

MISUSE OF THE RIGHT TO FAMILY REUNIFICATION: MARRIAGES OF CONVENIENCE AND FALSE DECLARATIONS OF PARENTHOOD



Home Office

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Disclaimer: The following responses have been provided primarily for the purpose of completing a Synthesis Report for the above-titled European Migration Network (EMN) Focussed Study. The contributing EMN National Contact Points have provided information that is, to the best of their knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of an EMN National Contact Point's Member State.

Part A: Marriage of convenience

1. Summary

In 2011, 46,000 entry clearance visas to the UK were issued for family reasons (compared with over 300,000 for study and just under 150,000 for work). Over 16,000 visa extensions were granted for family reasons (103,000 for study, 97,000 for work) and almost a third (51,000) of grants of settlement were for family formation and reunion. The majority of migrants granted visas, visa extensions and settlement in the UK for family formation reasons join/accompany partners/fiancé(e)s (rather than being related to children).

Tackling abuse of the rights to free movement and family reunification is a priority for the UK Government. The UK is concerned about the number of third-country nationals entering into relationships of convenience with EU nationals to gain access to free movement rights and thus circumventing more stringent domestic immigration controls. Also of concern is the growing disparity between family reunification rules for non-mobile EU citizens and those exercising free movement rights.

While it is difficult to quantify the overall scale of abuse, there is clear evidence of abuse of family reunification, marriage and free movement in the UK. Research and Intelligence activity has identified the following:

- two Anglican vicars who were successfully convicted of facilitating more than 400 marriages of convenience;
- cases where a migrant has entered into a marriage of convenience (often referred to as sham marriage in the UK) with a British citizen or person settled here. Once granted settlement they go on to sponsor a new spouse (possibly their genuine spouse) to come to the UK;
- cases where marriages by third-country nationals to European Economic Area (EEA) nationals have taken place overseas. A small sampling exercise indicated cases of migrants with adverse immigration or criminal histories in the UK engaging in overseas marriages to EEA nationals. In some instances the UK had concerns over the authenticity of these relationships;
- an increase in the number of reports from registrars of suspected marriages of convenience involving students;
- an increase in the number of reports from registrars of suspected marriages of convenience involving those whose leave to remain has expired or is close to expiry, up 86 per cent from 2010 (934 marriages) to 2011 (1,741 marriages).

Most abuse identified in the UK has involved a third-country national marrying a British citizen or an EEA national.

Evidence from reports of suspected marriages of convenience by registrars suggests marriage of convenience may be used by those whose leave has expired, is close to expiry and who may have exhausted other means of extending their stays. Permission from the UK Border Agency to stay in the UK is not required by the family members of EEA nationals exercising their free movement rights; the route is also cost-free, compared to other immigration routes, which involve a fee-based application for leave to remain in the UK.

Motivations for sponsors (the EU or British person entering into a marriage with a third-country national) may include financial gain, which can be considerable (examples range from £2,000–£20,000).

TACKLING MARRIAGE OF CONVENIENCE

There is no criminal offence of ‘marriage of convenience’ in the UK – prosecutions are for related offences such as bigamy, perjury, facilitating unlawful immigration or conspiracy. Applications for leave on the basis of marriage/civil partnership found to be sham will be refused and action taken to remove the applicant from the UK. Article 35 of the Free Movement Directive allows the UK to refuse, terminate or withdraw the right conferred by the Directive in the case of abuse of rights or fraud, such as marriage of convenience.

Registration officers have a statutory duty to report to the UK Border Agency any persons they suspect are entering into a marriage of convenience for immigration purposes. These reports are investigated by the UK Border Agency. A number of other approaches are also in place, including an intelligence-led, risk-based, criterion for subjecting certain cases to further scrutiny; partnership working between the UK Border Agency, General Register Offices, the Anglican Church and local Registration Services; partnership working with other EU Member States; tough penalties (such as custodial sentences for convicted offenders) (acting as a deterrent); awareness raising; and provision of advice.

POSSIBLE WAYS FORWARD

Action to tackle fraud and abuse of free movement rights should not be limited to those Member States directly affected. Regardless of their end destination, third-country nationals are abusing free movement rights to facilitate their travel across Europe and to circumvent domestic immigration controls, using the same organised groups involved in wider illegal immigration abuse and criminal activity. Action is required at a national, bilateral and EU level if we are to protect these freedom of movement rights for the genuine migrants they were originally envisaged for.

Possible actions at a national level could include:¹

- giving the authorities the power to delay a marriage from taking place where they suspect a marriage of convenience; and
- defining more clearly what constitutes a genuine and continuing marriage in order to better identify marriages of convenience.

At an EU level actions could include:

- review of where the burden of proof should lie. Currently it sits with the Member State rather than the individual;
- further sharing of information at an EU level to help identify patterns and trends of abuse as well as to explore joint action to combat the fraudulent exercise of EEA treaty rights;
- review of the time allowed to investigate strong suspicions of abuse; and consideration of a ‘stop the clock’ (pause) mechanism to be applied to issuance timescales stipulated under the Free Movement Directive in set circumstances; and
- review of the evidence required under the Free Movement Directive. Individuals are not required to provide much evidence and often provide only the bare minimum. This means there is very little evidence available to allow for an informed decision or challenge to a claim.

¹ These and further measures were set out in the public consultation on family migration (July to October 2011): www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/family-migration/consultation.pdf?view=Binary
The Government will announce its firm plans on these proposals in 2012.

2. Family reunification and marriage of convenience: definitions and national legislative framework

2.1 MARRIAGE AND THE FAMILY IN IMMIGRATION LAW AND PRACTICE

Family

The term family includes fiancé(e)s, proposed civil partners, spouses, civil partners, or unmarried or same-sex partners, dependent children and adult dependent relatives. The ‘family route’ is the main route for family migration to the UK. It comprises those non-EEA nationals entering, remaining in or settling in the UK on the basis of a relationship with a British citizen or a person settled in the UK.

Marriage and partnership

The terms marriage and partnership include spouses, civil partnerships, other partnership (unmarried or same-sex partners), fiancé(e)s or proposed civil partners. Marriage and partnership visas dominate the family route; this group comprises all situations where the relationship plays a substantial role in an individual’s migration. In 2010, only 25 per cent of the 64,000 grants of family visa applications were related to children, rather than partners/spouses.²

Marriage of convenience

A ‘marriage of convenience’ can be contracted between:

- (a) a British citizen, a person settled in the UK, an EEA national, or a non-EEA national with existing leave and
- (b) a non-EEA national without leave or whose leave is about to expire, solely as a basis for trying to enable the latter to enter, remain in or extend their leave in the UK. There is no subsisting relationship and the parties do not intend to live together permanently, if at all.²

Section 24 of the 1999 Immigration and Asylum Act³ formally defines marriage of convenience as: “[the marriage has been entered into] for the purpose of avoiding the effect of one or more provisions of UK immigration law or the Immigration Rules”.

2.2 LEGISLATION AND PRACTICE REGARDING MARRIAGE AND CIVIL PARTNERSHIPS

In England and Wales it is a legal requirement for the majority of couples to give notice of their intention to marry in person to a Superintendent Registrar (employed by Local Authorities to provide registration services). Similar arrangements apply to civil partnerships. A couple intending to marry in an Anglican ceremony instead undertake the process of Banns or obtain a common licence authorising their marriage to proceed.

When giving notice to a Superintendent Registrar, each person must provide evidence of their full name, age and nationality. The registrar needs to be satisfied the person giving notice is resident in their district; it is recommended they see a utility bill or other document which states the person’s address. Parties will also be asked their address, current status (single, divorced – and where appropriate provide proof, e.g. decree absolute), occupation and intended venue for marriage or civil partnership ceremony.

² Home Office (2011) Family Migration: Evidence and Analysis. Occasional Paper 94:

www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/occ94?view=Binary

³ www.legislation.gov.uk/ukpga/1999/33/contents

In England, Wales and Northern Ireland the minimum legal age for marriage is 16 but written consent may be required for those aged under 18. In Scotland it is possible to marry at 16 without parental consent.

In order to marry in the UK, registration officers and, where applicable, the clergy must be satisfied there is no legal impediment to the marriage taking place. These are:

- one or both parties are under the minimum age of 16;
- one or both parties have a pre-existing marriage or civil partnership; or
- there is a prohibited degree of relationship between the couple.

In addition, for a civil ceremony in England and Wales, the parties must have resided in the district of the Superintendent Registrar for seven clear days before notice of marriage can be given. Those subject to immigration control living in England and Wales must give notice at one of 75 designated Register Offices. This allows the UK Border Agency to concentrate its joint-working and training with registration officers in a manageable number of locations.

In Scotland and Northern Ireland, there is no residence requirement, couples may give notice by post, and all Register Offices are designated.

2.3 NATIONAL LEGISLATION COVERING THE PREVENTION OF MISUSE OF FAMILY REUNIFICATION

There is no criminal offence of ‘marriage of convenience’. Prosecutions will be for related offences such as bigamy, perjury, facilitating unlawful immigration, conspiracy.

Section 24 reporting (reports of suspected marriages of convenience)

National legislation refers to marriage of convenience under Section 24 of the Immigration and Asylum Act 1999. See Section 2.1.

Under Section 24, Superintendent Registrars and other registration officers across the UK have a statutory duty to report to the UK Border Agency any persons they suspect are entering into a marriage of convenience and give their reasons for this. A Section 24 report is raised by a registration officer if they suspect a marriage is a sham. The report will highlight the reasons for their suspicions and provide personal details of the couple, such as their name and address. All Section 24 reports are investigated by the UK Border Agency and, where appropriate, action is taken (see Section 3.4).

Tackling abuse of free movement rights (Scenario B)

Article 35 of the Free Movement Directive states that Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by the Directive in the case of abuse of rights or fraud, such as marriages of convenience. Legislation on fraud and forgery can also be used.

Previous legislative measures for tackling marriage of convenience – lessons learned from the Certificate of Approval (CoA) scheme

In February 2005, the UK introduced a requirement for a person subject to immigration control to have the Secretary of State's written permission to marry in the UK. That requirement, known as the Certificate of Approval scheme, was introduced through the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.⁴

The Certificate of Approval scheme was designed as a means of tackling marriage of convenience by establishing the prospective partner had valid leave to remain in the UK. However, the scheme did not apply to marriages which took place in the Anglican Church.

The domestic courts and the European Court of Human Rights declared the scheme incompatible with Articles 12 and 14 of the ECHR. Changes were made to the original scheme to comply with domestic court rulings, which weakened the scheme and the Government considered there was no merit in continuing to operate a scheme which was no longer effective in combating the problem of marriage of convenience.

The legislation which brought the scheme into force was repealed by a Remedial Order under Section 10 of the Human Rights Act 1998 and the scheme was abolished in May 2011.

2.4 SCENARIOS OF FAMILY REUNIFICATION

The European Commission has identified four scenarios for family reunification. These are discussed in more detail in the sections that follow.

Scenario A: a **third-country national** residing lawfully in a Member State reunifying with a **third-country national** applying to enter/reside there in order to preserve the family unit.

Scenario B: a **mobile EU national**, i.e. an EU citizen who has exercised his/her right to free movement, reunifying with a **third-country national** through **Directive 2004/38/EC**.⁵

Scenario C: a non-mobile EU citizen with a **third-country national** where the EU citizenship **gives rise to the right to reside** for the third-country national family member on the basis of jurisprudence (using European case law – e.g. Zambrano⁶/Dereci⁷/McCarthy⁸).

Scenario D: a **non-mobile EU citizen**, i.e. an EU citizen who resides in the Member State of their nationality, reunifying with a **third-country national**.

⁴ www.legislation.gov.uk/ukpga/2004/19/contents

⁵ This may include both EU citizens who have exercised their right to free movement and are still living in a Member State other than their own and those who have at some point exercised their right to free movement under Directive 2004/38/EC, but who have now returned to living in their own Member State. See judgments of the European Court of Justice of 7 July 1992 in Case C-370/90 Singh, and of 11 December 2007 in Case C-291/05 Eind.

⁶ Judgment of 8 March 2011, Case C-34/09, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009C0034:EN:HTML>

⁷ Judgment of 15 November 2011 Dereci and Others. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CJ0256:EN:NOT>

⁸ Judgment of 25 November 2010 in Case C-434/09 Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009C0434:EN:HTML>

2.5 SCENARIO A (THIRD-COUNTRY NATIONAL RESIDING LAWFULLY IN THE EU/NORWAY REUNIFYING WITH A THIRD-COUNTRY NATIONAL APPLYING TO ENTER/RESIDE THERE IN ORDER TO PRESERVE THE FAMILY UNIT) AND SCENARIO D (NON-MOBILE EU CITIZEN REUNIFYING WITH A THIRD-COUNTRY NATIONAL)

There are three family reunification routes under these two scenarios:

- third-country nationals applying as a family member of a British citizen or settled third-country national;
- visitors coming to get married or register a civil partnership in the UK; and
- third-country nationals applying as a family member of a non-settled third-country national with temporary leave.

The Immigration Rules⁹, as laid before Parliament by the Home Secretary, constitute a statement of practice to be followed in the administration of the Immigration Act 1971¹⁰ for regulating entry into, and stay of persons in, the UK. Those subject to immigration control who are in a relationship with, married to, or in a civil or other partnership with a British citizen or a person settled in the UK can apply for permission to come to or remain in the UK (Part 8 of the Immigration Rules (HC 395)).

The UK has not opted into Directive 2003/86/EC (the Family Reunification Directive).

2.5.1 Third-country nationals applying as a family member of a British citizen or settled third-country national

This includes those who have previously married or registered a civil partnership elsewhere. Criteria for the family route are set out in Part 8 of the Immigration Rules.

Marriage/civil partner visa – for those who are already registered partners/spouses of British citizens or settled persons. If the application is successful, spouses and civil partners are given permission to live and work in the UK. They will be granted leave for a period of up to 27 months. After a two-year probationary period they are able to apply for settlement (Indefinite Leave to Remain) as the spouse or civil partner of the British citizen or person settled in the UK. Some spouses/partners may be eligible for immediate settlement.

There are comparable requirements for **unmarried** or **same-sex partners**, except applicants for leave to enter or remain in the UK and their partner settled in the UK must have been living together in a relationship akin to marriage for two years or more.

As part of a public consultation on family migration¹¹ the UK Government has proposed changes that would affect spouses and partners, including a new minimum income threshold, objective genuineness criteria and a five-year probationary period before settlement is granted. The Government will announce its firm plans on these proposals later in 2012.

Details of the requirements for this visa can be found in Annex A.

9 www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/

10 www.legislation.gov.uk/ukpga/1971/77/contents

11 www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/family-migration/

2.5.2 Visitors coming to get married or register a civil partnership in the UK

For fiancé(e)s and proposed civil partners who are coming to the UK for a short time, and plan to leave the UK soon after the ceremony.

Fiancé(e) visas are normally granted for a period of six months, during which time work is not permitted. After the couple have married or entered into a civil partnership, leave to remain can be applied for in the UK, which, if granted, is valid for two years and permits work.

Details of the requirements for this visa can be found in Annex A.

2.5.3 Third-country nationals applying as a family member of a non-settled third-country national with temporary leave

Most migrants staying in the UK or coming to the UK through the points-based system (PBS) and other work categories may be able to bring their partner and dependent children under 18 to join them.

The rules for settlement for these migrants are dependent on the category of the non-settled third-country national. They will not have the ability to acquire settlement unless the non-settled third-country national with temporary residence can acquire settlement. For example, dependants of investors and entrepreneurs and people who have come to the UK to work in skilled occupations (PBS Tiers 1 and 2 and their pre-PBS equivalents) have a route to settlement, whilst dependants of migrants who have come to the UK to work on a temporary basis (e.g. Tier 5 and pre-PBS equivalents; overseas domestic workers; and some other permit-free employment) would not have a route to settlement.

Details of the requirements for these migrants wishing to bring their dependants to the UK can be found in Annex A.

2.6 SCENARIO B (MOBILE EU NATIONAL REUNIFYING WITH A THIRD-COUNTRY NATIONAL) AND SCENARIO C (NON-MOBILE EU NATIONAL REUNIFYING WITH A THIRD-COUNTRY NATIONAL ON THE BASIS OF JURISPRUDENCE)

These scenarios concern the reunification of third-country nationals with EU nationals who have exercised their free movement right or with non-mobile EU nationals (who have not exercised their free movement right) whose situation is subject to case law (see Section 2.7).

Directive 2004/38/EC (the 'Free Movement Directive') gave effect to the right of citizens of the EU and their family members to move and reside freely within the territory of the Member States, giving effect to the Treaty on the Functioning of the European Union and codifying previous Union instruments on free movement.

The UK implemented the Free Movement Directive by way of the Immigration (EEA) Regulations 2006 made under Section 2(2) of the European Communities Act 1972. The Regulations take the following format:

- definitions of the various concepts which appear in the Regulations, including definitions of the categories of person who may derive rights under the Regulations, appear in Part 1;
- rights of admission and residence are dealt with in Part 2;
- residence documentation is dealt with in Part 3;
- refusal of admission and removal is dealt with in Part 4; and
- procedure and appeals are dealt with in Parts 5 and 6 respectively.

Third-country national direct family members of EEA nationals are not subject to immigration control.

2.7 SCENARIO C (NON-MOBILE EU NATIONAL REUNIFYING WITH A THIRD-COUNTRY NATIONAL ON THE BASIS OF JURISPRUDENCE)

Some family reunification cases for non-mobile EU nationals are decided according to case law (e.g. Zambrano¹², Singh¹³).

The ‘Ruiz Zambrano’ judgment established that Member States are precluded from refusing a third-country national, upon whom a Union citizen is dependent, a right to reside and work in the Member State of residence and nationality of that Union citizen when refusing residence would deprive the Union citizen of the genuine enjoyment of the substance of their European citizenship rights.

The UK has interim procedures in place to implement this judgment, and intends to amend the Immigration (EEA) Regulations 2006 to place these arrangements on a statutory footing.

The ‘Surinder Singh’ judgment made by the European Court of Justice in 1992 established the right of residence of non-EEA family members of British nationals who have previously exercised free movement rights as a worker or self-employed person in another Member State.

2.8 IMPACTS OF EUROPEAN COURT OF JUSTICE CASE LAW FOCUSED ON FAMILY REUNIFICATION (E.G. ZAMBRANO, MCCARTHY, DERECI)

European case law arising from the Court of Justice of the European Union can clarify the rights available to EEA nationals and their family members. In cases such as ‘Ruiz Zambrano’, ‘McCarthy’ and ‘Dereci’, changes to operational guidance and the Immigration (EEA) Regulations 2006 are required in order to ensure these judgments are effectively implemented. Where the rights of EEA nationals and their family members are widened, this can lead to an increase in the number of applications received for documentation confirming this right.

¹² Judgment of 8 March 2011, Case C-34/09, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009C0034:EN:HTML>

¹³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61990J0370:EN:HTML>

3. Marriage of convenience: the situation in the United Kingdom

3.1 RECOGNITION OF MARRIAGE OF CONVENIENCE AS AN EXAMPLE OF MISUSE OF FAMILY REUNIFICATION

Tackling marriage of convenience is a priority for the UK Government. Since 2001, when reporting of suspicious marriages was introduced for civil registrars, various legislative measures have been introduced to tackle this form of immigration abuse. The public consultation on family migration (July to October 2011)¹⁴ proposes new measures for identifying and disrupting marriages of convenience, ensuring no immigration advantage is gained from the marriage taking place (see Section 3.3).

The UK Border Agency has undertaken considerable operational activity to tackle marriages of convenience in register offices and is working closely with the Anglican Church to tackle the problem for marriages that do not require civil preliminaries.

Whilst the UK has not opted in to the Family Reunification Directive, the UK has several concerns about the potential for abuse in particular by third-country nationals. The UK is concerned about numbers of third-country nationals entering into relationships of convenience with European nationals to gain access to free movement rights and thus circumventing more stringent domestic immigration controls. The UK is also concerned about the growing disparity between family reunification rules for non-mobile EU citizens (citizens living in their own Member State) and those exercising free movement rights (see Section 3.10).

There are concerns about potential impacts on the national taxpayer as a result of marriages of convenience. In addition to free movement and labour market rights, non-EEA national family members of EEA nationals are also entitled to claim state benefits. This provides legal access to all the UK services an EEA national would be privy to, such as the National Health Service (NHS), Department of Work and Pensions (DWP) and Her Majesty's Revenue and Customs (HMRC), i.e. allowing access to benefits, work, housing and tax credits. To exemplify potential costs, an impact statement was conducted for the courts in relation to the case of Reverend Patrick Magumba¹⁵.

“Between 27th September 2008 and 17th June 2010, the clergyman at St Peters C of E Church, Newbold, Rochdale, Reverend Patrick Magumba, conducted 28 Banns marriages between EU nationals and foreign nationals. Based on the annual amount of benefits available to a single UK/EEA national, the potential cost per year for the 28 individuals above would be approximately £307,125.84. Based on the annual amount of benefits available to a UK/EEA single parent with 1 dependent child, the potential cost per year for the 28 individuals above with 1 dependent child in each case would be approximately £644,446.60.”

DirectGov Website

It is not possible to know exactly what any individual would claim for and costs could vary in light of dependants and the employment situation, but these types of costs would be of concern to the UK taxpayer.

¹⁴ www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/family-migration/consultation.pdf?view=Binary

¹⁵ <http://webarchives.gov.uk/20101110170004/http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2010/sept/17c-o-e-vicar-jailed>

There has been considerable media coverage on marriage of convenience within the UK, which has raised awareness of the issue among the general public – for example a BBC Panorama programme entitled ‘My Big Fat Fake Wedding’¹⁶. This included an interview with the Immigration Minister. There has been wide-scale coverage in several national and regional newspapers, for example: the sentencing of a vicar who pleaded guilty to conducting up to 28 marriages of convenience¹⁷; the investigation and sentencing of nine people involved in a marriage of convenience gang in Bradford¹⁸; and the successful conviction of an Anglican vicar and his two co-conspirators, who were found guilty of facilitating more than 300 marriages of convenience in 2010;¹⁹ and the successful conviction of an Anglican vicar in 2012 found guilty of facilitating more than 100 marriages of convenience²⁰.

It is, however, difficult to ascertain the overall scale of marriage of convenience occurring in the UK. The UK continues to improve intelligence data to help further our knowledge.

3.2 OTHER FORMS OF MISUSE DETECTED IN THE UK

There is some evidence that marriages between some third-country nationals may have taken place in order to provide evidence of established family ties needed to support an asylum case. These marriages would not result in access to EEA treaty rights, but are an example of where marriage may be used to create a barrier to removal from the UK.

Other forms of potential misuse include bigamous and proxy marriage²¹. Concerns about forced marriage and practical responses for tackling this issue are outlined in the UK consultation on family migration²².

There are also concerns about potential risks of other forms of relationships of convenience. For example, if ‘Rahman’ results in greater rights being afforded to extended family members than those seeking to abuse this route could potentially begin to fabricate evidence of relationship (e.g. false birth certificates/family trees etc.) to suggest a family connection.

3.3 PREVENTION OF MARRIAGES OF CONVENIENCE

In the UK, marriages of convenience are prevented using the following measures.

- Maintaining intelligence-led, risk-based, criteria for subjecting certain cases to further scrutiny, and regularly reviewing these criteria. This includes greater scrutiny of applications where a sponsor has previously sponsored or has recently obtained Indefinite Leave to Remain through marriage and now seeks to bring a new spouse to the UK.

16 http://news.bbc.co.uk/panorama/hi/front_page/newsid_9433000/9433554.stm

17 www.telegraph.co.uk/news/religion/9042186/Clergyman-jailed-for-sham-marriage-scam.html

18 www.dailymail.co.uk/news/article-2077166/Together-moths-loves-disko-music-The-exactly-romantic-sham-marriage-crib-sheet.html

19 <http://webarchives.gov.uk/20101110170004/http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2010/sept/17c-o-e-vicar-jailed>

20 www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2012/april/20-vicar-sentenced

21 A transnational marriage where the sponsor appoints a ‘proxy’ to stand in for him/her at the ceremony. The law of the UK does not allow for marriages to be contracted in this country by proxy.

22 Home Office (2011) Family Migration: Evidence and Analysis. Occasional Paper 94: www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/occ94?view=Binary

- Partnership working and a three-way alliance between the Home Office (UK Border Agency/General Register Office), the Anglican Church and local registration services. As a frontline service, it is vital registration officers continue to provide the right level of timely intervention to support the work of the UK Border Agency in refusing immigration status in appropriate cases.
- Continued working with Member States on joint operations to tackle the criminal networks that facilitate marriage of convenience. The UK also builds on the existing level of engagement with EU partners to share information bilaterally on patterns and trends of abuse.
- Tough penalties are designed to act as a deterrent to those contemplating entering into a marriage of convenience and to punish those who seek to break UK laws. See Section 3.7.
- The UK Border Agency also conducts targeted operations involving a visible presence in designated register offices reporting high levels of suspected marriages of convenience.
- Guidelines: the UK Border Agency and the General Register Office have produced guidelines for more effective partnership working to facilitate the early detection and efficient disruption of marriages of convenience in England and Wales. In April 2011 the Church of England published guidance for the clergy on tackling marriages of convenience. This directs non-EEA nationals towards the common licence route for marriage preliminaries, which involves a sworn statement as to the genuineness of the marriage, and confirms a licence should not be granted unless the person considering the application is satisfied the marriage is genuine.
- Awareness raising and advice: Local Immigration Teams (LITs) give presentations at regional registration panel meetings to raise awareness of marriage of convenience. LITs also provide registration officers with a single point of contact for advice and assistance from the UK Border Agency. The UK Border Agency also works closely with the Anglican Church to provide advice and support, and to investigate and disrupt suspected marriages of convenience. Clergy are encouraged to notify the UK Border Agency to allow action to be taken where appropriate.

As part of a public consultation on family migration (July to October 2011)²³, a range of new measures for identifying and disrupting marriages of convenience are being considered, to ensure they bring no advantage in immigration terms, and to bring to justice those involved in abusing the system. The following measures were proposed.

- Defining more clearly what constitutes a genuine and continuing marriage or partnership to help identify marriages of convenience more clearly and evidence this in refusing immigration applications based on them.
- Extending the probationary period before spouses and partners can apply for settlement from two years to five years, to test the genuineness of the relationship before permanent residence in the UK is granted on the basis of it, and encourage integration before reaching settlement.
- Exploring the feasibility in certain circumstances of combining some of the role and functions of the registrar and the UK Border Agency in designated offices in England and Wales.
- Exploring the case for requiring more documentation of foreign nationals wishing to marry in England and Wales to establish their entitlement to marry. This would broadly reciprocate the requirements on British citizens marrying overseas.
- Exploring the case for legislating to make ‘sham’ a lawful impediment to marriage in England and Wales, and to introduce powers to delay a marriage from taking place where sham is suspected so this can be investigated.

23 www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/family-migration/consultation.pdf?view=Binary

- Considering the case for restricting the scope for those sponsored as a spouse or partner to sponsor another spouse or partner within five years of obtaining settlement.
- Banning sponsorship for up to ten years for serial sponsors abusing the process, and for any person convicted of bigamy or an offence associated with marriage of convenience.

Following this consultation, an agreed package of measures will be put forward later in 2012.

3.4 TRIGGERS FOR AN INVESTIGATION OF INDIVIDUAL CASES OF MARRIAGES OF CONVENIENCE

3.4.1 Triggers for UK Border Agency caseworkers

Triggers may include the lack of a shared language between the couple or a lack of knowledge about their proposed spouse.

Example: Detecting overseas abuse via the EEA Family Permit Route

“In a recent case, an Iraqi national requested an EEA Family Permit to join his spouse in the UK. The applicant claimed to have met his wife several years ago but during an interview was unable to correctly state his wife’s date of birth, nor to explain what his wife did. He also said that he and his wife communicated with each other in English; however, the applicant was unable to communicate in English during the interview.”

The Government has proposed defining more clearly what constitutes a genuine and continuing marriage or partnership to help the UK Border Agency identify sham marriages more clearly. The Government will announce its proposals on this in due course following a public consultation²⁴.

3.4.2 Reports of suspected marriages of convenience

- **Section 24 reports:** A Section 24 report (made to the UK Border Agency) is raised by a registration officer if they suspect a marriage is a sham. All Section 24 reports are investigated by the UK Border Agency and, where appropriate, action is taken. For example, a case may be referred to a LIT enforcement team to consider taking enforcement action, or may be investigated further by intelligence teams to form part of higher level or ongoing investigation into facilitation. Even if the LITs or intelligence teams are unable to take immediate action, the Section 24 reports can result in action being taken further down the line after an application for leave or residence on the basis of marriage has been submitted to the UK Border Agency.²⁵
- **Reports by clergy:** Members of the clergy who suspect a couple may be marrying for immigration purposes can report their suspicions to the UK Border Agency on a voluntary basis. A number of successful operations have been undertaken following reports from clergy who believe a marriage may be suspect.
- **Public reporting:** If a member of the public becomes aware of an immigration crime being committed, including a marriage of convenience, they can report this to the Agency by way of a dedicated email address. Reports are forwarded to the relevant LIT where, if sufficient detail is available, the allegation will be investigated and action taken if appropriate.

²⁴ www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/family-migration/consultation.pdf?view=Binary

²⁵ Home Office (2011) Family Migration: Evidence and Analysis. Occasional Paper 94: www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/occ94?view=Binary

Reports of suspected marriages of convenience are investigated by the UK Border Agency. They may also be investigated by specialist teams of UK Border Agency officers and the police. UK Border Agency immigration crime teams carry out targeted, intelligence-led operations against criminal groups that profit from organising marriages of convenience. The main aim is to identify the organisers and destroy their criminal business. Offenders are often involved in other forms of criminality. Recent law enforcement operations have resulted in facilitators being charged with money laundering, identity card and other fraud offences and there have been links uncovered to illegal working.

3.4.3 Intelligence

Once an application for leave or residence on the basis of marriage has been submitted to the UK Border Agency, casework teams monitor trends and possible misuse via marriage of convenience. This helps develop intelligence-led, risk-based, criteria for subjecting certain cases to further scrutiny.

3.5 EVIDENCE NEEDED TO PROVE A MARRIAGE IS FALSE AND BURDEN OF PROOF

For EEA nationals and their family members the burden of proof is on the Secretary of State for the Home Department when asserting in the first instance a marriage is one of convenience. The burden and standard of proof can be tested in the domestic courts.

In terms of reviewing the evidence, it is the civil standard and will be based on the balance of probability.

3.6 RESPONSIBILITY FOR DETECTING MARRIAGES OF CONVENIENCE

- Civil registrars are required by Section 24 of the Immigration and Asylum Act 1999 to report any reasonable suspicions they may have that a marriage or civil partnership is, or will be, a sham to the UK Border Agency.
- Members of the clergy who suspect a couple may be marrying for immigration purposes can report their suspicions to the UK Border Agency on a voluntary basis.
- The police can also be contacted if a member of the clergy suspects a marriage they have conducted, or have been asked to conduct, is for the purpose of evading immigration law or if they feel they are being put under undue pressure to conduct such a marriage.

The UK Border Agency investigates reports of suspected marriages of convenience with specialist teams of UK Border Agency immigration officers and seconded police officers working together.

Partnership working and the three-way alliance between the Home Office (UK Border Agency/General Register Offices), the Anglican Church and local Registration Services are key to tackling marriage abuse and supporting genuine marriages. Representatives from these organisations meet regularly as part of the Marriage Advisory Board. This Board provides a forum to seek the opinions of, and discuss solutions with, key stakeholders and enables stakeholders to go back and engage with their own organisations.

The UK emphasises the importance of multi-agency working. For example, the Department of Work and Pensions has been heavily involved in many of the UK Border Agency operations and is pro-active in providing information needed for investigations into marriages of convenience.

There is an increasing amount of work going on with the various agencies in the UK, including the Serious Organised Crime Agency (SOCA), and discussions are taking place about a 'virtual unit' of all the agencies in the UK to combat this fraud.

3.7 TREATMENT OF THOSE FOUND TO BE MISUSING FAMILY REUNIFICATION THROUGH MARRIAGE OF CONVENIENCE

There is no criminal offence of 'marriage of convenience'. Prosecutions will be for related offences such as bigamy, perjury, facilitating unlawful immigration or conspiracy.

Applications from non-EEA nationals for leave on the basis of a marriage or civil partnership found to be a sham will be refused and action will be taken to remove the applicant from the UK. Any person found to have broken the law by way of entering into or organising a marriage of convenience will be arrested and processed through the criminal justice system.

Offenders are often involved in other forms of criminality. Recent law enforcement operations have resulted in facilitators being charged with money laundering, identity card and other fraud offences and there have been links uncovered to illegal working. Recent successful enforcement operations and prosecutions have involved individuals from various countries, including the UK, Slovakia, Lithuania, the Czech Republic, Uganda and Pakistan.

Notable (intelligence-led) enforcement activities have included ten arrests as a result of an operation with South Yorkshire police involving Pakistani, Czech and Slovak nationals (March 2011). Those arrested are believed to be part of an international organised crime group conducting marriages of convenience with Pakistani grooms outside the UK.

Examples of penalties incurred

- a) In the North West, seven Czech nationals were sentenced to between 16 months and five years for their part in facilitating marriages of convenience, some of which were also bigamous. Two beneficiaries of that group (i.e. two people who benefited from the marriages but were not involved in the organisation or facilitation of the offence) also received custodial sentences.
- b) An operation in the Midlands region led to the conviction of 13 people with sentences totalling 20 years.
- c) A Nigerian male was arrested and charged in June 2011 for his part in a wider investigation into marriages of convenience. The Nigerian male, who married a Dutch female, was charged with conspiracy to assist unlawful immigration and pleaded guilty to that offence. The man was sentenced to 32 months' imprisonment.
- d) In July 2009, two Nigerian males trying to marry Slovakian females were arrested and pleaded guilty. Sentenced in December 2009, both grooms received 12-month prison sentences; the brides received 12-months suspended sentences.
- e) At Slough Register Office, a Hungarian bride and Indian groom were arrested and charged with conspiracy to assist unlawful immigration. Both pleaded guilty and were each sentenced the same day to 15 months' custody. Both have since left the UK under the early release scheme for foreign national offenders.

3.8 RIGHTS OF APPEAL FOR THOSE ACCUSED OF MARRIAGE OF CONVENIENCE

If a person has submitted an application for entry clearance, leave to enter or leave to remain which is refused on the grounds that the UK Border Agency suspects it to be a marriage of convenience, that individual will have a right of appeal against the decision.

Where a direct family member of an EEA national is being refused a document under the Immigration (EEA) Regulations 2006 on the basis their marriage is suspected of being a marriage of convenience, then a right of appeal is currently given in accordance with regulation 26(3). Evidence, in the form of a marriage certificate or civil partnership certificate, must be provided in order for that right of appeal to be engaged.

3.9 TRANS-NATIONAL COOPERATION IN COMBATING MISUSE OF FAMILY REUNIFICATION

Example: Operation Fry/Geldermalsen

In October 2009, the North West Regional Intelligence Unit (NW RIU) commenced their investigation with Operation Berkane, a proposed marriage between a Dutch Antillean national and a Nigerian national. The bride, groom and others were intercepted at a church in Salford prior to the ceremony. Further investigation revealed this should have been a joint ceremony with another Antillean/Nigerian couple.

Further enquiries identified a trend of Dutch Antilleans flying to the UK to set up an identity in the UK and then returning at a later date to take part in a marriage of convenience.

In June 2010, representatives from the NW and East Midlands RIUs met at The Hague with Dutch Police officials to discuss the growing problem of marriage abuse involving Dutch nationals of Curacao origin. This resulted in an agreement, in August 2010, between senior UK Border Agency and Dutch Police officials and led to the UK Border Agency's first overseas Joint Investigation Team (JIT) for closer working between the two countries. This formal agreement also allowed the legal exchange of intelligence between both organisations. This was entitled Operation Fry in the UK and Operation Geldermalsen in Holland.

The NW RIU has remained in control of the strategic picture surrounding Antillean marriages of convenience and to date there have been eight operations to tackle organised crime groups involved in assisting unlawful entry through marriages of convenience, specifically targeting Antillean marriages. The NW RIU has also successfully proposed three operations to the London and South East Tasking Coordination Group (LSE TCG).

The continued support provided by our Dutch counterparts has proved vital to acquiring custodial sentences in the UK for UK- and Holland-based non-EEA nationals by:

- locating facilitators and 'fixers' in Holland and assisting with their extradition to the UK to successfully face charges. To date, six Dutch nationals have been extradited to the UK;
- Dutch officers travelling to the UK to assist in the successful debrief of Dutch nationals charged with facilitation; and
- performing status checks to show Dutch nationals are not exercising treaty rights in the UK, which has assisted UK Border Agency caseworkers to refuse residency applications by non-EEA spouses in the UK.

To date, joint-working between the UK Border Agency and The Royal Marechaussee (Dutch Military Police) has brought about the arrest of 63 individuals and 48 convictions (both EEA and non-EEA), with sentences totalling 724 months (60 years and four months).

3.10 MOTIVATIONS FOR THE SPONSOR AND APPLICANT ENGAGING IN A MARRIAGE OF CONVENIENCE

Motivations for third-country national applicants

Analysis of Section 24 reports (reports of suspected marriages of convenience by registrars) suggests marriage abuse may be used by those whose leave to remain has expired, is close to expiry and who may have exhausted all other means of extending their stay. Section 24 data suggested the following:

- In 2011, of the 1,727 individuals for whom a previous immigration status was noted, the largest proportions were those without valid leave (42%) and students (43%). The proportion who were students increased from 32 per cent in 2010 to 43 per cent in 2011.
- Seasonal trends have been observed, with peaks corresponding to the end of courses of study.
- Only 14 cases (1%) in 2011 were previously asylum seekers. Visitors comprised just two per cent.
- Irregular migrants may use marriage to stay in the UK based on Free Movement rights and/or Article 8 of the European Convention on Human Rights (right to private and family life).

However, it is possible that individuals may simply opt for a marriage of convenience as a method of choice and an easier way to obtain immigration status in the UK – particularly given the growing disparity between the rules for family reunification for non-mobile EU nationals and those exercising free movement rights. This can increase the risk of this route being abused by those wishing to facilitate marriages of convenience.

When a third-country national marries an EEA national in the UK they obtain a right to reside through the act of marriage, unlike those marrying a UK national who require permission from the UK Border Agency to reside in the UK on the basis of marriage. The EEA marriage route therefore offers a low challenge route to those seeking permanent residency in the UK. It is also cheaper to enter the UK in this manner than via other immigration routes as it does not involve a fee-based application for leave to remain in the UK.

An example of concerns regarding the growing use of free movement rights to enable UK residency can be found in the ECJ Rahman case. This concerns the extension of free movement rights for extended family members of EEA nationals.²⁶

²⁶ This case is about the treatment of extended family members under Article 3(2) of the Free Movement Directive (e.g. cousins, siblings, aunts, uncles). In essence the court is considering what rights Article 3(2) provides to extended family members and whether these rights provide an automatic right of entry and residence and whether the conditions set out in the Directive, such as the nature and duration of dependency, are 'threshold' conditions or simply relevant to Member States' consideration of all relevant circumstances in individual cases when exercising their discretion.

Motivations for sponsors

Evidence given during the conviction of two Anglican vicars suggested financial gain may be a motivation and the desire to help immigrants to stay in the UK.²⁷

Anecdotal evidence suggests migrants targeting this route may seek the assistance of individual facilitators or organised crime groups, of varying size and structure, to coordinate marriage of convenience activity. Anecdotal evidence suggests opportunists and organised crime groups may find substantial financial gain from assisting with such activity e.g. as facilitators or sponsors. Examples of fees paid to facilitators/organisers range from £2,000–£20,000. The risks involved for organised crime groups are relatively low but the levels of profit can be very high.

²⁷ www.telegraph.co.uk/news/religion/9042186/Clergyman-jailed-for-sham-marriage-scam.html;
www.dailymail.co.uk/news/article-2077166/Together-moths-loves-disko-music-The-exactly-romantic-sham-marriage-crib-sheet.html

4. Family reunification: available statistics, data sources and trends

4.1 CONTEXT IN THE UK – FAMILY FORMATION AND REUNION IN THE UK

There are three main data sources for third-country migrants to/in the UK for family formation and reunion: visa issuances, visa extensions and grants of settlement.²⁸ The reason for travel is also recorded when the passenger arrives at the UK border but these data are not presented as some family route passengers are included with the ‘Others given leave to enter’ category.

The data on family formation and reunion (see Annex B) show the numbers of migrants granted visas, visa extensions and settlement in the UK for family formation reasons are declining (Tables B1, B3, B5). The majority of migrants granted visas, visa extensions and settlement in the UK for family formation reasons are joining/accompanying partners/fiancé(e)s (rather than children). The largest numbers of visas for those joining/accompanying partners were issued in 2011 to nationals from Pakistan, followed by India, United States and Bangladesh (Table B2). The top four countries granted extensions for family reasons in 2010 were Pakistan, United States, India and Nigeria – these nationals accounted for 32 per cent of all family extension grants (Table B4).²⁹

There are typically more grants of settlement for family formation given to wives joining/accompanying their husbands than for husbands joining/accompanying their wives (Table B5). For example, in 2011, 53 per cent (27,149) of grants of settlement were to wives, 28 per cent (14,061) to husbands, 12 per cent (6,085) to children, two per cent (1,261) to parents/grandparents and four per cent (2,237) to others/unspecified dependants).

The UK does not have residence permits as defined by the Migratory Statistics Regulation EC No 862/2007, but does provide estimates of such ‘residence permits’ for third-country nationals who are granted permission to reside in the UK, by reason, to Eurostat. However, these statistics are an aggregate of published National Statistics data on passengers given permission to enter the UK, supplemented with other management information such as visas issued and asylum granted, which have been described separately above.

4.2 SCENARIO A – THIRD-COUNTRY NATIONALS REUNIFYING WITH THIRD-COUNTRY NATIONALS

There are very limited data on the nationality of sponsors of the migrants coming through the family route. The available data relate to (most) grants of settlement, but these only differentiate between those joining/accompanying British citizens and those joining/accompanying non-British people settled in the UK. It is not possible to separately identify those joining/accompanying third-country nationals and those joining/accompanying other (non-British) EEA nationals, other than those applying for EEA residence documents where it can be inferred they are joining an EEA national.

Grants of settlement to third-country nationals wishing to join British citizens and settled non-British people

In 2010³⁰, the majority of grants of settlement on the basis of marriage were to spouses/civil partners of British citizens (46,572, 88%). Just under 3,000 (6%) grants were to spouses/civil partners of non-British nationals who were settled in the UK (Table 1).

²⁸ These data exclude EEA nationals and Swiss Nationals. Nationals of EU accession countries are included or excluded according to their accession date. Data from 2003 exclude dependants of EEA and Swiss nationals in confirmed relationships granted temporary/permanent residence.

²⁹ The nationalities for grants of settlement are not available.

³⁰ 2011 data are not yet available.

Table 1: Grants of settlement to spouses on basis of marriage, 2006-2010

Category of grant	2006	2007	2008	2009	2010
Spouse or civil partner already settled here but not British	2,948	2,825	3,443	4,014	2,942
Spouse or civil partner a British citizen	36,771	31,204	34,481	48,661	46,572
Other types of settlement grant to spouse on basis of marriage	2,998	2,954	3,405	2,925	3,633
Total spouses	42,717	36,983	41,329	55,600	53,147

[Home Office statistics, table se.04³¹]

The majority of grants of settlement on the basis of marriage were to wives (Table 2). A similar proportion of husbands (5%) and wives (6%) were granted settlement on the basis of a marriage/civil partnership to a non-British person settled in the UK in 2010 (excluding 'other' grants of settlement).

Table 2: Grants of settlement to husbands and wives on basis of marriage, 2006-2010

Category of grant – husbands	2006	2007	2008	2009	2010
Spouse or civil partner already settled here but not British	868	918	1,189	1,290	969
Spouse or civil partner a British citizen	13,669	11,953	13,735	17,825	16,793
Other grants of settlement grant to spouse on basis of marriage	982	938	1,064	757	663
Total husbands	15,519	13,809	15,988	19,872	18,425
Category of grant – wives					
Spouse or civil partner already settled here but not British	2,080	1,907	2,254	2,724	1,973
Spouse or civil partner a British citizen	23,102	19,251	20,746	30,836	29,779
Other grants of settlement to spouse on basis of marriage	2,016	2,016	2,341	2,168	2,970
Total wives	27,198	23,174	25,341	35,728	34,722
Total spouses	42,717	36,983	41,329	55,600	53,147

[Home Office statistics, table se.04³¹]

31 www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q4-2011/settlement-q4-2011-tabs

4.3 SCENARIO B – MOBILE EU NATIONALS REUNIFYING WITH THIRD-COUNTRY NATIONALS

EEA Family Permits (issued overseas)

EEA Family Permits can be issued overseas to non-EEA nationals who have an EEA family member and wish to come to the UK. It is not compulsory for family members to apply for this documentation, so data only reflect those who have applied.

Table 3: Number of EEA family permits issued overseas, 2006-2011

	2006	2007	2008	2009	2010	2011
EEA family permits	25,869	23,417	18,669	19,372	20,747	19,881

[Home Office statistics, table be.06.o³²]

In 2011, there were 19,881 family permits issued overseas. The largest proportions were issued to Asian nationals (39%, 7,779) and African nationals (26%, 5,175). The highest number of issues was to Pakistani (2,171) and Indian (2,074) nationals, followed by Nigerian (1,154), Sri Lankan (992) and Russian (990). Nationality breakdowns are not available for previous years.

Table 4: EEA family permits, 2011

Geographical region	EEA family permits
Asia	7,779
Africa	5,175
Europe	2,866
Americas	2,360
Other	786
Middle East	586
Oceania	329
Total	19,881

[Home Office statistics, table be.04³²]

³² www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q4-2011/before-entry-q4-2011-tabs

EEA residence documentation (in-country applications)

EEA nationals and their non-EEA family members can apply in-country for EEA residence documentation to confirm their status in the UK. “Initial recognition of right to reside” documentation reflects registration documents and residence cards issued to confirm a treaty right or confirm status as a family member of an EEA national. “Recognition of permanent residence” reflects documents certifying permanent residence and permanent residence cards issued for an indefinite period after five years living in the UK.

The UK makes decisions on over 80,000 applications every year for EEA residence documentation. In 2010, approximately 70 per cent of decisions were in applications for initial recognition of right to reside. The number of refusals (for all documentation) increased from six per cent in 2006 to 20 per cent in 2010. This is discussed further in Section 5.1.

Table 5: Issue and refusal of residence documentation* to EEA nationals and their family members, 2006-2010

Issues and refusals	2006	2007	2008**	2009	2010
Initial recognition of right to reside – issued	67,054	67,583	36,680	60,414	44,539
Initial recognition of right to reside – refused	3,167	6,296	4,961	9,123	12,796
Recognition of permanent residence issued	8,777	7,623	4,020	11,379	20,157
Recognition of permanent residence refused	1,775	1,455	1,038	1,726	3,748
Other	365	371	1,449	285	744
Total	81,138	83,328	48,148	82,927	81,984

* NB. This excludes Workers’ Registration Scheme documentation.

** In 2008 just 48,148 applications were decided due to a change in operational and procedural measures, which resulted in a temporary drop in processing of applications.

[Home Office statistics, table ee.02³³]

The top ten nationalities comprise approximately 60 per cent to 67 per cent of all decisions in the years 2006 to 2010. In 2010, the top three nationalities receiving decisions on applications for EEA residence documentation were Nigeria (11,234), Poland (10,461) and Ghana (4,920) (Table 6). The nationalities of refused applicants are discussed in Section 5.1.

33 www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q4-2011/eea-q4-2011-tabs

Table 6: Top ten nationalities applying for EEA residence documentation, 2010*

Top ten nationalities	Total applications
Nigerian	11,234
Polish	10,461
Ghanaian	4,920
Portuguese	3,978
Indian	3,917
Brazilian	3,889
Dutch	3,401
Lithuanian	2,723
Pakistani	2,491
German	2,378
Other	32,592
Total	81,984

* Registration certificates and residence cards are issued to confirm a treaty right or confirm a person's status as a family member of an EEA national.

[Home Office statistics, table ee.02³³]

Decisions on applications from Nigerian nationals first appeared on the top ten list in 2008 and have increased from 1,508 in 2008 to 11,234 in 2010, comprising 14 per cent of applications. Other nationalities have also appeared consistently (with varying numbers of cases) in the top ten during this time, for example, Poland, Ghana, Brazil, Lithuania, Portugal, India, Netherlands, France, Germany, Italy.

4.4 SCENARIO C – NON-MOBILE EU NATIONALS REUNIFYING WITH THIRD-COUNTRY NATIONALS ON THE BASIS OF JURISPRUDENCE

Surinder Singh cases (see Section 2.7)

Statistics on these cases are provided below as requested in the specification. However, the UK has not found evidence of significant abuse of this area and current statistics are not able to indicate any abuse (some people are refused but we do not know whether these were refused due to abusive actions or for another reason, such as poor quality documentation and evidence).

In 2010, there were 363 Surinder Singh applications received at International Group Visa sections (i.e. applications made outside of the UK). There were 341 in 2011. Please note, these will not all be unique applications and will include some repeat applications if an applicant was refused the first time.

³³ www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q4-2011/eea-q4-2011-tabs

- Of the 704, a total of 558 have been issued so far.
- Nineteen were refused outright and 97 were refused with the right of appeal.
- The top ten nationalities applying were Russia, Pakistan, South Africa, Morocco, Nigeria, Thailand, China, Colombia, India, Philippines.

4.5 SCENARIO D – NON-MOBILE EU CITIZENS (IN THIS CASE BRITISH NATIONALS) REUNIFYING WITH THIRD-COUNTRY NATIONALS

As reported, it is only possible to identify third-country nationals joining British nationals from data on grants of settlement.

Grants of settlement to third-country nationals wishing to join settled British citizens

The majority of grants of settlement on the basis of marriage are due to marriage/partnership with a British citizen. In 2010³⁴, there were 46,572 grants of settlement for spouses/partners of British citizens, 88 per cent of all grants of settlement on the basis of marriage (Table 1).

34 2011 data are not yet available.

5. Marriage of convenience: available statistics, data sources and trends

5.1 DATA ON MARRIAGES OF CONVENIENCE

5.1.1 Section 24 reports

The primary data source for marriages of convenience is Section 24 reports; however, these are only cases reported as suspicious and are not necessarily proven. These also exclude marriages in the Anglican Church in England and Wales, unless preceded by civil preliminaries. Other small-scale exercises also provide some indication about the nature of the issue.

Table 7: Number of Section 24 reports (suspected marriages of convenience) in UK, 2005-2011

	2005	2006	2007	2008	2009	2010	2011
Marriage of convenience reports	452	282	384	344	561	934	1,741

The number of reports has been increasing each year since 2006 (Table 7). There was an 86 per cent increase in reports from 2010 (934) to 2011 (1,741). It is not clear whether this is due to increased incidence of suspected marriages of convenience, the ending of the Certificate of Approval Scheme (see Section 2.3), or an increased awareness of this type of abuse by registrars, which has resulted in an increase in reports.

The number of Section 24 reports decreased from 452 in 2005 to 282 in 2006. This followed the introduction of a new requirement for certain third-country nationals to obtain permission to marry from the Home Office before they could marry in the UK (Certificate of Approval, see Section 2.3 above). This requirement was abolished in May 2011.

5.1.2 Scenario A – third-country nationals reunifying with third-country nationals

Marriages of convenience in the UK usually involve a third-country national seeking to enter or remain in the UK on the basis of their marriage to a British citizen or EEA national. However, there is recent evidence, albeit a small number of cases, where there have been suspicions raised about marriages between third-country nationals.

ANALYSIS OF REMARRIAGES FOLLOWING SETTLEMENT ON THE BASIS OF MARRIAGE

Discussions with UK Border Agency caseworkers highlighted a potential pattern of abuse whereby migrants enter into a marriage of convenience with a British citizen or person settled here and once granted settlement, divorce and go on to sponsor a new spouse, possibly their ‘genuine’ partner, to come to the UK.

Analysis was carried out to look at the numbers of sponsors who gained settlement as a spouse to a British citizen in 2009 and then went on to sponsor a new spouse, and the time between these events. Further discussion of the method can be found in the Family Migration Evidence Base³⁵.

35 Family Migration: Evidence and Analysis. Home Office Occasional Paper 94: www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/occ94/occ94?view=Binary

A total of 719 individuals were identified where the sponsor and applicant journeys consisted of an initial marriage visa followed by a settlement grant and subsequent application to sponsor a new spouse. In nearly half (47%) of these cases, the sponsor sponsored another migrant as their spouse within three years of gaining settlement. Thirty-four cases (around 5%) appeared to sponsor a migrant spouse within one year of settlement, and 133 (19%) within two years.³⁶

ANALYSIS OF SECTION 24 REPORTS

Analysis of Section 24 reports showed there was an increase in the number of reports of Chinese nationals marrying other Chinese nationals in 2010. The small number of cases (around 30) involved Chinese asylum seekers or failed asylum seekers marrying other Chinese nationals who were also asylum seekers/failed asylum seekers or who were in the UK illegally. These marriages would not result in access to EEA treaty rights, but it is suspected they may be linked to the provision of evidence of established family ties needed to support asylum cases. It is an example of where marriage may be used to create a barrier to removal from the UK.

5.1.3 Scenario B – mobile EU nationals reunifying with third-country nationals

MARRIAGES OF CONVENIENCE TAKING PLACE OVERSEAS

The UK Border Agency International Group carried out an exercise during 2011 to explore abuse within the EEA Family Permit Route³⁷. The exercise focused on third-country nationals who may have taken part in a marriages of convenience to an EEA national overseas and then requested an EEA Family Permit to either visit the UK with that EEA national, or to join the EEA national who was exercising treaty rights in the UK.

The project was a sampling exercise, designed to provide a basic indication of whether migrants were abusing the Free Movement Directive overseas for the purpose of targeting the UK. The activity occurred over just a short period of time (May to October 2011) and relied on Entry Clearance Officers (ECOs) voluntarily referring cases to UK Border Agency officials if there were concerns over the authenticity of spousal relationships, false documentation or adverse immigration history. Findings from this limited sample cannot be generalised to the wider population but does evidence UK concerns that abuse of the route can occur.

During May to October 2011:

- There were 13,053 applications for EEA Family Permits. Of these, a total of 256 cases (1.9%) were referred by ECOs due to concerns relating to authenticity of the spousal relationship, associated documentation and/or adverse immigration or criminal history.
- Of the 256 cases, 176 were referred due to concerns about the authenticity of the spousal relationship. The remaining cases were referred for other reasons, including use of forged documentation and false exercise of treaty rights.
- Of the 256 cases, 78 had adverse immigration histories and 19 had criminal histories. In some cases there were also concerns about the authenticity of the relationship. Whilst these numbers are small, it suggests that some migrants are abusing the Free Movement Directive in order to gain legitimate entry to the UK which would not otherwise be possible due to their adverse immigration history.

³⁶ Thirty-four within one year and another 99 between one and two years.

³⁷ EEA Family Permits, requested overseas, confirm in advance of travel an EEA family member's right to travel under the EEA regulations.

IN-COUNTRY MARRIAGES OF CONVENIENCE – EEA RESIDENCY DOCUMENTATION (IN-COUNTRY APPLICATIONS)

As already reported, EEA nationals and their non-EEA family members can apply in-country for EEA residence documentation to confirm their status in the UK. It is not compulsory for family members to apply for this documentation, so data only reflect those who have applied.

Table 5 (Section 4.3) shows the number of refusals (for all documentation) increased from six per cent in 2006 to 20 per cent in 2010. Since February 2011 it has been possible to record sham, bigamous and proxy marriage as reasons for refusal of an application for a residence document. Refusals made on these grounds prior to the introduction of the new codes are not identifiable without reference to individual case records. The total number of refusals of EEA residence family permit documents in 2011 will be published in August 2012, including (if data quality allows) breakdowns of refusals that have been categorised under these additional reasons for refusal.

5.2 CHARACTERISTICS OF THOSE INVOLVED IN MARRIAGES OF CONVENIENCE

5.2.1 Scenario B – mobile EU nationals reunifying with third-country nationals

MARRIAGES OF CONVENIENCE TAKING PLACE OVERSEAS

The UK Border Agency International Group exercise exploring possible abuse within the EEA Family Permit route (see Section 5.1.3) found:

- the top third-country national nationalities referred due to concerns over the authenticity of the relationship were: Pakistani (34 people), Nigerian (26), Somalian (21); and
- the top EEA nationalities referred due to concerns over the authenticity of the relationship were: Dutch (27), Portuguese (21), Lithuanian (17).

IN-COUNTRY MARRIAGES OF CONVENIENCE – EEA RESIDENCY DOCUMENTATION (IN-COUNTRY APPLICATIONS)

Table 5 (Section 4.3) shows the number of refusals (for all documentation) increased from six per cent (4,942) in 2006 to 20 per cent (16,544) in 2010. The refusal rate for Nigerians (applying for all forms of documentation) was nearly 57 per cent in 2010. This rate was also an increase from 40 per cent seen in 2008 and 48 per cent in 2009. In comparison in 2010, the Ghanaian refusal rate was 39 per cent and Poland four per cent, whilst refusal rates for both Dutch and French applications were 17 per cent.

5.2.2 General trends

NATIONALITY

The top three nationalities reported in Section 24 reports between 2008 and 2011 were British, Pakistani and Nigerian. These three nationalities comprised almost half (48%) of nationalities reported under Section 24 each year.

In 2011, a total of 1,741 Section 24 reports were made by registrars. Of all individuals (3,482 people) involved in these reports, 24 per cent were British, 16 per cent were Pakistani nationals and eight per cent Nigerian. Between 2010 and 2011 Nigerian nationals accounted for the largest percentage change in Section 24 reports, increasing from 105 to 273 (an increase of +160%) reports in this period.

In 2011, British citizens comprised 47 per cent of sponsors (1,741 people) reported as suspicious in Section 24 reports, while other EEA nationals formed 44 per cent. The remaining eight per cent were other non-EEA national sponsors.

Table 8: Top three nationalities for Section 24 reports and percentage change over time

Top three nationalities	2008	2009		2010		2011	
	Number	% change (08-09)	Number	% change (09-10)	Number	% change (10-11)	Number
British	180	43%	258	38%	357	130%	821
Pakistani	49	206%	150	125%	338	70%	573
Nigerian	68	28%	87	21%	105	160%	273

Nationality and gender differences

In 2011, the largest proportion of males involved in Section 24 reports (1,741) were Pakistani (30%), followed by Indian (13%), Nigerian (12%) and British (12%). For females (1,741), the largest proportion were British (36%), followed by Polish (7%) and Lithuanian (6%). (See Tables 9 and 10).

Table 9: Section 24 reports for males, 2011

Nationality	Number	%
Pakistani	519	30%
Indian	223	13%
Nigerian	206	12%
British	201	12%
Bangladeshi	101	6%
Other*	491	28%
All nationalities	1,741	100%

* Nationalities with fewer than 50 reports.

Table 10: Section 24 reports for females, 2011

Nationality	Number	%
British	620	36%
Polish	128	7%
Lithuanian	110	6%
Romanian	71	4%
Nigerian	67	4%
Slovakian	62	4%
Latvian	60	3%
Portuguese	57	3%
Pakistani	54	3%
Other*	512	29%
All nationalities	1,741	100%

*Nationalities with fewer than 50 reports.

As with previous years, in 2011 a larger proportion of females were British or other EU nationals (74%) whilst a larger proportion of males were non-EU nationals (84%).

From 2008 to 2011, Pakistanis represented the largest proportion of males involved in Section 24 reports. Nigerian and Indian males were consistently in the top four, apart from 2008 where Ghanaians replaced Indians.

From 2008 to 2011, British citizens have consistently represented the largest proportion of females subject to Section 24 reports (over 30%). Polish nationals have consistently ranked second in the top ten female nationalities, but still represent a much smaller proportion (between 7 and 11%) than British citizens. Women of other nationalities reported under Section 24 include Lithuanian, Romanian, Portuguese, Slovakian, Latvian and Czech.

In 2011, most reports of suspected marriages of convenience from registrars involved third-country national men marrying British or Eastern European women (Table 11).

Table 11: Most frequently occurring nationality pairings, reports of suspected marriages of convenience, 2011

		Men							Total
		Pakistani	Indian	Nigerian	British	Bangladeshi	Algerian	Other	
Women	UK	174	95	147	0	57	10	136	619
	Polish	47	23	10	0	4	11	33	128
	Lithuanian	56	12	3	0	3	1	35	110
	Romanian	44	10	0	1	3	0	13	71
	Nigerian	0	0	10	40	0	0	17	67
	Slovakian	44	10	2	0	1	2	3	62
	Latvian	32	14	1	0	2	0	11	60
	Portuguese	15	11	12	0	6	4	9	57
	Pakistani	23	0	0	18	1	0	12	54
	Hungarian	17	14	3	0	1	2	9	46
	Indian	3	16	0	15	0	0	7	41
	Other	64	18	18	126	23	16	161	426
	Total	519	223	206	200	101	46	446	1,741

Nationality does not reflect immigration status.

Source: Section 24 reports, 2011

Previous immigration status

Since 2011, it has been possible to identify the previous immigration status for 1,727 (non-EEA) individuals. The largest proportions of these were migrants without valid leave (42%) and students (43%). The proportion of students had increased from 32 per cent seen in 2010. Visitors represented two per cent of reports in 2011 and asylum seekers just one per cent of reports (14 cases).

5.3 CHARACTERISTICS OF OTHERS INVOLVED IN MARRIAGES OF CONVENIENCE

Some marriages of convenience may be arranged by organised crime groups who may also profit from the situation. Evidence from marriages between EU brides and non-EU grooms, found the following types of situation/organisation.

- The fees charged ranged from between £2,000 and £10,645. In several cases 25 per cent of the total fee was requested in advance with the remainder payable at a later date. The bride typically paid up to ten per cent of the total fee charged.
- In some cases it was common practice for the organised criminal group to be split into two defined areas: the first responsible for making arrangements to get the non-EU grooms into the UK; the second responsible for sourcing the EU brides.
- Cases were found relating to Dutch individuals, predominantly of Curacao origin, who were flying into the UK for between 12 and 48 hours to take part in marriages of convenience.
- Other cases saw Egyptian and North African males facilitating marriages between third-country nationals (with no valid leave to remain in the UK) and EEA nationals, often from Eastern Europe. The majority came from poor to low-income family backgrounds. They had links to suspected criminal immigration advisers and solicitors and also to Czech nationals. The third-country national would pay the facilitator a large sum of money (between £5,000 to £20,000) and the facilitator sourced a willing EEA national and arranged for the couple to marry in a Church of England church (false addresses were supplied to the church). Following the marriage the beneficiary would then apply to the Home Office for EEA family member documentation. In some instances no application was made and the third-country national only disclosed the marriage to police or the UK Border Agency when encountered as an illegal entrant.

5.4 LOCATION OF MARRIAGES OF CONVENIENCE – IN THE UK OR IN ANOTHER EU MEMBER STATE

Evidence from Section 24 reports and refusals for EEA Family Permits made outside the UK (see Section 5.1) indicate marriages of convenience have been taking place both outside the UK and within the UK. The available data are not, however, able to say in which other Member States this abuse occurred.

Part B: False declaration of parenthood

1. Summary

Currently, there is a lack of evidence of the scale of this issue in the UK but there is anecdotal evidence from registrars that this may be an emerging issue and some other Member States have raised concerns. It is an issue that has potential to affect all Member States to some degree and it is important to clamp down on abuse whenever and wherever it occurs in order to protect the wider rights of free movement and family reunification for all.

2. Declaration of parenthood: national legislative framework and definitions

2.1 National legislation covering declaration of parenthood and preventing false declaration

PARENTHOOD REGISTRATION

There are three General Register Offices (GROs): England and Wales; Scotland; and Northern Ireland. Registration is a devolved matter. Each GRO is responsible for the registration of births in the appropriate local area.

INITIAL REGISTRATION

In all three GROs, current legislation does not require the mother/father to produce evidence at the 'initial registration' of birth. To make this happen would require a change in law.

In Northern Ireland and Scotland, in cases where the couple are not married to each other, declarations of paternity are required from the mother and the father. Parents can attend the registrar's office together or one parent can attend and provide the declarations from both. In England and Wales, unmarried parents are only required to provide the appropriate declarations if they do not attend the register office together.

CHANGES TO PATERNITY

In England and Wales, evidence is required in the form of DNA proof to change paternity.

In Scotland, it is very difficult to replace one father with another on the birth certificate. Changing the father on a birth certificate does not require DNA proof, but does require an action in the Scottish Courts to obtain a decree of parentage or non-parentage which would result in an amendment to the birth record.

In Northern Ireland, DNA evidence alone is not acceptable and a statutory declaration from both parties is required. Where either/both parties refuse to sign the statutory declaration a court-issued Declaration of Paternity is required.

There is no UK legislation or provisions, at present, to prevent false declarations of parenthood. However, anyone providing false information for a birth registration has committed an offence under the Perjury Act 1911/Perjury (Northern Ireland) Order 1979.

3. False declaration of parenthood: the situation in the United Kingdom

3.1 RECOGNITION OF FALSE DECLARATION OF PARENTHOOD AS AN EXAMPLE OF MISUSE OF FAMILY REUNIFICATION

Anecdotal instances of suspected paternity fraud have been encountered by GROs. For example, where a mother is suspected to have falsely registered a birth with a father who is a non-EEA national for an immigration or other type of advantage. Suspected numbers are very few – but there is no way of knowing which, if any, are indeed false declarations of parenthood.

In Scotland, some checks are made in respect of re-registered birth entries where the original entry was registered by a single parent mother, and the birth was then re-registered to add the father resulting in a combination of EEA/non-EEA parents. In Scotland, it is government policy to make adding a father's details to a birth entry straightforward, to encourage unmarried fathers to take responsibility for their children. Once an unmarried father is recorded on the child's birth entry, he automatically acquires parental rights and responsibilities.

In Northern Ireland, concerns around these types of cases have not been encountered. An unmarried father only obtains parental responsibility if he jointly registers the birth with the mother – he does not obtain parental responsibility on re-registration.

England and Wales plan to investigate the position relating to suspected abuse, although no firm dates are yet in place.

3.2 PREVENTION OF FALSE DECLARATION OF PARENTHOOD

In Northern Ireland and Scotland, unmarried couples are required to make a declaration of paternity.

For unmarried parents in England and Wales, a declaration is required where the parents do not attend the register office together. It is possible this may act as a deterrent to register a false parent.

3.3 TRIGGERS FOR AN INVESTIGATION OF FALSE DECLARATION OF PARENTHOOD

In some GROs, a case worker may have suspicions and carry out further checks in collaboration with the UK Border Agency if:

- a child keeps the mother's maiden name rather than the father's;
- if the baby does not have the father's surname when first registered (but does have the surname of the individual added to the form when the registration is amended);
- if a nationality pairing is unusual (i.e. no cultural or historical ties); or
- the parents are living at different addresses.

3.4 EVIDENCE NEEDED TO PROVE A DECLARATION OF PARENTHOOD IS FALSE

Current legislation does not require the mother/father to produce evidence at the initial registration of birth. If unmarried, couples in Northern Ireland and Scotland have to complete a declaration of paternity. In England and Wales, a declaration is required where unmarried parents do not attend the register office together.

In England and Wales, DNA proof is required when a change of paternity is registered. In Scotland, a decree of parentage or non-parentage is required from the Scottish Courts. In Northern Ireland, DNA evidence and a statutory declaration from both parties are required.

3.5 RESPONSIBILITY FOR DETECTING FALSE DECLARATIONS OF PARENTHOOD

A GRO case worker may carry out further checks in collaboration with the UK Border Agency.

4. False declaration of parenthood: available statistics, data sources and trends

4.1 DATA ON FALSE DECLARATION OF PARENTHOOD

Cases are few but UK GROs have encountered the following scenarios.

- The mother/father applies for a change to be made to the birth registration – normally to change the father's name. These cases normally involve an EEA national (father) and non-EEA national (mother) pairing when the birth is originally registered. The possible false declaration only comes to light if the registration is 'corrected' to show a non-EEA father, particularly where his surname is the same as the one given to the child at the initial registration.
- The mother or father registers a child's birth. In this application they record their place of birth as being within the EU. The mother or father then returns to correct the place of birth, now providing a non-EU address.
- In Scotland, cases of re-registered birth entries where the original entry was registered by a single parent mother, and the birth was then re-registered to add the father resulting in a combination of EEA/non-EEA parents.

4.2 CHARACTERISTICS OF THOSE INVOLVED IN FALSE DECLARATION OF PARENTHOOD

Without reliable statistics it is not possible to give a picture of the nationalities involved. The UK plans to improve data collection and intelligence exercises to help further our knowledge.

Annex A – Requirements for family reunification, Scenarios A and D

A1. THIRD-COUNTRY NATIONALS APPLYING AS A FAMILY MEMBER OF A BRITISH CITIZEN OR SETTLED THIRD-COUNTRY NATIONAL

Marriage/civil partner visa – for those who are already registered partners/spouses of British citizens or settled persons. The couple must meet the same requirements as the fiancé(e)/proposed civil partnership visa (see below), except they must demonstrate:

- they are legally married to each other or have registered a civil partnership;
- they intend to live together permanently as husband and wife, or as civil partners, and the marriage or civil partnership is subsisting; and
- they will be able to maintain themselves and any dependants adequately without recourse to public funds.

If the application is successful, spouses and civil partners are given permission to live and work in the UK. They will be granted leave for a period of up to 27 months. After a two-year probationary period they are able to apply for settlement (Indefinite Leave to Remain) as the spouse or civil partner of the British citizen or person settled in the UK.

Spouses and civil partners may be eligible for immediate settlement (Indefinite Leave to Enter) if:

- they married or formed a civil partnership at least four years ago;
- they spent those four years living together outside the UK;
- they are both coming to the UK to settle here together; and
- they have sufficient knowledge of the English language and of life in the UK (unless aged 65 or over or unless they qualify for an exemption on the grounds of disability).

If the applicant is already in the UK – the Immigration Rules permit migrants to switch into the category of spouse, civil partner or unmarried or same-sex partner from within the UK if they have valid leave when they submit an application and they were issued leave to enter or remain beyond a period of six months (this prevents applicants who entered as visitors and those with no leave being able to switch into this category). The six-month restriction does not apply to those granted a fiancé(e) or proposed civil partner visa, or the spouse or partner of a relevant points-based system (PBS) migrant.

To switch into the marriage or civil partner category in the UK, migrants must meet the same requirements as those applying for a marriage or civil partner visa overseas. In addition they must also demonstrate:

- they have not remained in the UK in breach of the immigration laws; and
- their marriage or civil partnership did not take place after a decision was made to deport or remove them from the UK.

There are comparable requirements for unmarried or same-sex partners, except applicants for leave to enter or remain in the UK and their partner settled in the UK must have been living together in a relationship akin to marriage for two years or more.

A2. VISITORS COMING TO GET MARRIED OR REGISTER A CIVIL PARTNERSHIP IN THE UK

Requirements for visitors to marry or register a civil partnership are differentiated by existing residence status in the UK and future plans for UK settlement.

If both partners are in the UK and one or both subject to immigration control, they need to give notice to marry or register the civil partnership with a registrar at a ‘designated office’. Designated offices are all registration offices in Scotland and Northern Ireland and 75 offices in England and Wales. Details of the designated offices in England and Wales can be found at the Directgov website³⁸.

If either partner is not already in the UK, that partner will need to obtain a visa before they come to the UK to marry or register their civil partnership, unless they:

- a. are a British citizen;
- b. are a national of a country in the EEA or Switzerland, or the family member of a national of the EEA who has the right of residence in the UK;
- c. have a certificate of entitlement in their passport, giving them the right to live in the UK; or
- d. are not subject to immigration control.

Both the British citizen or person settled here (the sponsor) and the migrant (the applicant) for a fiancé(e)/proposed civil partnership visa must be at least 18 years old, and both the sponsor and the applicant must show:

- they plan to marry or register a civil partnership within a reasonable time;
- they have met each other;
- they plan to live together permanently after the marriage or civil partnership;
- adequate maintenance and accommodation without recourse to public funds will be available to the applicant until the marriage or civil partnership;
- after the marriage or civil partnership there will be adequate accommodation (for them and any dependants) which they own or occupy exclusively without public funds; and
- after the marriage or civil partnership they will be able to maintain themselves and any dependants adequately without recourse to public funds.

The applicant must demonstrate they can speak and understand a basic level of English (A1 of the Common European Framework of Reference for Languages³⁹).

Fiancé(e) visas are normally granted for a period of six months, during which time work is not permitted. After the couple have married or entered into a civil partnership, leave to remain can be applied for in the UK, which, if granted, is valid for two years and permits work.

38 www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/@government/documents/digitalasset/dg_176374.pdf

39 www.coe.int/t/dg4/linguistic/cadre_EN.asp

A3. THIRD-COUNTRY NATIONALS APPLYING AS A FAMILY MEMBER OF A NON-SETTLED THIRD-COUNTRY NATIONAL WITH TEMPORARY LEAVE

Most migrants staying in the UK or coming to the UK through the PBS and other work categories can apply for a visa for their partner and dependent children under 18 to join them if they meet the following conditions.

- The migrant worker needs to prove they can support dependants and themselves without needing state benefits or other public funds.
- Partners need to show they intend to live with the migrant worker during their stay, and the relationship is genuine (not a ‘marriage of convenience’).
- Children under 18 need to show they have not formed an independent family unit and are not leading an independent life.

Since 2011, students cannot bring dependants to the UK **unless** they are:

- sponsored by a higher education institution on a course at National Qualifications Framework (NQF) level 7 or above which lasts 12 months or more; or
- a new government-sponsored student following a course which lasts longer than six months.

Annex B – Statistics on family reunification in the UK

VISA ISSUANCES FOR FAMILY FORMATION

In 2011, 46,000 entry clearance visas were issued to those coming to the UK for family reasons (Table B1). This compares to almost 150,000 for work and over 300,000 for study.

The number of visas issued for family reasons reached a peak in 2006 (70,119) after which numbers decreased until 2009 (49,474). Since this time, the number of visas issued for family reasons rose to another peak in 2010 (53,717), after which they have again decreased.

The majority of visas for the family route (76%) were issued to partners joining/accompanying British citizens or people settled in the UK.

Table B1: Number of visas issued by broad category, 2006–2011

Broad visa category	2006	2007	2008	2009	2010	2011
Work	249,635	205,827	184,712	155,691	160,743	149,181
Study	234,329	246,196	274,217	341,070	334,737	322,653
Family route	70,119	64,389	53,546	49,474	53,717	45,697
– Partner	53,139	50,728	45,100	39,556	40,469	34,820
– Child	5,238	4,262	3,506	4,260	5,698	4,681
– Other	11,742	9,399	5,658	5,658	7,550	5,496
Dep. joining/accompanying	27,559	42,088	41,461	17,481	15,359	14,146
Other	1,646,626	1,504,154	1,400,703	1,431,673	1,580,128	1,740,694
Total	2,228,268	2,062,654	1,954,639	1,995,389	2,144,684	2,272,371

[Home Office statistics, be.04⁴⁰]

The largest numbers of visas for those joining/accompanying partners were issued to nationals from Pakistan, India, United States of America and Bangladesh (Table B2).

40 www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q4-2011/before-entry-q4-2011-tabs

Table B2: Top ten nationalities for family route visas issued for marriages and partnerships, 2011

Nationality	Partner	Partner (for settlement)
Pakistani	7,079	27
Indian	2,931	31
American	2,668	63
Bangladeshi	1,859	2
Nepalese	446	872
Thai	1,138	2
Filipino	1,058	10
Australian	882	34
Afghan	908	4
Turkish	890	1
Total of nationalities above	19,859	1,046
Total all nationalities	33,495	1,325

[Home Office statistics, be.06.f⁴⁰]

FAMILY-RELATED VISA EXTENSIONS

In 2011, there were 237,500 grants of an extension of stay in the United Kingdom (excluding dependants) (Table B3). Just over 16,000 (7%) were granted for family reasons, the majority of which were to fiancé(e)s or spouses of British citizens or people settled in the UK.

The number of extensions granted for family reasons peaked in 2007 and has since been decreasing.

40 www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q4-2011/before-entry-q4-2011-tabs

Table B3: Grants of an extension of stay by broad category, excluding dependants, 2006–2011

	2006	2007	2008	2009	2010	2011
Work	106,744	96,547	121,920	107,741	88,636	96,855
Study	134,241	136,055	109,975	108,535	119,928	102,683
Family	20,600	27,932	26,132	21,713	20,510	16,213
– <i>Fiancé(e)/spouse</i>	20,469	27,247	24,723	20,733	20,059	16,021
– <i>UK-born children</i>	131	685	1,409	980	451	192
Other	15,410	13,488	9,836	12,805	15,227	21,756
Total	276,995	274,022	267,863	250,794	244,301	237,507

[Home Office statistics: tables ex.03 and 2011 from ex.04g⁴¹]

The largest numbers of extensions of stay for family reasons were granted to nationals of Pakistan, United States, India and Nigeria (Table B4).

Table B4: Grants of extension of stay for family reasons, excluding dependants, top ten nationalities, 2010

	Total family	Fiancé(e)s	Spouse (probationary period applications)	UK-born children
Pakistani	2,172	7	2,123	42
American	1,556	4	1,460	92
Indian	1,480	1	1,396	83
Nigerian	1,265	0	1,250	15
Thai	1,215	4	1,211	0
Chinese	1,163	1	1,143	19
Filipino	909	2	899	8
Australian	680	0	658	22
South African	626	0	610	16
Bangladeshi	529	1	523	5
Total of nationalities above	11,595	20	11,273	302
Total all nationalities	20,510	31	20,028	451

[Home Office statistics: ex.03.f⁴¹]

41 www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q4-2011/extensions-q4-2011-tabs

GRANTS OF SETTLEMENT FOR FAMILY FORMATION

In 2011, 163,500 people were granted settlement to the UK (including dependants) (Table B5). Almost a third (31%) of these grants were for family formation and reunion, second only to employment-related grants (43%).

The largest proportion of grants of settlement for family reunification and formation were granted to women coming to join their partners. In 2011, 53 per cent (27,149) of grants of settlement were to wives, 28 per cent (14,061) to husbands.

Grants of settlement for family formation and reunion were at their highest in 2009 and 2010. Family formation and reunion grants of settlement fell by 27 per cent from 69,228 in 2010 to 50,793 in 2011, a return to the levels in 2007 (50,822).

Grants of settlement overall were at their highest levels in 2009 and 2010, mainly due to a large number of grants on a discretionary basis (82,295 grants in 2010) made under measures aimed at clearing the backlog of outstanding unresolved cases. This backlog clearance exercise may have affected the numbers of family grants in other categories.

Table B5: Grants of settlement by broad category, 2006–2011⁴²

Category of grant	2006	2007	2008	2009	2010	2011
Employment-related grants	31,831	37,209	60,768	81,185	84,347	69,904
Asylum-related grants	30,654	14,191	2,824	3,110	4,931	12,888
Family formation and reunion grants	59,802	50,822	55,348	72,239	69,228	50,793
– Husbands	15,519	13,809	15,988	19,872	18,425	14,061
– Wives	27,198	23,174	25,341	35,728	34,722	27,149
– Children	9,290	8,494	8,263	10,147	9,699	6,085
– Parents and grandparents	1,469	1,001	975	1,003	1,766	1,261
– Other and unspecified dependants	6,326	4,344	4,781	5,489	4,616	2,237
Other grants on a discretionary basis	7,720	18,751	29,904	37,940	82,295	29,544
Category unknown	4,439	3,881	902	307	391	348
All grants of settlement	134,446	124,854	148,936	194,781	241,192	163,477

[Home Office statistics se.02⁴³]

⁴² There was a dip in employment-related grants in 2006 and 2007 reflecting a rule change in April 2006 when the qualifying period for settlement in all employment-related categories changed from four to five years.

⁴³ www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q4-2011/settlement-q4-2011-tabs



Home Office