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|--|---|--|------------------------------------|
| Title: Tackling Sham Marriage IA No: HO0090 Lead department or agency: Home Office Other departments or agencies: Ministry of Justice, Government Equalities Office, HM Treasury | Impact Assessment (IA) | | |
| | Date: 11/09/13 | | |
| | Stage: Final | | |
| | Source of intervention: Domestic | | |
| | Type of measure: Primary legislation | | |
| Contact for enquiries: Immigration Bill Team: ImmigrationBillTeam@homeoffice.gsi.gov.uk | | | |
| Summary: Intervention and Options | | | RPC Opinion: Not Applicable |

| Cost of Preferred (or more likely) Option | | | |
|---|----------------------------|--|---|
| Total Net Present Value | Business Net Present Value | Net cost to business per year (EANCB on 2009 prices) | In scope of One-In, Two-Out? Measure qualifies as |
| £118m | £0m | £0m | No NA |

What is the problem under consideration? Why is government intervention necessary?

The Home Office (HO) considers that sham marriages/civil partnerships (CPs) for immigration advantage are a significant problem, leading to an estimated 4,000 to 10,000 immigration applications each year. In 2011, the HO launched a public consultation on proposed changes to Family Migration, including measures to tackle sham marriage; consultation responses have been considered in developing these proposals. Legislative changes are required to allow registration officers/authorised persons to refer to the HO information on all couples intending to marry or enter into a CP, where at least one party could gain an immigration advantage, enabling the HO to assess, investigate and if necessary take enforcement action.

What are the policy objectives and the intended effects?

To deter sham marriages/CPs from taking place and/or ensuring that such marriages/CPs cannot be relied upon to gain immigration advantage. This is especially important for those seeking to gain a right to reside in the UK under EU law where the burden is on the State to prove the marriage was not genuine at the point it was entered into. The new scheme will apply before the marriage, including those in the Anglican Church, or CP with an emphasis on compliance, interviewing and identity checks to prevent fraud. It is expected to disrupt organised crime groups who arrange sham marriages/CPs for profit.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: Do nothing.
Option 2 (preferred): Enable the HO to identify sham marriages/CPs and take robust action against those involved: a new definition of sham; extending civil preliminaries to non EEA nationals seeking an Anglican marriage; extending the marriage/CP notice period for all couples from 15 days to 28 days; extending the notice period to 70 days where the HO has reasonable grounds to suspect sham to enable it to investigate genuineness; requiring couples to comply with the investigation in order to fulfil the notice requirement (nb: will not affect couples where both are British/EEA/permanently resident/exempt from immigration control); extending data-sharing powers between registration officers/authorised persons, HO and key partners, to tackle sham marriages/CPs and related abuse.

| | | | | | |
|---|--|--------------------|----------------------|-----------------------|---------------------------|
| Will the policy be reviewed? It will be reviewed. If applicable, set review date: 5 Years from implementation | | | | | |
| Does implementation go beyond minimum EU requirements? | | | | N/A | |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base. | | Micro No | < 20 No | Small No | Medium No |
| What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) | | | | Traded: N/A | Non-traded: N/A |

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: Mar Han Date: 01.10.2013

Summary: Analysis & Evidence

Policy Option 2

Description: Enable the Home Office to identify sham marriages/civil partnerships and take robust action against those involved.

FULL ECONOMIC ASSESSMENT

| Price Base Year 2013 | PV Base Year 2013 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
|-------------------------|----------------------|-------------------------|---------------------------------------|-----------|--------------------|
| | | | Low: 86 | High: 418 | Best Estimate: 118 |

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|--|---|-------------------------------|
| Low | 1.4 | 8.3 | 72.3 |
| High | 1.6 | 9.3 | 81.4 |
| Best Estimate | 1.5 | 8.0 | 69.9 |

Description and scale of key monetised costs by 'main affected groups'

Home Office - IT and staff set up costs (£0.9m PV), staffing costs to investigate marriages (£26.6 PV). Opportunity cost from impact on level of removals (£20.9m PV) and of appeals (£10.5m PV). General Register Office (GRO) and registration services - Greater volume of appointments and time required to inform the HO of in scope cases (£3.5m PV), IT costs (£0.6m PV) and staff training (£0.03 PV).

Other key non-monetised costs by 'main affected groups'

Couples wishing to marry following civil preliminaries or enter into a CP - The notice period will be extended for all couples.

Couples wishing to marry in the Anglican Church - All couples involving a non EEA national will be required to complete civil preliminaries.

Home Office - Risk of judicial review challenge from those affected by the proposed scheme.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|--|---|----------------------------------|
| Low | 0 | 19.5 | 158.5 |
| High | 0 | 61.2 | 499.4 |
| Best Estimate | 0 | 22.9 | 187.7 |

Description and scale of key monetised benefits by 'main affected groups'

Public sector - Additional fee revenue for registration services (£2.9m PV).

Indirect - Public sector savings through less usage of health, education and social services (£167m PV).

Increased employment opportunities for UK residents (£6m PV).

Cost saving from civil preliminaries for non EEA nationals wishing to marry in the Anglican church (£4.0m PV).

Other key non-monetised benefits by 'main affected groups'

Reduction in volume of sham marriages/CPs and of migrants gaining immigration advantage on that basis.

Reduction in funding for organised crime.

Reduction in levels of criminality and related abuse.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

4,000-10,000 applications per year based on sham marriages/CPs. HO has capacity to investigate up to 6,000 cases per year. Between 0-10% of sham marriages/CPs are expected to be deterred in year 1, rising to 60% in year 5, relative to current levels.

The public sector costs associated with each additional person in the UK are estimated to be between £5,050 and £8,350. Replacement with UK workers of 23%.

BUSINESS ASSESSMENT (Option 1)

| | | | | |
|---|--------------|---------|-------------------|----------------------|
| Direct impact on business (Equivalent Annual) £m: | | | In scope of OITO? | Measure qualifies as |
| Costs: £0 | Benefits: £0 | Net: £0 | No | NA |

Evidence Base (for summary sheets)

A. Strategic Overview

A.1. Background

The existing statutory definition of a sham marriage is set out in section 24 of the Immigration and Asylum Act 1999:

'Sham marriage' means a marriage (whether or not void) –

- (a) entered into between a person ('A') who is neither a British citizen nor a national of an EEA State other than the United Kingdom and another person (whether or not such a citizen or such a national); and
- (b) entered into by A for the purpose of avoiding the effect of one or more provisions of United Kingdom immigration law or the immigration rules.

The definition of a sham civil partnership is set out in section 24A of the 1999 Act.

The Immigration Rules and the Immigration (European Economic Area) Regulations 2006 allow non-EEA nationals to remain in the UK on the basis of their marriage to, or civil partnership with, a British citizen, a person settled in the UK (with Indefinite Leave to Enter or Remain (ILE/ILR)) or an EEA national. The Home Office estimates that around 35,000¹ marriages and civil partnerships a year in the UK involve a non-EEA national and, where they do not have settled status, are potentially advantageous in immigration terms to that person; and that 4,000-10,000² applications a year may be based on a sham marriage/CP. The EEA route is particularly vulnerable because, under EU law, it is open to visitors to the UK; there can be no maintenance, accommodation or language requirements; and the couple do not need to show, at the time the non-EEA national applies for a residence card, that the marriage/CP is subsisting: it is up to the Home Office to prove that it was a sham at the point the couple were married or entered into a civil partnership.

In February 2005, the Certificate of Approval (CoA) scheme was introduced under the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. It was intended to combat sham marriages involving non-EEA nationals marrying an EEA national, a British citizen or a person settled in the UK. Under the scheme, all persons subject to immigration control (except those with entry clearance for the purpose of marriage or with settled status) were required to apply to the Home Office for permission to marry, before giving notice of marriage at a Designated Register Office. The scheme also applied to civil partnerships. The scheme did not apply to marriages in the Anglican Church.

The original CoA scheme was initially successful because permission to marry was denied to those with most to gain in immigration terms from a sham marriage: those without any leave, those granted less than 6 months' leave, and those with less than 3 months' leave remaining at the date of the CoA application, unless there were exceptional, compassionate circumstances making it unreasonable to expect them to travel abroad to marry or to apply for entry clearance to come to the UK to marry. This

¹ There is currently no record of how many non-EEA nationals marry or enter into a CP in England and Wales; Scotland and Northern Ireland record information on country of birth. In 2011, around 292,200 marriages and civil partnerships were registered in the UK. In Scotland in 2011, around 29,600 marriages/CPs took place, of which approximately 3,600 involved an individual born outside the UK or EEA. The 2011 annual population survey (APS) data for Scotland finds that around 4% of the population of Scotland were born outside the EU but around 2% are nationals of a non-EU country. This produced a revised estimate of up to around 2,000 marriages/CPs in Scotland with a potential immigration advantage (around 7% of the total in 2011), though some of these cases would involve a non-EEA national with ILR (and therefore without potential immigration advantage for them). Adjusting, on the basis of APS data, for the higher proportion of non-EEA nationals residing in other parts of the UK, the 7% estimate was scaled up to 12%. Applying that percentage, with the same caveat about ILR cases, to the UK total for marriages/CPs in 2011 suggests that around 35,000 marriages/CPs a year may involve a non-EEA national.

² The lower end figure was calculated by applying an average 8% of marriages involving a foreign national lead to a section 24 report (see footnote 3) to the volume of applications on the basis of marriage/CP, including EEA family permits (around 50,000 applications). The higher estimate was calculated based on estimates provided by senior caseworkers regarding the number of sham marriages in the EEA route (20%), but it should be noted that they believed the higher level applied to high risk nationalities only.

success was reflected in a dramatic reduction in the number of section 24 reports³ from registration officers, from around 3,500 reports in 2004 to 450 reports in 2005.

However, the CoA scheme's utility and effectiveness were fairly soon eroded by a series of court judgments. These required changes to the scheme so that those with some valid leave, and later those without leave, could gain permission to marry enabling them to apply to remain in the UK. Excluding these groups from the CoA scheme, so preventing them from marrying in the UK, had been its main value. The CoA scheme was abolished in May 2011 in response to the declaration by the UK courts that the scheme was incompatible with ECHR Article 14 (non-discrimination), read with Article 12 (right to marry), because it did not apply to marriages in the Anglican Church. By that time, the vast majority of applications under the paper-based scheme were approved and it was no longer an effective means of countering sham marriage in any case.

Since the demise of the CoA scheme, the Home Office only receives advance notice of suspected sham marriages through notifications under section 24 of the Immigration and Asylum Act 1999, which places a duty on registration officers to notify suspected cases to the Home Office, and through enforcement and intelligence activity. There were 1,891 section 24 reports in 2012 (a 9% increase on 2011), more than half for the EEA route. It is thought that there is some level of under-reporting. Even for those received, as most are, before the ceremony, there is very little time to act before the marriage takes place.

For non-EEA nationals already in the UK, gaining leave to remain or a residence card through a sham marriage/CP – to a British citizen, EEA national or person with settled status – is a significant and growing area of abuse, as evidenced by the increase in section 24 reports from 450 in 2005 to 1,891 in 2012, and needs to be addressed. This requires the targeted application of resources by the Home Office and a truly joint approach with registration officers, including the establishment of new notification procedures and better information-sharing. It will also require joint work with the Devolved Administrations and the Anglican Church, as, to be fully effective and to ensure compatibility with the European Convention of Human Rights, any scheme will need to apply to all in-scope marriages and civil partnerships in the UK.

The Government believes that the most useful change would be to make all marriages and civil partnerships, including Anglican marriages involving a non-EEA national which would be required to follow the civil preliminary process (but not Anglican marriages between British citizens/EEA nationals), subject to a longer notice period: 28 days, compared to 15 days currently for marriages/CPs in England and Wales. This would enable those prospective marriages/CPs involving a person who is not a British citizen, EEA national, non-EEA national with settled status/permanent residence under EU law, or exempt from immigration control, to be referred to the Home Office. This referral scheme would give the Home Office a much better overview of potential sham marriages/CPs, at a stage – before the marriage/CP takes place – when it can be easier to gather the evidence necessary to establish that the couple's relationship is not genuine. It will not obstruct marriages/CPs that are found to be genuine, except by requiring the time taken for the new notice period and the referral scheme to be taken into account during the planning of the marriage/CP. This is thought to be reasonable and reflects the majority view expressed by respondents to a consultation held in 2011.

The proposals outlined in this impact assessment (IA) aim to deter people from attempting to enter into sham marriages/CPs, and to introduce clear and effective enforcement consequences for those who do. The Immigration Bill contains provision to legislate as outlined, including by redefining sham marriage and sham civil partnership to take into account the Immigration (European Economic Area) Regulations 2006 and introduce an assessment of the genuineness of the relationship.

A.2. Groups Affected

Those affected by the policy include:

³ Marriages that are suspected to be sham marriages are reported to the Home Office by registration officers under section 24 of the Immigration and Asylum Act 1999.

All couples seeking to enter into a marriage following civil preliminaries or a civil partnership. Couples where at least one party is a non-EEA national who seek to marry in the Anglican Church will be required to follow the civil preliminary process.

Any couple where at least one party is subject to immigration control and does not have settled status, or permanent residence under EU law, or is not exempt from immigration control, may be subject to investigation where there are reasonable grounds to suspect a sham.

Those affected in the public sector include the Home Office, which is responsible for administering the immigration system, and the General Register Office (GRO) and registration services.

A.3. Consultation

Within Government

Aside from the Home Office (including HM Passport Office), the Government departments consulted or involved in the formulation of the policy include: HM Treasury; Ministry of Justice; and Government Equalities Office. We have also consulted the Church of England, the Church in Wales and senior representatives of the local registration services for England and Wales.

Public Consultation

A 12-week public consultation on Family Migration, including measures to tackle sham marriage, was conducted by the former UK Border Agency (UKBA), from 13 July to 6 October 2011. In total 5,046 responses were received. 75% agreed that the authorities should have the power in England and Wales to delay a marriage from taking place where 'sham' is suspected and 62% agreed that some couples should be required to attend an interview to establish the genuineness of their relationship. Following the consultation, UKBA published casework guidance, which included a list of factors associated with genuine and non-genuine relationships, to help its caseworkers to focus on these issues; the minimum probationary period before settlement for non-EEA spouses and partners was also increased, in July 2012, from two years to five years, to test the genuineness of the relationship.

B. Rationale

Sham marriage for immigration purposes is a significant problem. The Home Office assesses that 4,000-10,000 applications a year to stay in the UK are made on the basis of a sham marriage or civil partnership, and estimates that around 35,000 marriages and civil partnerships a year involve a non-EEA national and are therefore potentially advantageous in immigration terms to that person if they do not have settled status.

Sham marriage is an attractive option for those seeking to remain in the UK. The Immigration Rules and the Immigration (European Economic Area) Regulations 2006 allow non-EEA nationals to remain in the UK on the basis of their marriage or civil partnership to a British citizen, a person settled in the UK or an EEA national. As the work and study routes are tightened, there is a risk that more non-EEA nationals will seek to abuse the marriage and civil partnership based routes as a means of remaining and settling in the UK.

In 2012, the Home Office received 1,891 section 24 reports, an increase of 8.6% from 2011 figures and 110% from 2010 (there were 1,741 section 24 reports received in 2011, 934 in 2010, and 561 in 2009). From 2010 to 2011, the number of section 24 reports involving students increased by 167%; in 2012, 49% of all section 24 reports involved a non-EEA national in the UK as a student. This suggests that rising numbers of non-EEA national students are looking to extend their leave by entering into a suspected sham marriage, given the tighter rules on extending leave as a student under Tier 4 of the Points Based System. From January to June 2013, UKBA conducted 460 sham marriage operations and made 212 arrests. The Government believes that we need to do more to prevent and tackle abuse, including ensuring that the family migration route is not seen as an easy target for those whose sole purpose is to work in the UK. Family migration must be based on a genuine relationship, not a marriage of convenience entered into in an attempt to gain an immigration advantage. Those involved in sham marriages and civil partnerships undermine our immigration system.

Migrants often seek the assistance of individual facilitators or organised crime groups of varying size and structure to co-ordinate sham marriage activity. The risks involved for organised crime groups are relatively low but the levels of profit can be very high with non-EEA nationals reported to pay up to £20,000 for this service. Organised crime groups are thought to be using gaps in Home Office Immigration and GRO systems and in information-sharing powers to perpetrate sham marriages on a large scale. Greater data sharing between all the agencies involved, to enable both strategic analysis of patterns and trends of abuse and operational responses, is considered to be a priority.

C. Objectives

The Government's objectives are to:

- Prevent and tackle abuse of family migration;
- Increase public confidence in our immigration system by tackling abuse and reducing burdens on the taxpayer and public services;
- At an early stage, deter and identify marriages and civil partnerships where couples are not in a genuine relationship and are getting married or entering into a civil partnership to support an application to remain in the UK or gain a right to remain in the UK;
- Take robust action against those entering (or attempting to enter) into a sham marriage or civil partnership.

Where immigration is not a factor (e.g. two British/EEA citizens marrying), the marriage or civil partnership will not be referred to the Home Office, even if there are other (non-immigration) reasons to suspect the relationship is not genuine. The scheme will also not apply where both parties are either British/EEA citizens or have settled status in the UK, permanent residence under EU law or are exempt from immigration control (e.g. because they have the Right of Abode in the UK).

D. Options

Option 1: Is to do nothing.

Option 2 (preferred): Is to enable the Home Office to identify sham marriages/CPs and take robust action against those involved: a new definition of sham; applying civil preliminaries to in-scope couples seeking an Anglican marriage; extending the notice period for all couples from 15 days to 28 days; extending the notice period for in-scope couples where the HO has reasonable suspicion of sham to 70 days to enable the HO to investigate the couple's genuineness; requiring couples to comply with the investigation in order to fulfil the notice requirement; extending data-sharing powers between registration officers, the HO and key partners to tackle sham marriages/CPs and related abuse.

E. Appraisal (Costs and Benefits)

General assumptions and data

This IA covers a 10-year period from 2014-15, in line with guidance from the Regulatory Policy Committee (RPC) and the Better Regulation Executive (BRE). The Immigration Bill is expected to obtain Royal Assent during 2014. We propose to implement the scheme outlined in this IA from April 2015. The IA aims to set out the best estimates of the policy impacts at the final stage of policy development, using the available evidence. The IA assumes that the scheme is extended to Scotland and Northern Ireland under the enabling provision for this contained in the Bill, in order to assess its full costs and benefits. Any key uncertainties are highlighted and key assumptions are tested in the sensitivity analysis section to show the range of potential impacts.

Objective function

In January 2012, the MAC published a report on the impacts of migration and recommended that migration policy impact assessments should concentrate on the welfare of the resident population. The NPV in this IA therefore aims to maximise the welfare of the legally resident population - defined as British citizens or those with settled status in the UK. The NPV should include the effects from any

change in fiscal, public service, consumer and producer surplus and dynamic effects where practical and appropriate, but should exclude forgone migrant wages (net of taxes).

In this case the costs for a migrant associated with leaving the UK will affect only non compliant individuals engaged in a sham marriage or civil partnership. Thus no consideration is made of the benefits (i.e. taxes paid) if they were to remain in the UK. Similarly, no consideration is made of the impact on businesses that employ illegal migrants. This is in line with the Better Regulation Framework Manual (2013) which states that an IA should not include costs and benefits that accrue to non compliant organisations or individuals.

The IA does include the benefit to the UK resident population of removing additional volumes of illegal migrants from the UK. This includes savings in providing publicly funded services such as healthcare and education and additional labour market participation.

Baseline volumes

The most recent data on the volume of marriages and civil partnerships in the UK is from 2011⁴, when around 292,200 marriages and civil partnerships took place in the UK. The volume of marriages and civil partnerships involving at least one person subject to immigration control is thought to be around 35,000 per year. The Home Office estimates that 4,000-10,000 immigration applications a year may be based on a sham marriage or civil partnership.

The Home Office makes no official forecast of future migration or marriages/civil partnerships, but for the purpose of this IA we assume that the volume of marriages and civil partnerships, and the number involving a non-EEA national, in the years following this policy change would have remained broadly constant at 2010 levels in the absence of any other changes. It is from this baseline that the impacts of policy proposals are calculated.

Option 1 – No change to policy

Costs

There will be no additional costs of option 1. However, there will be a number of risks and costs that will continue to arise, including:

Harms associated with abuse of the family migration route

- **Harms associated with sham marriages/CPs** – there is evidence of abuse of the family migration route through sham marriages/CPs. These are not beneficial to the UK and harm British society as well as those who remain in the UK on the basis of a sham marriage/CP and then cannot integrate fully into society.

Sham marriages/CPs are thought to contribute to the funding of organised criminal activity, through organised crime groups charging to facilitate sham marriages. Money is central to virtually all organised crime. It is not only a reward of crime, but also a driver, with profits funding future criminal activity. A greater impact on sham marriages/CPs will reduce the operation and profitability of organised crime.

- **Negative public perceptions** – by making no change to strengthen the family route against abuse by sham marriages/CPs, we will not counteract negative public perceptions: sham marriage is currently a high profile problem. There is a perception that it is easy to abuse the system in this area and it is important that the Government acts to counteract this.
- **Displacement of employment opportunities for UK residents** – labour market displacement occurs when employment opportunities in the UK that could be filled by UK residents are instead filled by those who are in the UK on the basis of a sham marriage/CP.

Burdens on the taxpayer

⁴ Source: ONS, GRO Scotland and GRO Northern Ireland. 2011 is the most recent period available.

- **Burdens on the taxpayer** – those participating in a sham marriage/CP may unjustly access public services during the period they remain in the UK or if they settle here. This includes the education system, the National Health Service and the welfare system. We estimate that each additional person in the UK costs the taxpayer between £4,250⁵ and £7,820⁶ per year through the use of public services such as health, education and welfare benefits. This is calculated by apportioning public spending to the resident population in the UK. See Annex A for an explanation of the Home Office’s standard assumptions. Those who are in the UK on the basis of a sham marriage/CP are assumed to make use of public services as any other migrant would.

Benefits

There will be no additional benefits of option 1. The lack of effective deterrence may lead to an increase in the volume of sham marriages and civil partnerships.

Option 2 – Enable the Home Office to take action against those engaging in sham marriages and civil partnerships

The estimated volume impacts of the policy framework are translated into monetary values for inclusion in the cost-benefit analysis under two broad headings – direct costs and benefits on the one hand, and indirect, or “wider”, costs and benefits on the other.

The **direct** costs and benefits are those that are clearly and immediately related to the activities of those entering into a sham marriage/CP. The direct costs include, for example, the cost to the Home Office of investigating sham marriages. The direct benefits, on the other hand, include additional fee income for Designated Register Offices if the volume of people using their services increases.

The **wider**, or **indirect**, costs and benefits are those that occur as a result of the direct impacts, including behaviour changes. They should be considered when the impacts are thought to be significant. The wider costs include a set of assumptions relating to the wider economy. The wider costs and benefits include the impact on public services if those engaging in a sham marriage/CP are prevented from remaining in the UK and are replaced in employment by UK residents.

The following sections describe in more detail how costs and benefits have been calculated, and summarise the results. In general, the method is straightforward: total costs and benefits are the product of a change in volume and an estimated unit cost or benefit, adjusted for the particular impact being considered.

Impact of behavioural change

There are uncertainties surrounding the assumptions and impact estimates, particularly around behavioural change by those seeking to engage in sham marriage/CP – it is hoped that the proposals will help to deter applications based on a sham marriage/CP. Where relevant, we have modelled a range of scenarios to investigate the volume impacts under differing behavioural assumptions, and we have set out those which have a significant impact on our estimates.

Current policy

For non-Anglican marriages in England and Wales, for all marriages in Scotland and Northern Ireland, and for all civil partnerships, the following applies:

- Applicants must satisfy the registration officer of their name, age and nationality (for British citizens this can be achieved with a birth certificate where appropriate); proof that any previous marriage or civil partnership has been dissolved or annulled. Those who are subject to immigration control may be asked to provide further information at the request of the registration officer.

⁵ For migrants in the UK for less than 5 years

⁶ For migrants in the UK for up to 10 years

- If either of the couple is subject to immigration control, they are required to give notice at a Designated Register Office (DRO) (there are 75 DROs in England and Wales; all register offices in Scotland and Northern Ireland are designated as a DRO).
- Notice of intention to marry or enter into a CP must be given in person (or by post in Scotland and Northern Ireland) no less than 15 days beforehand in England and Wales and Scotland, and 14 days beforehand in Northern Ireland. Sections 24 and 24A of the Immigration and Asylum Act 1999 require registration officers/authorised persons to report to the Home Office without delay any reasonable suspicion they may have that the marriage/CP is a sham to gain immigration advantage. This duty applies in all parts of the UK. Notification takes the form of a section 24 or 24A report, sent to the Home Office via email or post.
- The Home Office considers the information provided in section 24 and 24A reports, and may investigate further where appropriate, and/or record it on relevant databases (for use when assessing future applications by the non EEA national involved).

For marriages involving at least one non EEA national in the Anglican Church in England and Wales, the following common licence process is encouraged:

- The licence is granted in the name of the Bishop of the Diocese where the proposed marriage will take place, and he has discretion whether or not to grant it. It is thought that more than 90%⁷ of Anglican marriages involving a non EEA national went through this process in 2010.
- To obtain a common licence, one of the couple must have had his or her usual residence within the parish or district of the church in which the marriage is to be due to take place, during the 15 days immediately preceding the application, or must have had his or her usual place of worship at the church.
- Common licences, costing £165 per couple, can only be granted for marriage to take place within the Diocese, and are valid for three months.

Proposal

The Immigration Bill would amend the process for all marriages following civil preliminaries and for civil partnerships, including for British citizen and EEA couples. Any couple seeking to enter into an Anglican marriage, involving at least one non EEA national, would be subject to civil preliminaries. The notice period would be extended to 28 days for all couples.

All notices of marriage/CP involving a non EEA national (unless exempt from immigration control) would continue to be given at a DRO. A registration officer/authorised person would require information and associated evidence from those giving notice, e.g. full name, place of residence and nationality. British citizens and EEA nationals are not required to give notice at a DRO, and we have no plans to alter this: such couples will continue to give notice at their local register office or complete Anglican marriage preliminaries, e.g. the banns process.

If they had given notice correctly, and there was no legal impediment to their marriage or CP, couples who were both either a British citizen, EEA national, person with settled status or permanent residence under EU law, or exempt from immigration control, would be able to marry or enter into a CP at the end of the 28 day notice period, without investigation by the Home Office into the genuineness of their relationship.

Where one party to the marriage was a non EEA national without settled status, permanent residence under EU law or exemption from immigration control, registration officers/authorised persons would refer the proposed marriage/CP to the Home Office. Where the registration officer/authorised person had a reasonable suspicion that the proposed marriage/CP was a sham, they would also make a section 24 or 24A report.

The parties would be notified that there was a legal requirement for their proposed marriage/CP to be referred to the Home Office and that they might be subject to an extended notice period (of 70 days in total) and a Home Office investigation into the genuineness of their relationship, with which they would have to comply in order to fulfil the notice process.

⁷ In 2010, 5,900 marriages in the Anglican Church were preceded by the common licence process or a superintendent registrar's certificate. It is thought that there were around 6,400 marriages involving a non EEA national in the Anglican Church during this period.

Home Office referral

It is expected that around 35,000 cases a year would be referred to the Home Office. A Home Office unit would assess the referrals against intelligence based risk profiles and immigration and other records, and take account of section 24/24A reporting and other sources of information, and identify cases where there was a reasonable suspicion of sham for investigation. In the cases identified for investigation, the notice period would be extended to 70 days and the couple (and the registration officer/authorised person) notified accordingly. Other couples would be able to marry or enter into a CP after 28 days.

Investigation

It is expected that around 6,000 cases a year would be investigated by the Home Office. In order to assess the genuineness of the couple's relationship, the Home Office might request further information or documentation, and/or require the couple to attend for interview or be visited at home. A couple who failed unreasonably to comply with the Home Office investigation would be deemed not to have fulfilled the notice process and would not be able to marry or enter into a CP. They would have to give notice again if they still wished to marry or enter into a CP.

Outcome

All couples subject to the 70 day notice period, provided they complied with the Home Office investigation, would then be issued with the certificates/Schedule enabling them to marry or enter into a CP, even where the Home Office considered that the marriage/CP was a sham. However, in such a case the Home Office could use the evidence established by the investigation – that the relationship was not genuine and the marriage/CP was a sham – as the basis for an enforcement decision under existing immigration powers, against the non EEA national involved, e.g. curtailment of any extant leave and removal of an overstayer or illegal entrant. The Home Office could also use that evidence as the basis for refusing a subsequent immigration application based on the sham marriage/CP, subject to a fresh assessment at that stage of the couple's genuineness.

Impact

It is estimated that around 35,000 marriages or civil partnerships involving at least one non EEA national take place each year and that 4,000-10,000 applications a year to the Home Office are based on a sham marriage/CP.

The number of section 24 and 24A reports in cases where a registration officer/authorised person suspects that a marriage/CP is a sham has risen significantly in recent years. Although not all of these referrals can be assumed to involve a sham marriage/CP, it gives some indication of the possible scale of the problem. Once fully operational, the proposed scheme in this IA, which allows for the better identification of sham marriages/CPs, and subsequent immigration action, is assumed to provide a deterrent which will reduce the incidence of sham marriage/CP by approximately 60% within 5 years.

The Home Office estimates that rate of deterrence will increase over a period of 4-5 years, as a result of increased effectiveness in identifying sham marriages/CPs, demonstrable enforcement action and dealing robustly with those who seek to subvert the new process, together with strong public communications around the scheme. The current estimate of the deterrence rate across the first 5 years of implementation is given in table 1. The central and low scenario hold volumes constant after year 5 while the high estimate increases deterrence by a further 5% each year. Over year 1-5, the low estimate is 50% lower than then central estimate while the high estimate is 10% higher.

Table 1 – Estimated level of deterrence relative to current volumes

| Deterrent over time from Year 1 levels | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
|--|--------|--------|--------|--------|--------|
| Low | 5.0% | 15.0% | 22.5% | 25.0% | 30.0% |
| Central | 10.0% | 30.0% | 45.0% | 50.0% | 60.0% |
| High | 11.0% | 33.0% | 49.5% | 55.0% | 66.0% |

Source – Home Office Assumption

It is estimated that up to 2,500 potential removals from the UK will be generated in the first year of operation. This will reduce over time as people are deterred from entering a sham marriage/CP. It is assumed that the proportion of those deterred from entering into a sham marriage/CP who leave the UK

voluntarily will be around 5%. It is assumed that a large proportion will continue to seek to evade immigration control to maintain their stay in the UK. Enforcement action may be taken against those remaining in the UK. Other measures contained in the Immigration Bill seek to deter those in the UK without valid leave.

Costs

Set Up Costs

Training and familiarisation - Public Sector

There are likely to be some training and familiarisation costs for Home Office caseworkers. The Home Office estimate these costs to be around £0.5m (PV) and fall in year 1 alone.

GRO and registration service staff will also require training in respect of the change in process. It is thought that training will take half a day for around 400 staff. In addition, there would be costs associated with updating handbooks for registration officers, authorised persons and clergy. It is estimated that these costs would amount to around £0.3m.

IT set up costs – Public Sector

The Home Office will look to set up an IT system to allow DROs to transmit information to the Home Office easily and securely. This is expected to cost between £0.25m and £0.5m (PV) and the costs fall in year 1. GRO IT costs are expected to be £0.5m (PV) and the costs fall in year 1.

Direct Ongoing Costs

Operational costs to the public sector

- **Increased Home Office case costs** – there will be an increase in Home Office casework costs of carrying out an assessment of the 35,000 cases expected to be referred a year. Assuming that of these 6,000 cases a year are investigated, the additional staffing costs from 2015-16 onwards are estimated to be £26.6m (PV) over the 10 year period assessed in this IA. This includes additional staff to manually investigate marriage/CP notifications, to interview couples and conduct home visits and to answer any additional enquiries made by those awaiting a decision.
- **Increase in appeal costs to the Home Office and HM Courts and Tribunals Service (HMCTS)** – it is estimated that up to 2,000 cases a year could appeal against the enforcement decision taken against the non EEA national on the basis of a Home Office assessment, following an investigation, that the marriage/CP is a sham. This figure is expected to reduce over time as more sham marriages/CPs are deterred. However, it is probable that some people engaging in sham marriages/CPs would have been refused leave to remain in the UK later down the line and would have appealed their decision then. It is thought that leave would in any case have been refused and an appeal would have been brought within a period of 1 to 5⁸ years for between 5% and 15% of cases⁹.

The volumes and categories of appeals dealt with each year reflect agreed HMCTS and Home Office resourcing and priorities. This implies that, without any change in resourcing or priorities, the additional immigration enforcement appeals as a result of this policy will reduce appeal volumes in other areas. The cost associated with these appeals can be considered an opportunity cost as resources are diverted to a different area. The average cost per appeal is £311 to the Home Office and £861 to HMCTS. The overall opportunity cost is expected to be £10.5m (PV) over 10 years.

- **Change in enforcement and removal costs for the Home Office** – the Home Office believes that the costs involved in detaining and removing individuals can be carried out within existing budgets and does not anticipate that additional costs will be incurred. This implies that there will be an

⁸ Home Office assumption reflecting the length of time before a person involved in a sham marriage would have come to the attention of the Home Office. Timescales for enforcement action and appeals are variable depending on a number of internal and external factors. In cases where the correct documentation is present enforcement action could be concluded relatively quickly. However, other cases may take longer.

⁹ Ibid

opportunity cost as resources are used to enforce this policy change and not what they would otherwise have been used for. It is thought that the average cost of removal, and thus opportunity cost per removal, is £3,281.¹⁰ It is likely that some of those removed from the UK would have been removed at a later date, implying that some of the opportunity cost of additional removals at an earlier date will decline over time. The proposed policy change will allow earlier removal.

The central estimate assumes that the volume of potential removals is 2,500 in year 1 and that, depending on the nationality profile of these cases and other factors, the proportion of these potential removals that is achieved is around 60%. The number of removals reduces over time as the volume of sham marriages/CPs deterred increases. The total opportunity cost is expected to be £20.9m (PV) over 10 years.

There may also be additional opportunity costs in taking enforcement action against those who are deterred from entering a sham marriage/CP but do not depart the UK voluntarily.

- **Increase in casework costs for registration services** – the additional time taken for a couple to give notice and for the Home Office to be notified of all proposed marriages/CPs involving a non EEA national is estimated to be 30 minutes per couple giving notice. There will also be additional notices given by couples involving a non EEA national who wish to marry in the Anglican Church. It is estimated that this will affect around 6,700 couples.¹¹ The volume of couples affected is expected to reduce over time as the sham cases deterred increase. The time taken to give notice is around 30 minutes for each person. The median staff cost is £20.52¹². The total expected cost is £3.5m (PV) over 10 years.
- **Reduction in income for the Anglican Church** – couples in scope of the proposed scheme will no longer be allowed to complete the common licence process in the Anglican Church. Instead they will be required to complete the civil preliminary process. This is likely to result in a drop in income for the Anglican Church, which will be offset by a drop in administrative activity.

It is estimated that around 6,700 couples a year who marry in the Anglican Church will be in scope of the proposed scheme. The impact assessment process does not include the impacts where persons are engaging in non compliant activity, such as a sham marriage. If we assume that 10-20%¹³ of marriages involving a non EEA national are sham (though this is considered to be an over-estimate where marriages in the Anglican Church are concerned), then, for the purposes of this IA, the change in costs in respect of 80-90% of these couples has been included. The proportion of marriages that are sham marriages will fall over time due to the expected deterrent impact of the new scheme. The Anglican Church charges a fee of £165 per couple to undertake the common licence process, thus the expected drop in income is £6.9m PV over 10 years.

It is assumed that the fee is set at a level that covers the cost to the Anglican Church of providing this service. Thus, for the purposes of this IA, it has been assumed that the reduction in income will be exactly offset by the administrative savings to the Church, meaning that the overall impact will be zero. This is shown as an offsetting benefit in table 2.

Costs to the public sector – non monetised

- **Increase in Judicial Reviews** – it is thought that the volume of judicial review challenges may increase as a result of the policy changes. This will have cost implications for the Home Office and HMCTS. As volumes are unknown, these costs have not been quantified.

Impacts on couples seeking to marry or enter into a CP – non monetised

¹⁰ In financial year 2011-12, the average cost to the UK Border Agency of each removal was £3,281. This has been calculated by dividing the total cost of our removal activity by the volume of removals in that financial year. The cost of unsuccessful attempts at removal is absorbed within this average cost.

¹¹ In 2011, around 12% of marriages involved at least one non-EEA national. See footnote 1 for detail.

¹² Annual Survey of Hours and Earnings (2012): median wage for SOC code 2429 - Business, research and administrative professionals n.e.c. including registrars. Includes 16.4% 'on costs' to account for employer costs such as national insurance.

¹³ It is estimated that there are around 35,000 marriages and civil partnerships a year involving a non EEA national and 4,000-10,000 sham-based applications a year to the Home Office.

- **Increasing the length of process** – couples are currently required to give between 14-15 days' notice before they can marry or enter into a CP. The proposals outlined in this impact assessment mean all couples going through the civil preliminary process will be required to give at least 28 days' notice before they can marry. In 2011, around 238,500 couples married following civil preliminaries or entered into a civil partnership.

In England and Wales, around 85% of marriages following civil preliminaries give notice in a non DRO. In 2010, 10% (18,250) of all non DRO marriages and, by contrast, 49% (10,025) of all DRO marriages took place within 28 days of notice being given, i.e. within 13 days of the end of the current notice period. This suggests that 15% of all couples (both DRO and non DRO marriages) marrying following civil preliminaries will have to change their behaviour and give notice earlier owing to the change in the notice period to 28 days. As DRO marriages will include all those involving a non EEA national subject to immigration control (as well as other marriages in that area), this also suggests that the marriages about which the Government has concerns take place more quickly than others, thus the impact is more likely to fall on couples who could gain an immigration advantage through a sham marriage.

On average, the waiting time for a marriage once notice has been given is 153 days for non DRO marriages, i.e. 138 days after the end of the current notice period, compared to 53 days for DRO marriages, i.e. 38 days after the end of the current notice period. Although the impact on genuine couples cannot be quantified, it is thought that genuine couples are less likely to be affected by the change.

The notice period for couples selected for investigation will be an additional 42 days, in addition to the initial 28 days. It is estimated that around 6,000 couples will be affected.

- **Immigration decisions based on assessments of sham** – some genuine couples may fail to persuade the Home Office that their relationship is genuine. The Home Office has mitigated against this by maintaining a right of appeal against enforcement and other immigration decisions based on an assessment of sham. It is not possible to quantify this impact as the proportion and impact is unknown.

Benefits

Direct Ongoing Benefits

Impacts on the public sector - monetised

- **Increased appeal fee income to HMCTS** – HMCTS charges an administration fee for appeals: an oral hearing is £140 and a written hearing is £80. The estimated volume of additional appeals associated with the proposed scheme is set out on page 11. The total increase in fee income is expected to be £1.1m (PV) over 10 years.
- **Increased fee income to the registration service** – all couples seeking to marry where at least one of them is a non EEA national will now be required to give notice at a Designated Register Office (unless they are exempt from immigration control). Previously those marrying in the Anglican Church in England and Wales would not be required to contact a DRO. It is thought that around 6,700 couples a year could be required to pay the additional fee of £35 per person. However, as set out on page 12, only the fees from genuine couples are included. The total increase in fee income to the registration service is around £2.9m (PV) over 10 years. The fees are set to reflect the time required to give notice; if fee income from all couples were included, this would fully cover any additional costs.

Impacts on couples seeking to marry or enter into a CP – monetised

- **Reduction in fee for those marrying in the Anglican Church in England and Wales** – those in scope of the proposed scheme and seeking to marry in the Anglican Church in England and Wales will now be required to give notice in a DRO with a fee of £35 per person, instead of through the common licence process in the Anglican Church, where the fee is set at £165 per couple. It is estimated that around 6,400 couples could be affected. However, as set out on page 12, the impact

assessment process does not include the additional costs where couples are engaging in non compliant activity, such as a sham marriage. The total saving to couples seeking to marry is around £4.0m (PV) over 10 years.

Wider benefits – wider UK economy – monetised

- **Reduced burdens on public services** – if there is a reduction in the volume of migrants remaining and settling in the UK, both through removals arising in respect of sham marriages/CPs and from the deterring of sham cases, this could help to reduce pressures on public services by reducing the volume of people eligible to utilize them. The cost of all public services can be allocated to each individual in the UK, on the assumption that consumption is the same as a UK resident. This figure has been adjusted to account for services which migrants are not eligible to claim, such as most welfare benefits before settled status is obtained, and for services which are not affected by volume, such as public goods. Annex A sets out the Home Office's standard assumptions and calculations used to estimate the savings. Those who are in the UK on the basis of a sham marriage/CP are assumed to make use of public services as any other migrant would.

There will be savings both from the volume of illegal migrants removed from the UK as a result of engaging in a sham marriage/CP (£153m PV) and from those who are deterred from entering into a sham marriage/CP to obtain leave to stay in the UK (£14m PV). The proportion of those deterred from entering into a sham marriage/CP, but displaced into a different irregular stay in the UK, is not known. However, for the purposes of this impact assessment it is assumed to be around 95%.¹⁴ It is assumed that those deterred from entering into a sham marriage/CP and not displaced into a different illegal route either leave the UK or do not come to the UK. The savings are measured against a baseline that assumes that persons entering into a sham marriage/CP would have remained in the UK indefinitely in the absence of a policy change. The combined saving is expected to amount to £167m over 10 years.

A significant proportion of this figure is likely to be realised through opportunity costs, in that the reduction in use of public services by those entering into a sham marriage/CP will instead be utilised by other UK residents meaning actual cash savings may not be realised.

- **Increased employment opportunities for UK residents** – if a migrant who entered into a sham marriage/CP was gainfully employed in the legitimate labour market, then they may be replaced by a UK resident when they depart the UK or are deterred from entering the UK.

The independent Migration Advisory Committee's January 2012 report¹⁵ found that 100 additional non-EU migrants may cautiously be estimated to be associated with a reduction in employment of 23 native workers both during periods of economic growth and downturn. This IA assumes that the inverse of this finding is valid when the number of non EEA migrants is reduced. See Annex B for a description of the findings and their application in impact assessments.

The type of jobs that are likely to be taken by UK residents is unknown. However, it is thought that those seeking to remain in the UK illegally are likely to be found in the low skilled jobs in the lower half of the earnings distribution. Thus it is assumed that those affected are in jobs earning between the 10th and 50th percentile. The central estimate assumes earnings on the 25th percentile – £12,936¹⁶ – and the number of jobs affected is calculated using the employment rate (58.94%¹⁷) for all non EEA nationals. It is likely that a proportion of those employed may be employed in the shadow economy and not in legitimate jobs. The IA assumes that 40% are employed in the legitimate labour market, on the basis that a proportion will currently have leave which enables them to work. These assumptions are tested in the sensitivity analysis. The benefit to UK residents through earnings from additional employment is £6.1m (PV) over 10 years.

¹⁴ Home Office assumption

¹⁵ MAC (2012) Analysis of the impacts of migration. Available from <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/27-analysis-migration/>

¹⁶ Annual Survey of Hours and Earnings (2012) all jobs – 25th percentile.

¹⁷ ONS Labour Market Statistics May 2012 Table EMP06: Employment by country of birth and nationality

The impacts on the businesses employing migrants are not considered as they are employing illegal migrants and are therefore not compliant. However, the jobs affected are likely to be low skilled implying that there will be negligible costs involved in up-skilling and recruitment.

Wider benefits – wider UK economy – non monetised

- **Reduction in abuse of the family migration route and in volumes of sham marriages/CPs** – it is expected that the proposals to change the notice process and increase enforcement against those involved in a sham marriage/CP will deter people from entering into a sham marriage/CP. Table 1 on page 10 sets out the expected level of deterrence.
- **Reduction in funding for and level of organised crime** – as described above, migrants often seek the assistance of individual facilitators or organised crime groups of varying size and structure to co-ordinate sham marriage activity. The risks involved for organised crime groups are relatively low but the levels of profit can be very high with non EEA nationals reported to pay up to £20,000 for this service. Money is central to virtually all organised crime. It is not only a reward of crime, but also a driver, with profits funding future criminal activity. A greater impact on sham marriages/CPs will reduce the operation and profitability of organised crime.
- **Reduction in levels of abuse of public services** – the introduction of new information-sharing powers between registration officers/authorised persons, the Home Office and key partners is expected to help tackle sham marriages/CPs and related abuse.

Summary of costs and benefits

A summary of the key monetised costs and benefits included in the NPV is set out below.

Table 2 – Summary of costs and benefits

| Summary of Costs and Benefits | 10 yr impact (£m) PV |
|--|---------------------------------|
| Costs | |
| <u>Set-up costs</u> | |
| 1. Training and familiarisation costs - Home Office | £0.5 |
| 2. Training and familiarisation - registration service | £0.3 |
| 3. Home Office IT set up and maintenance | £0.4 |
| 4. GRO IT set up and maintenance | £0.5 |
| Total Set Up Costs | £1.7 |
| <u>Ongoing costs</u> | |
| 1. Home Office staff impacts | £26.6 |
| 2. Increase in appeal costs | £10.5 |
| 3. Additional costs for registration service | £3.5 |
| 4. Removal costs - Home Office | £20.9 |
| 5. Reduction in income for Anglican Church | £6.9 |
| Total Ongoing Costs | £68.3 |
| Total costs | £70.0 |
| Benefits | |
| Ongoing Benefits | |
| 1. Additional fee income to registration service | £2.9 |
| 2. Additional appeal fee income to HMCTS | £1.1 |
| 3. Reduction in fees paid by those marrying in Anglican Church | £4.0 |
| 4. Reduction in administrative activity for Anglican Church | £6.9 |
| 5. Public sector service savings | £166.8 |
| - Reduced public service costs from removals | £152.7 |
| - Reduced public service costs from deterrence | £14.1 |
| 6. Increased employment for UK residents | £6.1 |
| Total benefits | £187.7 |
| Net present value | £118 |

Impact on Businesses

There are no direct or indirect impacts on businesses as a result of this policy proposal. Sham marriages/CPs will not be prevented from taking place. Instead those engaged in sham marriages/CPs will face greater enforcement action which is more likely to result in their removal from the UK or the refusal of any subsequent immigration application. However, this will only affect individuals who are not compliant with the law and public sector organisations. This includes the Anglican Church, in the context of its status, in England, as the established Church. Any impacts on businesses will only affect those who have employed those who are in the UK illegally. These impacts have not been considered as they are not compliant. Therefore this proposal is out of scope of the one in, two out process.

F. Risks

Modelling risks

There are a number of sensitivities and uncertainties associated with the impacts modelled in this impact assessment. The high/low ranges are set out in the table below to highlight the key sensitivities.

Table 3 – Key sensitivities

| Key Sensitivities | Low | Central | High |
|--|--------------------------|---------|-------|
| Volume of sham-based applications | 4000 | 6000 | 10000 |
| Deterrence | See Estimates in Table 1 | | |
| Public sector costs | 5,050 | 6,700 | 8,350 |
| Potential removals | 1700 | 2500 | 2500 |
| Actual removals | 50% | 60% | 70% |
| Proportion who would have been removed without policy change | 10% | 15% | 20% |

| Length of stay in absence of policy change - years | 1 | 3 | 5 |
|--|--------|---------|---------|
| Wages for UK residents taking up employment | £6,500 | £12,900 | £21,500 |
| Proportion in legitimate employment | 10% | 40% | 55% |

Table 4 sets out the cost, benefits and NPV associated with the key sensitivities in table 3.

Table 4 – Low, Central and High estimates.

| Summary of Costs and Benefits | Low Summary | Central Summary | High Summary |
|--|---------------------------------|---------------------------------|---------------------------------|
| | 10 yr impact (£m) PV | 10 yr impact (£m) PV | 10 yr impact (£m) PV |
| Costs | | | |
| <u>Set-up costs</u> | | | |
| 1. Training and familiarisation - Home Office | £0.5 | £0.5 | £0.5 |
| 2. Training and familiarisation - registration service | £0.3 | £0.3 | £0.3 |
| 3. Home Office IT set up and maintenance | £0.3 | £0.4 | £0.5 |
| 4. GRO IT set up and maintenance | £0.5 | £0.5 | £0.5 |
| Total Set Up Costs | £1.6 | £1.7 | £1.8 |
| <u>Ongoing costs</u> | | | |
| 1. Home Office staff impacts | £26.6 | £26.6 | £26.6 |
| 2. Increase in appeal costs | £12.2 | £10.5 | £15.8 |
| 3. Additional costs for registration service | £3.7 | £3.5 | £3.2 |
| 4. Removal costs - Home Office | £20.9 | £20.9 | £28.3 |
| 5. Reduction in income for Anglican Church | £7.5 | £6.9 | £5.7 |
| Total Ongoing Costs | £70.9 | £68.3 | £79.7 |
| Total costs | £72.5 | £70.0 | £81.5 |
| Benefits | | | |
| <u>Ongoing Benefits</u> | | | |
| 1. Additional fee income to registration service | £3.2 | £2.9 | £2.4 |
| 2. Additional appeal fee income to HMCTS | £1.3 | £1.1 | £1.6 |
| 3. Reduction in fees paid by those marrying in Anglican Church | £4 | £4 | £3 |
| 4. Reduction in administrative activity for Anglican Church | £7 | £7 | £6 |
| 5. Public sector service savings | £142 | £167 | £440 |
| - Reduced public service costs from removals | £138 | £153 | £391 |
| - Reduced public service costs from deterrence | £5 | £14 | £49 |
| 6. Increased employment for UK residents | £0.1 | £6.1 | £46.4 |
| Total benefits | £158.5 | £187.7 | £499.4 |
| Net present value | £86 | £118 | £418 |

G. Enforcement

The processes couples will be required to follow in order to comply with the scheme will be clearly outlined and explained. We will look to publish as much information about the investigation aspects of the scheme as is operationally appropriate.

We will be clear about the consequences for individuals where the Home Office considers a proposed marriage/CP to be sham. We will not be introducing new types of immigration decision or appeal as a result of the scheme, but will instead rely on current enforcement action, e.g. curtailment of any extant leave and removal of an overstayer or illegal entrant, and on refusing any subsequent sham-based immigration application. Those individuals subject to enforcement or other immigration action as a result of the scheme will have access to any right of appeal linked to that action.

As the proposed scheme is directly linked to immigration control, it will be administered by the Home Office, in partnership with the GRO and registration services.

H. Summary and Recommendations

The table below outlines the costs and benefits of the proposed changes.

| Table 5 Costs and Benefits | | |
|-----------------------------------|---------------------------|----------------------------|
| Option | Costs | Benefits |
| 2 | £70.0m (PV over 10 years) | £187.7m (PV over 10 years) |

Source: Home Office Analysis

The preferred option is option 2. This is because option 1 does not mitigate against the harms caused by sham marriages/CPs, does not tackle abuse of the family migration route and does not reduce the burden on the taxpayer. The expected benefits outweigh the costs for option 2.

I. Implementation

This measure will be considered as part of the Immigration Bill, which is expected to receive Royal Assent in 2014. We propose to fully implement the scheme outlined in this IA from April 2015.

J. Monitoring and Evaluation

Post-implementation, the effectiveness of the new scheme will be monitored by the Home Office. This will include:

1. Monitoring the volume of cases where action has been taken against a non EEA national entering a sham marriage/CP.
2. Monitoring the number of applications made to the Home Office on the basis of marriage/CP.

Annex A - Impact on Public Services

Home Office impact assessments have previously attempted to estimate the impact of migrants on health, education, criminal justice and welfare benefits using a bottom up approach which aims to identify consumption of specific services. However, these estimates present only a partial picture of the impacts and may be biased in that unidentified consumption may substantially alter the picture. For this reason a top down approach, which aims to allocate all public spending to each person in the UK, is preferred. This annex sets out the preferred approach, which aims to estimate the impact on public services of a change in the number of migrants arriving or remaining in the UK. This figure can be used to quantify the change in migration in impact assessments (IAs).

Allocation of Public Expenditure

A top down approach to allocating public spending to individuals assumes that consumption is broadly similar for all individuals included in the calculation. This approach has been documented in the relevant literature (Glover et al, 2000 and NIESR, 2011). HM Treasury document total levels of public spending (total managed expenditure (TME)) in the Public Expenditure Statistical Analyses (PESA) 2011 documents the total level of public spending in different areas, including general public services; defence; public order and safety; economic affairs; environment protection; housing and community amenities; health; education; social protection and EU transactions.

Simple calculation

This allows public expenditure to be allocated to each individual in the UK. The analysis assumed 62.3 million individuals in the UK, from the ONS statistical bulletin of national population projections (2011). Per head costs are calculated as being the sum of total spending on each element of public services, divided by the total UK population, and does not vary across characteristics or groups. This method gives an estimated spend per person, including children, in the UK of £11,300 per person.

Public Goods

However, this figure includes public goods which mean it may not be reasonable to assume that excluding a migrant from the UK could have a marginal impact of £11,300 on public finances. Instead it is sensible to exclude costs associated with public goods, as the cost of extending or removing coverage to one additional migrant is zero as public goods are not attributable to any one individual in the population.

Public goods are defined as non-rival and non-excludable. To be non-rival it must be that the consumption of a good by one individual does not reduce the ability of others to consume that good. A non-excludable good means that once the good is provided it is impossible for any individual to opt out. An example of a public good may be national defence. Once national defence is provided for the country, an individual is unable to opt out of it. Whether they wish to be defended or not, they will be defended as it is not possible to protect the country without also protecting everyone in it. However, it is also true that one individual who receives the protection of national defence does not reduce the defence of others. Thus the good is non-rival and non-excludable.

The characteristics of a public good mean that the marginal cost of providing the good to one additional person is zero. As such it is sometimes debated that the cost of that good, which is attributable to a single individual, should also be zero. For this reason estimate B in table 1 provides the estimated cost of public spending per person excluding those goods deemed to be public goods. The excluded spending includes items such as general public spending, research and development, defence, pollution and other environmental spending, and street lighting.

In addition to excluding these public goods, spending on public debt transactions and EU payments have also been excluded. This is because these are obligations which cannot be opted out of and are not always directly attributable to the current population. Thus on a similar principle to a public good they are not incurred on a per person basis and would not be affected by one additional migrant. Removing these categories reduces the average impact of a marginal individual in the UK to £9,100 per year. However, this does not control for differing characteristics of migrants and how these characteristics may affect use of public services.

The exclusion of public goods from the cost calculation is one that could be contested. It is possible to suggest that the migrant population in total is non-marginal and therefore the costs of migrants as a whole are not zero. However, as the IA approach is to estimate the impact of a marginal change in migrant volumes, the use of a zero marginal cost would be more appropriate. Similarly, some previous methods have not excluded debt transactions, or have only excluded part of them. The reasoning in these methods is that there is still some benefit gained from the large infrastructure projects that incurred the debt. However, this is complex to calculate the remaining benefit and apportion the debt payments appropriately and it is doubtful whether the presence of migrants per se has affected the demand for such capital investment, so debt transactions have been excluded.

Welfare and Benefits

Allocating public expenditure to the individuals in the population includes welfare and benefit expenditure. However, most migrants will not be eligible to claim most welfare benefits until they have been in the UK for at least 5 years and have been granted settlement in the UK. For this reason, it is prudent to exclude welfare benefit expenditure for migrants who have been in the UK for less than 5 years and who will not be eligible to claim. Estimate C in table 1 provides an estimated cost per person excluding public goods and welfare of £5,800 per person. For migrants who have been in the UK longer than 5 years and have settled here, welfare expenditure should be included, meaning estimate B is more appropriate.

Wider Services

This approach assumes that consumption is the same for all individuals. However, migrants and the native population are unlikely to be a homogenous group with identical patterns of consumption. Consumption is likely to vary by age, gender, family composition and other factors such as income and ethnicity. The recent report on the impacts of migration by the Migration Advisory Committee (2012) has presented new evidence on the social impacts of migration. The MAC commissioned NIESR to provide top down estimates on health, education and social services expenditure for different migrant groups.

Given that health, education and social services expenditure figures which take these characteristics into account are available, we have excluded these from our simple estimate. This gives two estimates of general public expenditure. Estimate D of £1,400 per person, which excludes public goods and welfare expenditure as well as health, education and social services expenditure and estimate E of £4,700 per person, which includes welfare benefit expenditure while excluding public goods, health, education and social services. These wider estimates should be added to the estimates of health, education and social services expenditure which have been adjusted to account for age and other characteristics of specific migrant groups.

Table 1: Summary of the per head cost of public services consumed by a migrant

| | | £ |
|---|--|--------|
| A | Total spend per capita | 11,200 |
| B | Total excluding public goods | 9,100 |
| C | Total excluding public goods and welfare | 5,800 |
| D | Total excluding public goods, welfare, health, education & social services | 1,400 |
| E | Total excluding public goods, health, education & social services | 4,700 |

Source: based on National Population Projections 2010-based Statistical Bulletin, ONS, (2011) and Public Expenditure Statistical Analyses (PESA), HM Treasury, Table 5.2, (2011).

NIESR

NIESR (2011) were commissioned to provide an estimate of migrants' consumption of education, health and social services. Estimates have been produced for all migrants, defined as those born outside of the UK, according to their key characteristics, on the assumption that age is the most powerful characteristic that drives consumption of public expenditure. NIESR estimated the proportion of the population that are migrants in each of the migrant groups of interest using the Annual Population Survey (APS). The APS identifies families, including children living at home. For some migrant groups, NIESR have given a narrow and broad definition¹⁸ which will allow the creation of a range of costs for each type of migrant.

¹⁸ In the narrow definitions, migrants are included if they cannot be included in any other group. For example, economic migrants includes those working in the UK but only if they are not as full time student or if their partner's status could not allow them to work. The broad definition

The population estimates were combined with PESA data for 2009/10 to estimate consumption per individual. These figures have been uplifted to 2011/12 prices using the change in public expenditure since 2009/10. These estimates can be added to the wider estimates (D and E) described above to give an overall estimate for cost to the public services per migrant in the UK.

Health

The evidence in the literature concludes that migrants in general are unlikely to pose a disproportionate burden on health services. There is strong evidence for lower impacts for Tier 1 and 2 work migrants, who are generally young and healthy. This is supported by a recent Home Office publication¹⁹ which suggested that students and skilled workers, more often likely to be young and healthy, are likely to have a low impact on public services, making a lower demand on the public sector than an average UK resident. Expenditure on healthcare is much higher for elderly adults. NIESR base their estimates on the proportion of migrants and non migrants in the population, their gender and age, meaning estimates for migrants are lower than those for the non migrant population.

Education

The literature is unclear on the impact of migration on the provision of education. The main negative impacts concern children with poor English language skills and pupils arriving or leaving mid year. On the other hand, there is evidence of a positive relationship between children with English as an additional language and attainment. These views are supported by Home Office research.²⁰ These data suggest that consumption exceeds non migrant groups for some migrants groups. This is the case for economic migrants, primarily due to larger family sizes, but not for Tier 4 migrants owing to low volumes of accompanying children.

Social services

There is little evidence on migrants' use of social services, and most skilled migrants and students will be unlikely to make many demands. This would not be the case for family migrants, from poorer backgrounds, or asylum seekers necessarily, although evidence suggests there is a lack of awareness and thus use amongst these groups. However, demand may increase over time. Estimates have been adjusted by the age of migrant groups and suggest that on average use of social services by the migrant population is much lower than for non migrants.

Table 2 sets out the overall costs for public service consumption used in this IA. These consist of the values suggested by NIESR for health, education and social services expenditure uplifted to 2011/12 prices and estimate D or E given in Table 1. Estimate E is used for the maximum estimate as it is appropriate to include welfare payments for those who are settled in the UK. Estimate D, excluding welfare payments, is used for the lower estimates.

Table 2 – Aggregate costs for health, education and social services.

| | £ per head - Min | £ per head - Max |
|--------------------------|------------------|------------------|
| Whole population | 5,190 | 8,490 |
| Non-migrants | 5,240 | 8,540 |
| Migrant in last 10 years | 4,520 | 7,820 |
| Migrant in last 5 years | 4,250 | 4,250 |

(PESA), HM Treasury, Table 5.2, (2009). Uplifted to 2011/12 prices.

The values in table 2 can be used to quantify the impacts on public expenditure of marginal changes in the level of migrants arriving or remaining in the UK. Over the medium to long-run, it is expected that the migrant's pattern of consumption of service will converge to that of a UK resident.

includes all migrants who may be in each category. For example, all employed migrants are treated as economic migrants regardless of their student or partner's status.

¹⁹ Home Office (2013) Social and Public Service impacts of International Migration at the local level. Available from <https://www.gov.uk/government/publications/social-and-public-service-impacts-of-international-migration-at-the-local-level>

²⁰ *Ibid.*

Annex B: Displacement Assumptions

Displacement

Labour market displacement occurs when employment opportunities in the UK that could be filled by UK natives (UK born or UK nationals) are instead filled by migrants (foreign born or foreign nationals). The Government commissioned the Migration Advisory Committee (MAC) to analyse the impact of displacement on the UK labour market, culminating in a report²¹ in January 2012. This annex sets out how the report's findings have been applied in this impact assessment.

The assumptions that are used in this impact assessment, and described below, reflect the current Home Office position and are not a cross-government consensus.

Rate of Displacement

This IA uses displacement assumptions derived from MAC (2012), which sought to estimate the association between migration and the native employment rate in Great Britain, between 1975 and 2010, using the Labour Force Survey. Natives were defined as UK-born individuals. The headline result, and that which is used in this IA, suggests that a one-off increase of 100 in the inflow of working-age non-EU born migrants is associated with a reduction in native employment of 23 people (this is based on analysis of data spanning 1995 to 2010). The MAC report implies that this result holds in all periods, including both economic growth and contraction (further analysis suggests the reduction in native employment from an inflow of foreign-born working-age migrants may be higher in years when the output gap was zero or negative). Essentially, this suggests that upon entering the country, 23 per cent of immigrants (as defined) could take up employment that would otherwise have gone to those who are UK-born.

Length of Displacement

In implementing the volume of displacement, a key consideration is the tentative association in MAC (2012) that only those migrants who have been in the UK for less than 5 years are associated with displacement, not those who have been in the UK for more than 5 years. Practically, this is not directly applicable to IAs, which show impacts annually. Therefore, without further evidence to suggest otherwise, displacement is assumed to diminish equally each year over a 5 year period, for each particular cohort of migrants. It is also assumed that those who are removed from the UK may have already spent a period of time here and may be associated with a lower level of displacement. However, the length of time here is not known. It is assumed that migrants would have been in the UK for between 0 and 5 years.

Displacement by Cohort

It is important to note that this tracking over time of displacement is measured per cohort of immigrants. In any year that there is an inflow of migrants, these are classed as one cohort specific to that year (or any other time period being analysed). The following year, there will be another inflow of migrants, and whilst these add to the existing stock of migrants, they are an individual cohort specific to year 2. When displacement is measured over time, it is done so per cohort. This means that moving from one year to the next, there will be a new cohort arriving, but the previous year's cohort will have its own diminishing effects still occurring.

Illustrative Example

This can be seen in Table B1, which sets out a very basic approach as an illustrative example to analysing the impact of displacement, over time, per cohort:

Working through Table 1: each year, from year 1 through to year 6, sees a number of workers entering the UK; the number of workers entering in year 1 (200) belong to cohort year t (t reflects a cohort's first year); so looking **only** at year 2, the number entering in year 2 (300) belong to cohort year t (as this is their first year), and the cohort which entered in year 1 become part of cohort $t-1$; in year 3, those who entered in year 2 will become part of cohort year $t-1$, and those who entered in year 1 will become part of cohort year $t-2$; as the effect of displacement declines over time, a particular year's cohort will displace fewer UK natives as that cohort progresses through time; so the 200 migrants in year 1 will displace 20 natives in year 1, 16 in year 2, 12 in year 3, 8 in year 4, 4 in year 5, and 0 in year 6.

²¹ MAC (2012) Analysis of the impacts of migration.

Table B1: Illustrative Example of the Impact of Displacement

| Immigrants per year | | | | | | |
|---------------------|-----|-----|-----|-----|-----|-----|
| Cohort Year = t | 1 | 2 | 3 | 4 | 5 | 6 |
| t | 200 | 300 | 250 | 600 | 400 | 200 |
| t-1 | | 200 | 300 | 250 | 600 | 400 |
| t-2 | | | 200 | 300 | 250 | 600 |
| t-3 | | | | 200 | 300 | 250 |
| t-4 | | | | | 200 | 300 |
| t-5 | | | | | | 200 |

| Assumed Displacement per year (%) | | | | | | |
|-----------------------------------|-----|-----|-----|-----|-----|-----|
| Cohort Year = t | 1 | 2 | 3 | 4 | 5 | 6 |
| t | 23% | 23% | 23% | 23% | 23% | 23% |
| t-1 | | 18% | 18% | 18% | 18% | 18% |
| t-2 | | | 14% | 14% | 14% | 14% |
| t-3 | | | | 9% | 9% | 9% |
| t-4 | | | | | 5% | 5% |
| t-5 | | | | | | 0% |

| Assumed Displacement per year (number of people) | | | | | | |
|--|----|----|----|-----|-----|----|
| Cohort Year = t | 1 | 2 | 3 | 4 | 5 | 6 |
| t | 46 | 69 | 58 | 138 | 92 | 46 |
| t-1 | | 37 | 55 | 46 | 110 | 74 |
| t-2 | | | 28 | 41 | 35 | 83 |
| t-3 | | | | 18 | 28 | 23 |
| t-4 | | | | | 9 | 14 |
| t-5 | | | | | | 0 |

NB – volumes are purely illustrative.

Replacement

Whilst the above outline of displacement is considered to be a cost, a benefit would arise if measuring the impact of migrants leaving the UK. This is known as a *replacement* effect. MAC (2012) tentatively suggests that any reduction in native employment associated with migrant inflows is equal to an increase in a native employment associated with equivalent migrant outflows.

Application to this IA

The policy changes considered in this IA result in both a reduced inflow of migrants, and an increased outflow of migrants currently residing in the UK. Thus there will be the occurrence of replacement. The assumption is that from the number of immigrants that leave the UK that were employed, 23 per cent of the employment vacated will be filled by UK natives.

Table B2 outlines how the replacement methodology is applied to this IA:

Table B2: Replacement Applied

| | 14/15 | 15/16 | 16/17 | 17/18 | 18/19 | 19/20 | 20/21 | 21/22 | 22/23 | 23/24 | 10 year total | |
|-------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|---------------|--|
| | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | | |
| Volumes leaving the UK | | 0 | 1500 | 1380 | 1140 | 960 | 900 | 780 | 780 | 780 | 780 | |
| Volumes engaged in legitimate | 40% | 40% | 40% | 40% | 40% | 40% | 40% | 40% | 40% | 40% | 40% | |

| | | | | | | | | | | | |
|--|---|-----|------|------|------|------|------|-----|-----|-----|-------------|
| jobs | | | | | | | | | | | |
| Cumulative Volumes | 0 | 900 | 1430 | 1540 | 1310 | 1150 | 1020 | 960 | 940 | 940 | |
| Increased employment - UK residents | 0 | 80 | 130 | 140 | 120 | 110 | 90 | 90 | 90 | 90 | 1170 |

Table B2 outlines the volumes leaving the UK each year. The proportion of those who were in legitimate jobs is accounted for. The cumulative volumes takes into account the replacement rate of 23 per cent and also factors in the diminishing rate of replacement each year for cohorts from the previous years – this is progressively cumulative, as recall that cohorts from previous years have an impact that declines over time. In other words, 23 per cent of employment vacated by outgoing migrants in a particular year will be filled by natives; the following years will see some more natives taking up employment vacated by that particular cohort of leaving migrants, but at a reduced rate. Overall, this results in increased employment for UK residents, as the volume leaving the UK rises each year.