



The Law Society

UK Border Agency Family Migration Response
Response by the Law Society
of England and Wales
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supporting
solicitors

Response to the UKBA's Family Migration Consultation

The Law Society is the representative body for more than 145,000 solicitors in England and Wales. The Society negotiates on behalf of the profession, and lobbies regulators, government and others.

This response has been prepared by the Society's Immigration Law and Family Law committees. Immigration Law Committee members are experienced immigration and asylum practitioners; Family Law Committee members are specialist practitioners with significant experience of working within the family justice system, not only as solicitors in private and public law but also as mediators and as judges.

Summary

Abuse of the family migration route should not be tolerated. Forced and sham marriages should not be a means of migration. However, the steps taken to enforce this should be proportionate and in keeping with Articles 8 and 12 of the ECHR. The existing family migration application system is thorough and proportionate, and the legal framework is already in place to tackle abuse of the family migration route. The UKBA's primary focus should be on enforcing existing rules more effectively and efficiently.

A rigid 'tick box' approach to applications is not appropriate in the context of family migration. Objective criteria might enhance the predictability of the system for migrants, but over-reliance on whether boxes are ticked is likely to discourage officials from considering all the facts of the case. The current system provides a definition of a genuine relationship that allows for examination of all of the facts: it is effective and does not need to be amended. A 'tick box' approach may even help those determined to abuse the system.

According to the Secretary of State's foreword, 'we need to crack down on abuse of the family route and to tighten up the system'. The consultation does not produce sufficient empirical evidence that this abuse is significant. Our members' experience is that this 'abuse' is minimal and any reduction that results from the proposed changes would be nominal. The measures suggested are disproportionate in comparison to the scale of the problem and the likely results. We urge the UKBA to acknowledge the significance of this consultation for individual families and for wider social cohesion. As the Secretary of State observes, 'families are the bedrock of society.'

An individual's right to marry and to a private life are protected by the ECHR. Disproportionate interference with these rights is likely to be held to be unlawful. Article 8 does not require a balance of 'the right to private life' with effective immigration control. Immigration control must be fair and in accordance with human rights. Whether interference with the exercise of 'the right to respect to private life' is proportionate is ultimately a judicial matter. The government is entitled as a matter of policy to keep net migration levels down; however, the UK's treaty obligations must be respected.

Marriage and Civil Partnership

Q.1 Should we seek to define more clearly what constitutes a genuine and continuing relationship, marriage or partnership, for the purposes of the Immigration Rules? If yes, please make suggestions as to how we should do this.

No. The current system for identifying 'sham' marriages incorporates a definition of how a genuine relationship should be assessed¹. In the case of *GA ('Subsisting' marriage) Ghana*² the tribunal stated that that *'The requirement in para 281 that a marriage be 'subsisting' is not limited to considering whether there has been a valid marriage which formally continues. The word requires an assessment of the current relationship between the parties and a decision as to whether in the broadest sense it comprises a marriage properly described as 'subsisting'.* In addition, and following the abolition of the primary purpose rule, the UKBA has started to use the 'intention to live together' clause to refuse spouses, as now defined in the immigration rules.

The current test is robust and thorough. It requires ECOs/IOs and immigration judges to carry out an assessment of all the factual aspects of the marriage to determine whether the marriage is 'subsisting'.

Every country has cultural, social, economic and historical aspects which help to define family life. If the UK is to provide a definition of a genuine relationship, that definition must take into account different cultural norms and must not be so restrictive as to discriminate unfairly. A restrictive definition of a relationship will force genuine couples to jump through hoops unnecessarily; exclude specific cultural groups; and create resentment amongst immigrant communities, rather than foster a desire to integrate.

Three of the countries of the Indian subcontinent feature in the top ten list of countries from which immigrant spouses settle in the UK (a third of all grants in 2008 and 41% in 2009). Those countries have long established traditions of arranged marriages. The existing rules and case law allow for this to be taken into account. The proposed changes do not allow for this tradition, and a checklist-based assessment of the genuineness of a marriage runs a significant risk of labelling arranged marriages a sham.

The proposed change requiring that the marriage constitutes a continuing relationship adds nothing to the existing test, which is effective in distinguishing between genuine marriages and those that are sham. A typical assessment by an immigration judge examines more factors than those set out in the consultation paper.

The indicators set out at 2.12 and 2.13 of the consultation paper are currently considered by ECOs, caseworkers and immigration judges. The evidence required for a typical entry clearance application to be successful includes photographs of the wedding, letters, cards, emails and itemised telephone bills amongst other things. These rules are sufficiently robust to test genuine relationships and there is no evident need for them to be changed.

¹ *GA ("Subsisting" marriage) Ghana* * [2006] UKAIT 00046

² *Ibid*

Q.2 Would an ‘attachment to the UK’ requirement, along the lines of the attachment requirement operated in Denmark:

a) Support better integration?

b) Help safeguard against sham marriage?

c) Help safeguard against forced marriage?

a) It is possible that an ‘attachment to the UK’ requirement would support better integration. Where for example a migrant has relatives living in the UK they would benefit from the community contacts that their relatives have established.

b) No, we can not see how an ‘attachment to the UK’ requirement will help safeguard against sham marriage.

c) No, we can not see how an ‘attachment to the UK’ requirement will help safeguard against forced marriage.

There is insufficient justification for an ‘attachment to the UK’ requirement similar to the test operated in Denmark. It is already a requirement that, for an applicant to settle, the sponsor must be settled in the UK. This, combined with the fact that individuals get indefinite leave to remain only after living in the UK for at least two years, should be sufficient to demonstrate that at the time of settlement the individual will have a genuine attachment to the UK. Attachment is implicit from the combination of the relationship with the sponsor and the period spent residing in the UK.

The proposed ‘attachment to the UK’ requirement excludes arranged marriages. Those that are party to an arranged marriage will face an impossible task in demonstrating a ‘combined’ attachment to the UK. It will almost always be the case that the UK based spouse already has a lengthy period of residence and/or citizenship whilst the overseas spouse has none. There are sufficient protection and legislative safeguards against sham marriages and forced marriages. The attachment requirement will not amount to a further safeguard, rather it will amount to an additional obstacle for genuine couples to overcome.

Q.3 Should we introduce a minimum income threshold for sponsoring a spouse or partner to come to or remain in the UK?

No. The current requirements require the applicant to show that they are able to maintain and accommodate themselves and their dependants without recourse to public funds. The current definition of maintenance is set at income support level and takes into account income, independent means and family support. These requirements achieve the policy objective so there is no need to introduce further requirements.

There have been high profile cases³ which have fine tuned the current ‘minimum threshold’ requirement. The leading case is *KA (adequacy of maintenance) Pakistan*⁴ which clearly sets out that the test for maintenance is adequacy. This has the effect that the financial minimum required to meet the maintenance requirement is flexible and changes with the economic conditions of the country as well as the value of currency. As a general point, this has meant that over the years the sponsoring spouse has had to demonstrate a greater level of income.

The powers exist to enable the UKBA to cross-check claimed income with HMRC. In addition, if an applicant were to claim public funds within the probationary period the UKBA would have legal grounds to refuse indefinite leave to remain. Production of supporting evidence is currently a requirement. This requirement is thorough and includes payslips, P60s, contracts of employment, employers’ letters of certification and bank statements. The proposed test will not add anything to this.

³ MK (Somalia) [2007] EWCA Civ 1521. 25 and Ahmed Mahad (previously referred to as AM) [2009] UKSC 16

⁴ *KA (adequacy of maintenance) Pakistan* [2006] UKAIT 00065

Q.4 Should there be scope to require those sponsoring family migrants to provide a local authority certificate confirming their housing will not be overcrowded, where they cannot otherwise provide documentation to evidence this?

No. We see no justification for requiring local authority certificates confirming that housing will not be overcrowded. The current rules are effective in ensuring that overcrowding does not occur.

Currently, an applicant must produce a certificate of adequacy of accommodation from a local authority, surveyor or other suitably qualified person. The accommodation will not be considered 'adequate' if it is overcrowded. Extensive documentation is required under the existing rules. Where the property is owned, the applicant must provide title deeds and a mortgage statement. Where accommodation is rented, the applicant must provide a rental agreement, evidence that rent payments are met and a certificate of accommodation. A certificate of accommodation is the method of evidencing that accommodation is adequate and not overcrowded.

An individual may already provide a certificate from their local authority confirming that the accommodation is not overcrowded. Restricting the provision of certificates to local authorities is unnecessary and counter productive. It would exacerbate delays in applications and burden the already overstretched resources of local authorities.

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

We appreciate that raising the probationary period to 5 years will make it more difficult for those in sham marriages to get to the stage where they can apply for permanent residence. However, the current 2 year requirement is sufficient. A good number of genuine marriages break down before reaching the 5 year point, so testing genuineness of a marriage in this way is irrelevant. This requirement appears to be not so much motivated by a desire to assess the genuineness of a relationship, as cynically aimed at reducing numbers. The fact that couples are allowed to apply after 2 years does not mean that their application will be accepted.

There is a lack of statistical evidence to demonstrate that this proposal would have a significant effect in reducing the number of migrants. The divorce statistics provided by the consultation paper reflect divorce rates in England and Wales as a whole rather than being applicable to immigrant communities. It is important to note that the proportion of couples from immigrant communities who divorce is lower than that in the wider population.

We are concerned about the effect this measure could have on the children of divorcing parents. Family breakdown has a huge impact on children, and these proposals aggravate the risk that if a relationship breaks down before the five year mark one of the parents will be removed from the UK (unless they qualify for settlement in some other way). Our view is that there could be strong Article 8 challenges to such a provision, as many applicants will be able to demonstrate that private family life had been established in the two to five year period and that they should, therefore, have leave to remain.

There is no justification to implement this change, as it will not enhance the current test; will have no effect on those who engage in breaking the law by entering into marriages of convenience; and may discriminate against genuine relationships and be damaging to spouses and children upon marital break up.

Q.6 Should spouses and partners, who have been married or in a relationship for at least 4 years before entering the UK, be required to complete a 5-year probationary period before they can apply for settlement?

No, the policy purpose of the probationary period is to test the genuineness of the relationship. Requiring couples who have lived abroad as a married couple to complete a further probationary period when returning to the UK will not have any effect on testing the genuineness of their relationship. A couple will already have proved that their relationship is genuine by evidencing that they have lived together for more than four years.

Q.7 Should spouses and partners applying for settlement (permanent residence) in the UK be required to understand everyday English?

To enhance community cohesion and individual economic and social welfare, it is desirable that migrants are able to understand everyday English.

Currently, the Birmingham High Court is hearing a case brought by Rashida Chapti of Leicester. Ms Chapti is a British citizen who wishes to bring her 58 year old Indian husband to the UK and maintains that he is unable to learn English prior to entry to the UK for a variety of reasons including his age and lack of access to tuition. Given the uncertainty of the outcome of that case, as well as the clear analogies that could be drawn to other dependant family members, we would recommend that the government delay implementing any new language requirement policy.

Q.8 Which of the following English language skills should we test?

Speaking

Listening

Reading

Writing

All should be tested but speaking and listening are the most important requirements. See also question 7.

TACKLING SHAM MARRIAGE

Q.9 Should we (in certain circumstances) combine some of the roles of registration officers in England and Wales and the UK Border Agency as a way of combating sham marriage?

No. There is no benefit in merging the roles of registration officers and UKBA officers. The consultation has not provided a clear justification for combining the roles. Immigration enforcement should not be carried out by those who are not trained for the specific task. This proposal is contradictory to the statement made in paragraph 3.14 that it is not the role of the local registration service to enforce immigration rules. We oppose any increase in immigration enforcement being carried out by those who are not officers of UKBA.

We are concerned about the increasing willingness of the UKBA to delegate their responsibilities to others. This raises issues of training, consistency and transparency.

The consultation has conflated two issues. Even if a couple marry this does not mean that the UKBA has to grant a right to remain. The UKBA has a clear legal right to deny settlement to those who have engaged in a 'sham' marriage.

Q.10 Should more documentation be required of foreign nationals wishing to marry in England and Wales to establish their entitlement to do so?

No, the existing requirements are satisfactory. The consultation provides no justification for introducing new requirements. Increased documentation will mean more time, effort and expense for applicants, the UKBA and Registrars. This requirement would present a potential impediment to

marriage and disproportionately affect those from developing countries with weak organisational systems.

Q.11 Should some couples, including a non-EEA national marrying in England and Wales, be required to attend an interview with the UK Border Agency during the time between giving notice of their intention to marry and being granted authority to do so?

No, this is an unnecessary use of already overburdened UKBA resources, as most couples have genuine intentions to marry. It would be difficult to accurately select those with less honourable intentions and therefore the UKBA would be forced to over-select people to interview based on arbitrary attributes such as nationality. This may be interpreted as a significant intrusion and interference with the right to marry.

Q.12 Should 'sham' be a lawful impediment to marriage in England and Wales?

No. In terms of immigration, preventing a couple from marrying is unnecessary. The UKBA is suggesting that preventing people from marrying will have a direct impact on migration figures.

Q.13 Should the authorities have the power in England and Wales to delay a marriage from taking place where 'sham' is suspected?

No. In terms of immigration, preventing a couple from marrying is unnecessary. The UKBA is suggesting that preventing people from marrying will have a direct impact on migration figures.

Under domestic and European law no immigration status can be obtained from a 'sham marriage' or a 'marriage of convenience'. Even if a person enters into a 'sham marriage' the UKBA has a clear legal right to refuse an immigration application on the basis of a sham marriage. The UKBA should focus on considering individual cases and identifying sham marriages where they occur, rather than creating new rules to make it more difficult for many more people to marry.

Local authorities are not sufficiently qualified or experienced to assess whether a marriage is a sham. This may also be interpreted as an interference with the right to marry.

Q.14 Should local authorities in England and Wales that have met high standards in countering sham marriage, be given greater flexibility and revenue raising powers in respect of civil marriage?

This is an alarming proposal. Local authorities are not adequately trained or experienced in assessing the validity of marriage. In addition, providing a financial incentive is an extremely uncomfortable proposition. Current immigration rules are effective in preventing those with sham marriages from settling. Delegation of UKBA responsibilities is inappropriate and raises concerns of transparency and accountability.

We are unclear about what 'revenue raising powers in respect of civil marriage' would mean.

Q.15 Should there be restrictions on those sponsored here as a spouse or partner sponsoring another spouse or partner within 5 years of being granted settlement in the UK?

We agree that this is a factor that should be taken into account by the UKBA when deciding whether to grant settlement. However, it would not be appropriate to introduce a ban for everyone in this category: consideration must be given to the facts of the case. There may be factors contributing to the marriage breakdown that are not the fault of the sponsor (e.g. domestic violence) Marriage breakdown is not uncommon and should not prevent an individual from engaging in a further relationship of their choosing. The statistics provided do not demonstrate that this is a significant problem. If this restriction were to be implemented, the effect on migration numbers would be nominal.

Q.16 If someone is found to be a serial sponsor abusing the process, or is convicted of bigamy or an offence associated with sham marriage, should they be banned from acting as any form of immigration sponsor for up to 10 years?

We support the UKBA considering convictions when making individual decisions about immigration. Those abusing the process should be prevented from doing so. However, we object to a blanket rule. Whilst restrictions must exist for those who have previously abused the process, there may be reasons why a marriage breaks down that are not the fault of either party. In every case the individual facts must be considered. Ten years is an arbitrary time period and should not be universally imposed. The UKBA should consider individual circumstances.

Q.17 Should we provide scope for marriage-based leave to remain applications to be countersigned by a solicitor or regulated immigration adviser, as a means of confirming some of the information they contain?

No. A counter signature will not make it any easier to assess whether the application relates to a sham or not. UKBA caseworkers are specially trained to analyse applications. If they are unable to identify 'sham' applications, it is unlikely that a solicitor, with less direct experience and training, will be able to do so.

Providing scope for applications to be signed by a solicitor may have an adverse impact on applicants. The proposals suggest that if an application is not countersigned by a solicitor it will be looked at more closely when analysing whether it is a sham: this will adversely affect less affluent applicants.

The UKBA states that if solicitors repeatedly countersigned applications which were then found to relate to sham marriages, it would make a referral to the Law Society (the Solicitors Regulation Authority) to investigate professional misconduct. It is not the role of a solicitor to vouch for the truth of information provided by a client. We think that it is unlikely that our members would be willing to provide such a service. Solicitors are not trained to identify 'sham' marriages and it would be difficult to pursue a misconduct claim against a solicitor for their inability to do so.

This proposal raises serious professional conduct implications for solicitors. If this proposal were carried out it would be difficult to reconcile the solicitor's duty to his client with a duty to the UKBA.

Q.18 Should there be scope for local authorities to provide a charged service for checking leave to remain applications, including those based on marriage, as they can do for nationality and settlement applications?

We have no views on this.

TACKLING FORCED MARRIAGE

Q.19 If someone is convicted of domestic violence, or has breached or been named as the respondent of a Forced Marriage Protection Order, should they be banned from acting as any form of immigration sponsor for up to 10 years?

No, there should be no blanket ban and each case should be considered on an individual basis. See questions 15 and 16 for reasons.

Q.20 If the sponsor is a person with a learning difficulty, or someone from another particularly vulnerable group, should social services departments in England be asked to assess their capacity to consent to marriage?

The question of capacity and the ability to give free consent to a marriage is one that the registrar considers. There is no compelling reason why this should change. Marriage should be based on the consent of both parties; subjecting vulnerable people to assessments by social services is demeaning and disproportionate.

It is not practical or workable to require a local authority to assess capacity. The local authority has no statutory function in relation to consent or refusal to marry. In considering whether a person has

capacity to consent to marry registrars are required to have regard to the test for capacity to marry set out in *Sheffield City Council v (1) E and (2) S [2004]*⁵ and be familiar with the principles of the Mental Capacity Act 2005 and its Code of Practice. Registrars should also be familiar with local procedures for protecting adults under the Safeguarding Vulnerable Adults procedures.

OTHER FAMILY MEMBERS

Q.21 Should there be a minimum income threshold for sponsoring other family members coming to the UK?

A minimum income threshold already exists, which is in line with income support. Other factors are also considered, including personal resources and family support. Applicants are currently required to demonstrate that they have access to accommodation and maintenance without recourse to public funds. The policy objective has already been achieved, so introducing the further requirements would be unnecessary.

Q.22 Should adult dependants and dependants aged 65 or over complete a 5-year probationary period before they can apply for settlement (permanent residence) in the UK?

Any changes that are made need to be in line with laws against age discrimination and comply with human rights requirements.

Q.23 Should we keep the age threshold for elderly dependants in line with the state pension age?

Any changes that are made need to be in line with laws against age discrimination and comply with human rights requirements.

Q.24 Should we look at whether there are ways of parents or grandparents aged 65 or over being supported by their relative in the UK short of them settling here?

Whilst we understand the fiscal and other policy objectives behind this proposal, there are human rights obligations to those that have lived in the UK for 5 years. The applicant is at a vulnerable stage of their life and may find it difficult to resettle elsewhere.

Q.25 Should there be any change to the length of leave granted to dependants nearing their 18th birthday?

No. The current rules allowing applicants to be aged 18 at the time of application are logical and predictable. Changing the age at application to 17.5 is an arbitrary amendment without justification.

Q.26 Should dependants aged 16 or 17 and adult dependants aged under 65 be required to speak and understand basic English before being granted entry to or leave to remain in the UK?

Any changes that are made need to be in line with laws against age discrimination and comply with human rights requirements.

Q.27 Should adult dependants aged under 65 be required to understand everyday English before being granted settlement (permanent residence) in the UK?

See Q.7.

POINTS-BASED SYSTEM DEPENDANTS

Q.28 Should we increase the probationary period before settlement (permanent residence) in the UK for points-based system dependants from 2 years to 5 years?

No. The government states that it is appropriate to 'test the genuineness, for spouse/partner dependants, of the marriage or partnership before permanent residence in the UK is granted' and

⁵ *Sheffield City Council v (1) E and (2) S [2004]* EWHC 2808 (Fam)

the attachment of dependants to the UK. However, the government does not offer an explanation as to why the additional three years will better achieve this.

Changing the system for points based applicants would be unnecessary, unpredictable and confusing. Each decision should be made on a case by case basis.

Q.29 Should only time spent in the UK on a route to settlement count towards the 5-year probationary period for points-based system dependants?

No, this is an arbitrary method of extending the probationary period for points based applicants.

For the reasons given in Q.28 we do not think this is relevant. Severely reducing migrants' options to settle will result in a lack of emotional, economic and social investment in the UK.

Q.30 Should we require points-based system dependants to understand everyday English before being granted settlement (permanent residence) in the UK?

See Q.7.

OTHER GROUPS

Q.31 In what other ways could the UK Border Agency improve the family visit visa application process, in order to reduce the number of appeals?

We strongly oppose the proposal to remove the right to appeal. The UKBA may be aware of the shortcomings in the assessment of visa applications. An illustration of this is provided by the Independent Chief Inspector's 'short-notice inspection of decision making quality in the Istanbul visa section, 24 and 25 November 2010'. This found that in approximately a quarter of the visa cases sampled, key evidence provided by applicants was overlooked, and that in almost a third of visa cases sampled, applicants were refused on the basis of requirements that would not have been clear to them at the time of application. We urge the UKBA to consider these flaws along with the consultation.

We suggest that the UKBA refers to the response prepared by the Immigration Law Practitioners' Association for detailed suggestions.

Q.32 Beyond race discrimination and ECHR grounds, are there other circumstances in which a family visit visa appeal right should be retained?

We commend the UKBA's acknowledgement of the importance of family visits as a means of enhancing family cohesion and enabling families to celebrate important occasions together. Family appeal rights should be retained as they are. Abuse of the family visit route is minimal and any reduction in this would be negligible.

We object to the grounds under which the right of appeal is being removed. It is said that the appeal system is being 'misused' because in 63% of cases the appeal is allowed simply because of new evidence. This is not an example of 'misuse'; it is merely an illustration of the nature of litigation. There are numerous examples of the Secretary of State serving new evidence during the course of appeal proceedings presumably the Secretary of State does not see this as 'misuse'. There are statutory and common law rules regarding the admission of new evidence in appeal proceedings.

Some people issued with family visit visas, either on application or following an appeal, go on to claim asylum. However the number is a fraction of one percentage point - and it should be noted that a significant proportion of that small number appear to be granted status. The grant of refugee status to people who have been determined to be fleeing persecution is something that should be welcomed. Asylum applications should not be regarded as by definition negative.

The availability of appeals is a vital check against the poor decision making that the UKBA is well aware of, from the reports of the Independent Chief Inspector. The removal of appeal rights allows

poor decision making to go uncorrected, perpetuating unfairness and thereby weakening the rule of law.

Q.33 Should we prevent family visitors switching into the family route as a dependent relative while in the UK?

There are often valid reasons why individuals need to change their status in the UK each case should be judged on an individual basis, to create a blanket rule would be disproportionate. There is no rationale proposed in the consultation for preventing people from switching routes while in the UK. The requirement to leave the UK and apply from overseas is purely procedural, there are already mechanisms in place to prevent recourse to public funds which are sufficient to achieve the policy objective.

ECHR ARTICLE 8: INDIVIDUAL RIGHTS AND RESPONSIBILITIES

Q.34 Should the requirements we put in place for family migrants reflect a balance between Article 8 rights and the wider public interest in controlling immigration?

Article 8 is a fundamental human right. Any changes the government make should comply with this.

Q.35 If a foreign national with family here has shown a serious disregard for UK laws, should we be able to remove them from the UK?

Yes, the UK should be able to remove a foreign national with family in the UK, if they have shown serious disregard for UK laws, and where relevant conditions are met. In sections 32 and 33 of the UK Borders Act 2007, the government accepts that 'Automatic' deportation is conditional upon avoiding violation of international treaty obligations, and of the requirements of the common law.

The courts' position on this is evolving. Since *ZH (Tanzania)*⁶, misbehaviour by a parent may, on the particular facts, not be the determining factor: Lord Hope at paragraph 44 asserts: 'It would be wrong in principle to devalue what was in (the best interests of any relevant children) by something for which they could in no way be held to be responsible'. In *SL (Vietnam) (2010)*⁷ the appellant who had entered the UK as an asylum seeker, had been sentenced to 2 years detention for involvement in cannabis production. In the leading judgment, Lord Justice Jackson at paragraph 43 said: 'The offence which the appellant has committed, although serious, is not as grave as many of the offences resulting in deportation which come before this court. Although possible, it is not inevitable that the Secretary of State would have reached the same decision in September 2008 if he had taken all relevant factors into account.'

Q.36 If a foreign national has established a family life in the UK without an entitlement to be here, is it appropriate to expect them to choose between separation from their UK-based spouse or partner or continuing their family life together overseas?

Any changes that are made need to be in line with laws against age discrimination and comply with human rights requirements.

GENERAL QUESTIONS

Q.37 What more can be done to prevent and tackle abuse of the family route, particularly sham and forced marriage?

The question of what more can be done to prevent and tackle abuse is less important than establishing whether the family route is currently being abused. Insufficient evidence is provided in the consultation that there is abuse. Arguably the present case law concerning Article 8, as for example with the 7 year children rule, now discontinued, would achieve much the same result as the 14 year rule. Retaining it would, contrary to suggestion in 8.20, however assist with certainty, which, in itself, is a useful principle of law.

⁶ *ZH (Tanzania) v SSHD* [2011] UKSC 4

⁷ *SL (Vietnam) (2010) EWCA Civ 225*

Q.38 What more can be done to promote the integration of family migrants?

We have no opinion on this.

Q.39 What more can be done to reduce burdens on the taxpayer from family migration?

We have no opinion on this.

Q.40 How should we strike a balance between the individual's right under ECHR Article 8 to respect for private and family life and the wider public interest in protecting the public and controlling immigration?

Article 8 should be compromised only where it conflicts with other human rights.