

ILPA information sheet

Information sheets provide general information only, accurate as at the date of the information sheet. Law, policy and practice may change over time.

ILPA members listed in the directory at www.ilpa.org.uk provide legal advice on individual cases. ILPA does not do so.

The ILPA information service is funded by the Joseph Rowntree Charitable Trust.

An archive of information sheets is available at www.ilpa.org.uk/infoservice.html

Steve Symonds ILPA Legal Officer 020-7490 1553 steve.symonds@ilpa.org.uk

Immigration Law Practitioners' Association www.ilpa.org.uk 020-7251 8383 (t) 020-7251 8384 (f)

Family Migration Consultation 2

3rd August 2011

On 13 July 2011, the UK Border Agency published its consultation on “Family Migration”. This information sheet provides information about the consultation. It should be read along with the “Family Migration Consultation 1” information sheet. It provides information on sections of the consultation not dealt with in that other information sheet. That other information sheet also gives information about when and how to respond to the consultation.

Tackling sham marriage

This section of the consultation document contains several proposals including:

- To give registrars (who register marriages) in England and Wales powers to perform some of the functions of immigration officers
- To require extra documentation (e.g. a certificate from a migrant’s national embassy that there is no reason to preclude marriage) before migrants may marry in England and Wales
- To define a genuine and continuing marriage, and to legislate so that the definition must be met to marry in England and Wales
- To restrict the opportunity of migrants, who have come to the UK to join British or settled partners, to be joined in the UK within five years of their settlement (grant of indefinite leave to remain) by a new partner
- To ban some people (considered to have abused the opportunity to be joined in the UK by a partner) from being able to be joined in the UK by a partner

The consultation document refers to a ‘sham marriage’ as one made for no other reason than to allow a party to the marriage to come to or stay in the UK. It highlights the number of reports made by registrars raising doubts about whether a marriage involving a foreign national is genuine. No information is given about the number of times an investigation of the report shows the marriage to be sham. The extent to which registrars are being unduly suspicious or uncovering sham marriages is left entirely unclear. This is not a good basis for introducing more hurdles to marriage. The consultation document indicates that the governments in Scotland and Northern Ireland will be asked to adopt some or all of the proposals relating to England and Wales.

Tackling forced marriage

This section of the consultation document contains several proposals including:

- To publicise information about forced marriage and the Home Office Forced Marriage Unit
- To ask social services in England to carry out an assessment of a British or settled person’s capacity to marry if he or she “is a person with learning difficulties or of another particularly vulnerable group” and is seeking to be joined in the UK by his or her foreign partner

- To consider interviews with British or settled persons seeking to be joined in the UK by a foreign partner

The consultation document also refers to the case of *Quila* about the age requirement (21 years) in marriage cases (see the December 2010 “Marriage Age 2” information sheet). The Government wants to maintain the 21 years age requirement, but first needs to consider the decision from the Supreme Court in the case of *Quila*. That decision has not yet been given.

Other family members

This section of the consultation document contains several proposals including:

- To require dependant family members over 65 years of age to spend a five years (probationary) period in the UK before applying for settlement (indefinite leave to remain)
- To make changes to the requirements for elderly relatives to join British or settled persons in the UK (including raising the 65 years age threshold); and for children to join British or settled parents in the UK (particularly where the child is nearing the age of 18)
- To introduce new English language requirements for all adult dependants and children aged 16 or 17 years

As with the proposals on marriages and other partnerships, these proposals seem more concerned with stopping family members coming to the UK than helping with their integration. Extending the probationary period from two to five years would greatly extend the period during which these family members are excluded from services available to settled persons and British citizens.

Points-based system dependants

This section of the consultation document contains proposals that would mean dependants of migrant workers (under the Points Based System) could not apply for settlement (indefinite leave to remain) at the same time as the migrant worker, unless (and until) they had been living with the migrant worker in the UK for five years. It also proposes to raise the language requirement for their settlement applications (from A1 to B1 of the Common European Framework of Reference).

Other groups

The consultation document states that the UK Border Agency is considering making changes for family members (other than partners and children under 18 years of age) of refugees and those granted humanitarian protection in line with other proposals set out in the consultation document. However, the consultation questions include no question about this.

The consultation document proposes to take away appeals against refusals of family visit visas (except for appeals on grounds of race discrimination or human rights breach). Family visits allow people to visit family in the UK for up to six months (e.g. for births, weddings and funerals). The consultation document says many appeals are allowed because of new evidence. No evidence is given about when or why new evidence is presented (e.g. did the UK Border Agency highlight what evidence it needed before refusing the application, was the evidence needed to deal with a false allegation made in the refusal decision?). In 2010, 22,400 family visit appeals were allowed.

ECHR Article 8: individual rights and responsibilities

The consultation document acknowledges that the UK’s “*policies and practices must comply with the ECHR [European Convention on Human Rights]*”, and confirms that the Government “*has a firm commitment to human rights*”. This section of the consultation document and the questions it includes are, however, very troubling. The section includes inaccurate statements about UK and European law, and seeks to re-run arguments the UK Border Agency has lost before the courts by way of a public consultation. This is wholly inappropriate.