

# ILPA information sheet

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## Family Migration Consultation 1

3<sup>rd</sup> August 2011

On 13 July 2011, the UK Border Agency published its consultation on “Family Migration”. This information sheet, along with the “Family Migration Consultation 2” information sheet provides information about the consultation – including what is being proposed and how to respond to the consultation. The deadline for responses is 6 October 2011. The consultation documents can be found at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/family-migration/>

### **Responding to the consultation**

The consultation closes on 6 October 2011. Responses should be received by the UK Border Agency on or before this date. Responses can be sent by post or by email to:

Family consultation

UK Border Agency, 1<sup>st</sup> Floor Seacole

2 Marsham Street, London SW1P 4DF

[Familyconsultation@homeoffice.gsi.gov.uk](mailto:Familyconsultation@homeoffice.gsi.gov.uk)

The consultation document sets out 40 questions. There is a questionnaire, which may be used to respond to the consultation. However, the following should be noted:

- It is not necessary to use the questionnaire.
- It is not necessary to answer all the specific questions asked.
- If the consultation document and proposals require a response that does not directly respond to a specific question, it is perfectly appropriate to make that response. If possible, it may be useful to include it with any response to a question that seems to most closely relate to it.
- Some questions ask for a response of either Yes, No or No Opinion. If none of these responses are appropriate, it is perfectly appropriate to say so and not tick Yes, No or No Opinion.

### **General information about the consultation**

The consultation document gives the following description (at the beginning of the executive summary):

*“This consultation paper sets out the government’s proposals for the reform of family migration. It focuses on preventing and tackling abuse, promoting integration and reducing burdens on the taxpayer. It seeks to deliver better migration, which is fair to applicants, local communities and the taxpayer.”*

It is not necessary, if responding to this consultation, to restrict comments to matters concerning whether the proposals meet the aims set out in this description. However, if a proposal does not meet any of these aims, that may be an important matter to highlight.

The consultation document is divided into sections. Seven of the sections set out proposals on specific issues or areas. Those seven sections are: (1) Marriage and civil and other partnership; (2) Tackling sham marriage; (3) Tackling forced marriage; (4) Other family members; (5) Points-based system dependants; (6) Other groups; and (7) ECHR Article 8: individual rights and responsibilities

This information sheet provides information on the first of these sections. The remaining sections are dealt with in the “Family Migration Consultation 2” information sheet.

### **Marriage and civil and other partnership**

This section of the consultation document contains several proposals including:

- To define “more clearly” what constitutes a genuine and continuing relationship, marriage or partnership
- To introduce an “attachment to the UK” requirement for migrants applying to come to the UK to join British or settled partners (it is suggested that various factors might be considered such as whether either or both partners have lived and have family in the UK)
- To set a new and higher minimum income threshold which British or settled persons must satisfy in order for their partners to be permitted to join them in the UK (the current threshold is set at the income support level)
- To increase the (probationary) period from two to five years that migrants joining their British or settled partners must spend in the UK before being permitted to apply for settlement (indefinite leave to remain); and to remove the current provision allowing some migrants (where the relationship has lasted for at least four years) to apply for settlement (indefinite leave to enter) at the point of entry to the UK
- To raise the language requirement for partners applying for settlement (from A1 to B1 on the Common European Framework of Reference)

There is no clear proposal for a definition of what constitutes a genuine and continuing relationship. This strongly indicates the proposal is flawed. It suggests no such definition exists or can be created. The consultation document suggests various factors or criteria that could be included in any definition. Many of these would not appear to make any contribution to any definition. If acted upon, however, the proposal may add to confusion and increase disputes (including litigation) about UK Border Agency decision-making in this area. The proposed ‘attachment’ requirement may also add to confusion and disputes concerning UK Border Agency decision-making.

Generally, it is difficult to see how the proposals would contribute to “promoting integration”. The proposals may make it harder for British citizens and settled persons to be joined in the UK by their partners. The proposals would particularly make this harder for poorer British citizens or settled persons – not on the basis they must financially support their partners (this is already required by the Rules), but on the basis of a higher income threshold. Although the consultation questions do not specifically invite a response to the proposal, the consultation document includes a proposal that could remove the current entitlement to rely upon the support of third parties (e.g. family members) to satisfy the requirement to be able to financially support a partner joining a British or settled person in the UK. This would increase the prospect that those British or settled persons who are not independently wealthy may be excluded from having their partners join them in the UK. Extending the probationary period from two to five years before an application for settlement can be made will exclude people from various services, to which settled persons are entitled, and may make it harder for people to find a settled job (while their immigration status remains unsettled – i.e. temporary).