



## The prevention of sham marriages

1 For some years sham marriages –marriages intended to avoid immigration rules –have been a significant problem. Figures from Brent alone showed an increasing number of marriages year by year: 1,205 in 2002, 2,700 in 2003 and 3,700 in 2004.

2 Accordingly, in 2004, the government sought to introduce a system of control over civil marriages whereby, if one party was subject to immigration control, the couple had to have the prior written permission of the Home Secretary –known as a Certificate of Approval.

3 In 2007 this system was challenged in the courts and was rejected by the Court of Appeal on two grounds :

(i) That the system was disproportionate because it applied to all weddings with foreign nationals in order to deal with what was thought to be a small proportion of them.

(ii) That it was discriminatory because it applied to civil weddings but not to Anglican marriages conducted in a church.

4 The second of these points has now been dealt with by the Anglican church, perhaps spurred into action by the case of a vicar in Sussex who was convicted of conducting over 300 sham marriages. There is now a requirement for a licence to be obtained from the Diocesan Registrar before a marriage is conducted with someone subject to immigration control. That licence will not be granted unless it has been established that the marriage is genuine.

5 The second point will be dealt with from 9 May from which date the Home Office have announced that they will abolish the Certificates of Approval scheme.

6 The situation is now, in effect, reversed with some control over church weddings but not over civil weddings. There remains a requirement on Registrars of civil marriages to report suspected sham marriages to the Home Secretary [1] but they do not have power to investigate the genuineness of an intended marriage or to delay or refuse to conduct it.

7 It is also relevant that the marriage, of itself, does not confer an automatic right to reside indefinitely in the UK. Permission for Extended or Indefinite Leave to Remain has to be applied for separately. This requires the applicants to show that the parties intend to live together permanently as man and wife, that they have adequate accommodation for themselves and any dependants and will be able to maintain themselves and any depends without recourse to public funds. We believe that the granting of this permission to remain has been almost automatic in the past.

### Recommendations

Accordingly, we make two proposals:

**(a) A new power to delay**

We suggest that registrars be given power to impose a delay of up to three months in suspicious cases to allow a time for investigation. Appeals are unlikely but there could be provision for an appeal to the First Tier of the Immigration and Asylum Chamber of the Tribunal.

**(b) A stronger check at the ELR/ILR point**

We further suggest that the grant of an Extension of Stay or Indefinite Leave to Remain (ILR) should be the point at which the validity of the marriage is checked before either is granted. The Immigration Rules require that each of the parties to the marriage "intends to live permanently with the other as his or her spouse". Clearly, this is not the case for sham marriages and this should be detectable at the point where an Extension or Indefinite Leave to Remain is considered. Those involved in sham marriages should be denied ILR, removed and their cases should be publicised as a warning to others.

3 May, 2011

**NOTES**

1      [Section 24 of the Immigration and Asylum Act 1999](#)