

FAMILY MIGRATION CONSULTATION RESPONSE

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YOUR DETAILS

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MARRIAGE AND CIVIL PARTNERSHIP

QUESTION 1

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

No.

Under the current system couples are already required to prove that they are legally married to each other or have registered a civil partnership; are both at least 21 years old; they intend to live together permanently as husband and wife, or as civil partners; they have met each other; they meet English language requirements, they can support yourselves and dependants without help from public funds and have adequate accommodation where they can live exclusively with no recourse to public funds.

Other than stating such requirements and expecting couples to meet those seeking to define a '***genuine and continuing relationship, marriage or partnership***' will be impractical. People come from different cultural and religious backgrounds and what seems an ordinary and perfectly genuine relationship to one might not fit into the definition of another.

QUESTION 2

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

The requirement of 'attachment' operated in Denmark is onerous, unreasonable and discriminatory. *It requires couples to show that the combined attachment of both parties to the UK is greater than their combined attachment to any other country.* This is not only discriminatory to the spouse or partner who is applying for visa but also to the British citizen/resident who has a right to form relationship with whomever he/she wishes and live in his country of citizenship or residency.

The proposal also states that part of the combined attachment requirement in Denmark the applicant for marriage visa must have visited Denmark at least twice and the sponsor must have legally settled in Denmark for 15 years. This will be discriminatory for people who come from countries where it's hard to travel due to economic and other circumstances. It is also up to the UKBA to grant visitors visa in the first place which will just put them a person at the mercy of that authority to be able to live and settle with their spouse or partner in the UK.

Besides, there is nothing mentioned on the consultation that shows that the intended purposes, which are better integration, safeguard against sham marriage or forced marriage, could be met by the so-called combined attachment requirement.

a) Support better integration? **No**

b) Help safeguard against sham marriage? **No** – the proposed measure would be disproportionate when in fact what may be needed is better training and procedures at UKBA and with registrars.

c) Help safeguard against forced marriage? **No** - what is needed is better prevention of forced marriage and resourcing to support forced marriage victims and consultation with forced marriage victims and support services as to what measures would help them. We should guard against assumptions that forced marriage is an immigration issue.

QUESTION 3

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

No.

Under the current system there is a maintenance (funds) requirement when applying for settlement. The couple must demonstrate that they can cover their living expenses in the UK. This is adequate evidence and there is no need for further requirement of a certain minimum income threshold.

A minimum income threshold could raise equality issues - affecting women disproportionately since women earn less in the UK with a gender pay gap of 15.5%.¹

¹ <http://www.fawcettsociety.org.uk/index.asp?PageID=321>

QUESTION 4

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

No

Those sponsoring family migrants are supposed to prove that they can live exclusively and have adequate accommodation for their dependants without needing public funds. There is no need to require them to apply for a local authority certificate which would be unnecessary cost for both the individual and the local authority.

QUESTION 5

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

No

The consultation proposes to extend the probation period before spouses get a permanent residence to 5 years hoping that *'around 10 percent of spouses and partners will not apply for settlement due to divorce or relationship breakdown'*. This is a bizarre ground to base ones policy on. Besides this extension would have a negative effect on family integration to the British society because it will create uncertainty.

The Probationary period is a constituent element of abuse in violent relationships. This period requires the incoming partner to be entirely dependent on the sponsor and his/her family. A situation of dependence is ripe for abuse. Moreover during the probationary period there is no recourse to public funds. This traps the incoming spouse in violent relationships. The Sojourner project, intended to help no recourse cases, is in fact hugely limited in scope and doesn't cover all those, including partners, who are affected by the no recourse rule. Public authorities already do their best to evade, delay or dispute paying out for those few who actually are entitled to support under Sojourner. The proposed legal aid reforms if they go through intend to use a narrow and inappropriate and contradictory definition of domestic violence and they intend to require a contradictory and unreasonable level of proof – so even what little support is currently available under Sojourner will no longer be accessible thus trapping people in violent relationships. Any extension to the period without suitable resources and amendments to safeguard people's access to safety and justice would increase the length of time people are trapped in violence and be in breach of legal obligations under CEDAW .

QUESTION 6

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

No

If the purpose of requiring a probation period is to see the legitimacy of a relationship - its cumbersome and unjustifiable to expect couples to live for 5 years in the UK before they get settlement even if they have been in a relationship and living together outside the UK for 4 or more years. Also comments above (Q 5) relating to probationary period, dependence and VAW apply.

QUESTION 7

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

No

This would be a discriminatory requirement as there is unequal access to education in many countries around the world for many people and particularly for women or those with learning issues, let alone to English which for some would not even be a second or third language. It may of course be a useful proposal to invest here in UK in learning English as a foreign/second language for all new residents and to ensure that people are not prevented by their partner and extended family from attending such courses.

QUESTION 8

Which of the following English language skills should we test?

Speaking
Listening
Reading
Writing

See above (Q7)

SHAM MARRIAGE

QUESTION 9

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

No

Under the current system registration officers have a statutory duty to report any marriage or civil partnership they suspect has been arranged for the sole purpose of evading statutory immigration controls. It's more practical to train registration officers to spot possible sham marriages and further action and investigation should be left to the competent authorities.

QUESTION 10

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

No firm opinion but any such proposal risks increasing burden and cost and having a discriminatory impact for women and for people from poorer countries or where corruption among officials is rife. The system is already burdensome.

QUESTION 11

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

No

There would be a risk that this could be used arbitrarily and its harassing couples who genuinely want to marry but have to go for an interview to be interrogated about their relationship. As mentioned before registrars have the duty to report if they suspect sham marriage – which is much more cost effective than making interviews routine. However some more thoughtful suggestions could be brought forward that may help a victim of a forced marriage or a reluctant sponsor to be able to challenge the marriage.

QUESTION 12

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

No opinion

QUESTION 13

Should the authorities have the power in England and Wales to delay a marriage from taking place where 'sham' is suspected?

No firm opinion but there would need to be transparent and challengeable processes in place to prevent suspicions arising from assumptions and prejudices resulting in discriminatory application of this power.

QUESTION 14

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

No

A financial incentive could be a motivation for unduly pestering people.

QUESTION 15

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

No

Circumstances of individuals change and it's not right to restrict fundamental rights as the right to form a family just because a person has been sponsored as a spouse or a partner within five years.

QUESTION 16

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

What is defined as a "serial sponsor"?

Existing legal processes against bigamy/polygamy, abusive relationships and fraud should be used. Better training, processes and awareness among UKBA and passport staff overseas and in UK should be in place to enable officers to spot questionable, fraudulent or abusive cases. This goes against the principle that people should be punished only once for an offence.

QUESTION 17

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

No

The UKBA officers should be able to deal with possible sham partnerships and couples should not incur additional cost to get countersignature from a solicitor or immigration advisor who has no capacity to decide whether a marriage is genuine or not.

QUESTION 18

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

No firm opinion but it would seem to be unnecessarily burdensome, time consuming, expensive and bureaucratic for both the local authority and the individual..

TACKLING FORCED MARRIAGE

QUESTION 19

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

No

There are appropriate laws that deal with domestic violence or named respondent to a Forced Marriage Protection Order. There is no apparent reason or proof that banning a person from sponsoring would help to safeguard women or men from domestic violence or forced marriage.

There may be a number of other processes or training that could be put in place to help victims of forced marriage to seek help before or after a marriage but guidance should be sought from victims and from agencies helping them as to what these steps should be.

While several forced marriages may be international and some may well be committed with one of the motives being around facilitating immigration – it is a mistake to try to address forced marriage through this prism when the motives for it are much more complex and varied. Some do not include a transnational element at all and in some there is no intention to bring the UK party or their partner back to the UK at all.

QUESTION 20

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

If a sponsor is known to have learning difficulty or other vulnerability it's important that his/her capacity to consent should be assessed. However, it should be a formal assessment made by medical professionals and not just social workers who don't have the medical expertise in determining a person's capacity. Also, vulnerable groups should be defined here to avoid arbitrary usage.

OTHER FAMILY MEMBERS

QUESTION 21

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

No – see Q 3

QUESTION 22

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

No – see Q 5

QUESTION 23

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

No opinion

QUESTION 24

Should we look at whether there are ways of parents or grandparents aged 65 or over being supported by their relative in the UK short of them settling here?

No

A decision to move and settle in a different country is not an easy decision that is made especially if one is aged 65 or above. Families reach that decision after a lot of consideration and it would not be practical to compel people to find a way to take care of their elderly short of looking after them personally.

If yes, please make suggestions

QUESTION 25

Should there be any change to the length of leave granted to dependants nearing their 18th birthday?

No

QUESTION 26

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

No

This will be discriminatory for people who come from countries where it's difficult or impossible to learn English and especially for those who might not even have the chance to be educated.

This also would affect women disproportionately since almost two thirds of the world's illiterate are women.²

QUESTION 27

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

No

² Gender Equality Factsheet – UNFPA
http://www.unfpa.org/swp/2005/presskit/factsheets/facts_gender.htm

POINTS-BASED SYSTEM DEPENDANTS

QUESTION 28

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

No – see Q 5

QUESTION 29

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

No

Time spent in the UK through other routes like study should also be considered for the probation period

QUESTION 30

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

No

OTHER GROUPS

QUESTION 31

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

Please list all suggestions

- Making the application and requirement much simpler
- Make the application form available in different languages

QUESTION 32

Beyond race discrimination and ECHR grounds, are there other circumstances in which a family visit visa appeal right should be retained?

The right to appeal should not be restricted – a person should have an opportunity for his case to be reviewed by an immigration tribunal when he/she believes that they have been unduly denied visa to visit a family member.

QUESTION 33

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

No

Circumstances of people change and the rules should be flexible to accommodate the changes. Requiring a person to leave the country and apply for a family route just incurs unnecessary cost both to the individuals and the UKBA.

ECHR ARTICLE 8: INDIVIDUAL RIGHTS AND RESPONSIBILITIES

QUESTION 34

Should the requirements we put in place for family migrants reflect a balance between Article 8 rights and the wider public interest in controlling immigration?

Article 8 already states that states could make restriction to this right *in accordance with the law in the interests of national security, public safety or the economic well-being of the country*. Any policy put in place to restrict the right to family life should be in accordance with national and international laws and it should fall under the exceptions stated in the article.

QUESTION 35

If a foreign national with family here has shown a serious disregard for UK laws, should we be able to remove them from the UK?

No

QUESTION 36

If a foreign national has established a family life in the UK without an entitlement to be here, is it appropriate to expect them to choose between separation from their UK-based spouse or partner or continuing their family life together overseas?

No – the fault is shared between the foreign national who has done this and the UK government administrative processes that have enabled it. Therefore it is important that UKBA's own administrative procedures are sorted out.

Article 8 of ECHR states the exceptions where the right to family life could be restricted. As long as the individual case doesn't fall under such exception it is not appropriate to expect them to separate from their family life in the UK.

Not all people who overstay do for malicious reasons for instance women who come to the UK with a spouse/partner who is here to study or for work might find themselves in an abusive situation and decide to leave. However, since the Domestic Violence Rule does not apply to such women under the Sojourner Project and they can't access support services or advice on their immigration status they might overstay.

Domestic workers who come to the UK under the domestic workers visa and trafficked people are also another example. There are cases when their passport is confiscated by their abusers or they don't have the necessary information about their immigration status and what to do.

GENERAL QUESTIONS

QUESTION 37

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

- Raising awareness about forced marriage in schools, communities, amongst statutory bodies, etc
- Improving the existing forced marriage protection orders
- Supporting victims of forced marriage – funding specialist services
- Better targeted training for UKBA and registrar staff

QUESTION 38

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

Making it easier for families to settle in the UK and to ensure that all who come to the UK are able to leave the home and move and associate freely and access education and training opportunities particularly English language – this will help facilitate integration.

QUESTION 39

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

This question irrationally starts from a presumption that family migration is burden to the taxpayer. It does not provide any evidence to that effect and it completely disregards the fact that the sponsor who would be joined by a family member is a taxpayer.

QUESTION 40

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

See Q 34