



Borders Immigration Citizenship Systems Equality Impact Assessment

Demonstrating Compliance with the Public Sector Equality Duty (PSED)

Equality Impact Assessment (EIA)

- **Remember that your duty is to demonstrate that you have had “due regard” to equalities issues.**

Useful guidance:

- [Discrimination and differentiation guidance](#)
- [Equality Impact Assessments](#)

1. Name and outline of policy proposal, guidance or operational activity

This Equality Impact Assessment (EIA) sets out the equalities considerations for the introduction of an automated system that will be used to triage referrals from UK register offices, which required by law for couples who fall within scope of the marriage referral and investigation scheme (the Scheme).

This automatic system is overseen by the Marriage Referral Assessment Unit (MRAU). The automated system utilises an assurance scoring tool built by Data Science and Analytics (DSA) to support the identification potential sham marriage abuse with the referral made by registrars at the point couples give notice to marry or form a civil partnership, allowing the Home Office to carry out its obligations under S48 of the 2014 Act when deciding whether to investigate a potential sham relationship, before the marriage takes place.

Background

Sham marriage, civil partnership and marriage of convenience: definitions

Sham marriages allow individuals to gain an immigration advantage to which they are not entitled. It is also linked in many cases to wider organised crime which is why we focus on disrupting facilitators as well as prosecuting individuals involved in sham marriages.

Under section 24 of the Immigration and Asylum Act 1999, as amended by section 55 of the Immigration Act 2014, a sham marriage is one in which all of the following apply:

- one or both parties is not a 'relevant national'
- there is no genuine relationship between the parties to the marriage
- either, or both, of the parties enter the marriage for the purpose of circumventing UK immigration controls, including under the Immigration Rules or the Immigration (EEA) Regulations 2016

There are equivalent provisions in respect of sham civil partnerships set out in section 24A of the Immigration & Asylum Act 1999.

The Immigration (European Economic Area) Regulations 2016 (the Regulations), used the term 'marriage of convenience' which includes a marriage entered into for the purpose of using the EEA Regulations, or any other right conferred by the EU treaties, as a means to circumvent Immigration Rules that apply to non-EEA nationals or criteria that anyone party to a marriage of convenience would otherwise have to meet to enjoy a right to reside under EEA regulations or the EU treaties

Marriages of convenience are, for immigration purposes, synonymous with sham marriages, with the important factor being an absence of genuine relationship.

UK marriage preliminaries

In England and Wales, all non-relevant nationals (i.e. those subject to the sham marriage and civil partnership referral and investigation scheme), except those exempt from immigration control, are required to give notice of marriage or civil partnership, together with their partner, at a designated register office (DRO) This includes non-EEA nationals with a temporary or permanent right to enter or remain in the UK under the Immigration Rules, and those who have a European Union (EU) right to enter or remain in the UK. For example, holders of EEA family permits, residence cards and permanent residence cards. All couples involving a non 'relevant national', who wish to marry in the Anglican Church in England and Wales, must complete civil preliminaries, giving notice at a DRO.

In England and Wales, both parties to the marriage or civil partnership must attend the DRO together in person. In Scotland and Northern Ireland, notice may also be

given by post as well as in person, and it must be given at a designated register office.

In Northern Ireland and Scotland, couples including a non 'relevant national' can give notice at any register office, but will still be required to attend together.

Registration Officers with DROs in E&W, and in all offices in Scotland and NI, are trained to undertake the additional checks and referrals required when a couple includes one or more non 'relevant national'

The marriage referral and investigation scheme (the Scheme)

Part 4 of the 2014 Act, and secondary legislation, introduced the current sham marriage referral and investigation scheme (the Scheme), which reformed the processes for giving notice of marriage or civil partnership to give the Home Office a much stronger platform for effective, action to disrupt and deter sham marriages and civil partnerships and prevent participants from gaining an immigration advantage.

The Scheme, which commenced in March 2015, provides the means to identify and investigate suspected sham marriages and sham civil partnerships, enabling the Home Office to take immigration enforcement action in cases established as sham, from the point the couple give notice to marry. The scheme has proved effective in identifying abuse and in deterring couples from abusing our marriage laws.

Under the scheme all proposed marriages and civil partnerships in the UK must to be referred to the Home Office by the registration officer if they involve:

- a non-relevant national with limited or no immigration status in the UK
- a non-relevant national who does not provide specified evidence that they are exempt from the scheme

Individuals are exempt from the scheme if they hold a relevant marriage visa (for example, a marriage visit visa), or appropriate immigration status (for example, ILR)

Under section 48(2) of the 2014 Act, where a proposed marriage or civil partnership is referred to the Home Office the Secretary of State must decide whether to investigate whether it is a sham. Under section 48(3) the Secretary of State may decide not to conduct an investigation unless: 1. one or both of the parties are not exempt; and 2. There are reasonable grounds for suspecting that the marriage or civil partnership is a sham.

If the Home Office assesses there are reasonable grounds to suspect a sham marriage/civil partnership the statutory notice period (the period between giving notice and receiving permission to marry / form a civil partnership) can be extended from 28 days to 70 days to investigate the genuineness of the relationship. The assessments of referrals, and investigation decisions, were carried out manually by a team of intelligence officers within MRAU.

Sham marriage is not a legal impediment to marry or form a civil partnership. Once under investigation, if couples comply with the requirements of the investigation, they will be granted permission to marry / form a civil partnership, regardless of the assessment of their relationship. Any cases deemed a sham will also then be referred for consideration of casework or enforcement action in respect of the sham relationship (this action can be taken either before or after the marriage takes place)

The Scheme does not grant permission to remain in the UK. Post marriage / civil partnership, all couples must make an application to UKVI. Evidence gathered during the course of our investigation can be used as evidence during the consideration of that application.

In addition to the mandatory referral process, if a registration official has reasonable grounds for suspecting a sham marriage, they have a duty under Section 24 of the Immigration and Asylum Act 1999 to report their suspicions to the Home Office.

Introduce an automated triage process

A triage process was developed with Data Science and Analytics (DSA) and came into operation in April 2019. This automated triage process, developed in accordance with Analytical Quality Assessment (AQA) best practice to leverage historic outcomes and associated data on sham marriages in order to identify referrals of couples where there is an indication of potential sham activity, whilst still reducing the risk of discrimination.

The tool was designed to enable introduce efficiency and bring about savings, by i) reducing the number of Immigration Intelligence staff required for consideration of referrals, from 25 to 4. (four will be retained to undertake manual reviews on more complex cases), and ii) to reduce the time taken for the Home Office to decide whether to investigate the relationship to be made, enabling couples who are not having their notification period extended to be informed in 3 to 4 days instead of 14, thereby improving customer service for low risk couples.

In England, Wales and Scotland, cases are referred digitally through data feeds, and will include the information gathered at the point the couples gave notice to marry or enter a civil partnership.

This information enters the DSA triage process, where it is assessed against the system's risk factors (eight specific criteria which are detailed in the section below), to determine the potential risk of the couple engaging in a sham marriage. Couples are then allocated either a

- 'green light' or 'no extension outcome' indicating we would have no interest in investigating their relationship at this time and do not wish to extend their notification period for investigation; or
- 'red light' or 'extension outcome', for couples triaged as factors that potentially indicate we would wish to look further at their relationship to rule out or identify sham activity and we will extend their notification period for that purpose

MRAU then processes the outcomes, printing and sending letters to prospective couples and ensuring the casework system is correctly updated.

Whereas MRAU would manually update CID (the Casework Information Database), the triage tool will also automatically create CID entries for non-extended cases. The system also queues the extension and non-extension letters to be printed and sent in hard copy format to the couples giving notice to marry.

In extended cases MRAU will manually update the outcome depending on whether the couples comply with the requirements of the investigation and overall process, and progress to Immigration and Compliance and Enforcement (ICE) referrals, or do not comply so are denied the opportunity to marry at that time.

Where a notice period is extended, and the couple comply with the request for further information, a referral is made by MRAU to Immigration Enforcement under a process overseen by the National Marriage Investigation Team (NMIT). Immigration Enforcement conduct further enquiries into the circumstances of the marriage and this usually includes an interview. The triage process has improved the efficiency of this process, allowing ICE more time to arrange and conduct interviews with couples.

In the financial year 2019/20 the MRAU received 16,600 notifications of marriages involving a non EU/EEA national. 15,301 did not have their notification period extended while 1,299 were extended under the scheme.

2. Summary of the evidence considered in demonstrating due regard to the Public Sector Equality Duty.

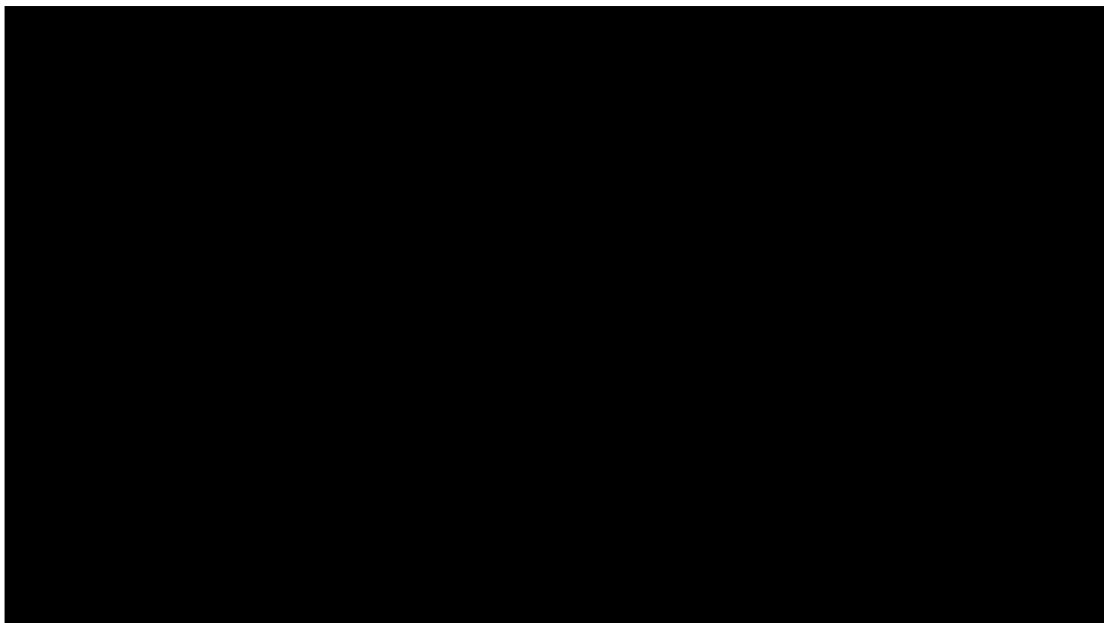
The Public-Sector Equality Duty (PSED) under the Equality Act 2010 requires public bodies to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The equality duty covers the following eight protected characteristics: age; disability; gender reassignment; pregnancy and maternity; race (including ethnic or national origins, colour or nationality); religion or belief; sex; and sexual orientation. A public body also needs to have due regard to the need to eliminate unlawful discrimination against someone because of their marriage or civil partnership status.

Start of Official Sensitive section

The triage process uses the following eight criteria:



End of Official Sensitive section

An extensive model training exercise was undertaken in 2018-2019 to select the most appropriate features as defined above.

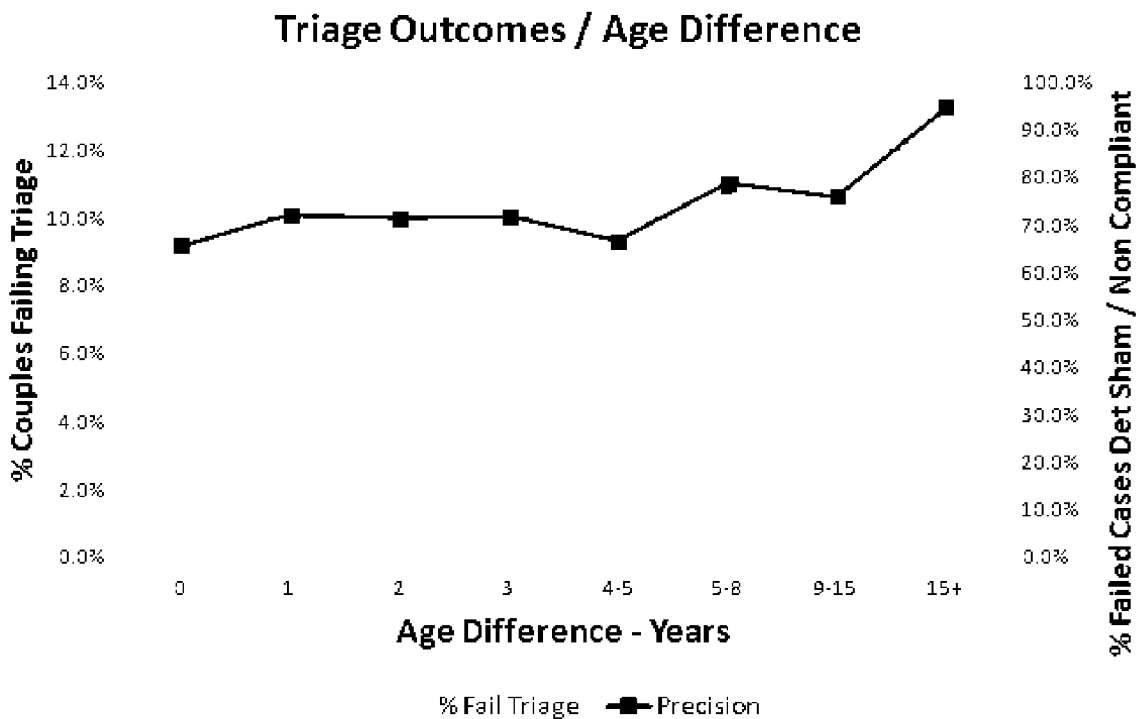
It is important to note that the model works by combining the predictive power of all the features. For instance, a larger value of one feature doesn't necessarily mean there is stronger correlation of a pass or fail of the triage.

The most powerful features identified related to the interactions between the couple, reflecting the fact that the model is predicting the likelihood of sham marriages. In the case of the Section 24 features, these are generated from the Section 24 form which is populated by the registrar observing the behaviour of the

couple. Registrars meet large numbers of people giving notice to marry and are able to ascertain unusual behaviour. Another important feature is shared travel events, whereby if a couple have travelled on many flights together there is a suggestion of a stronger relationship between the parties.

Other considerations included the independence of the features and the avoidance of protected characteristics. Age is a protected characteristic, but it is important to consider that the model does not use an individual's age, but instead uses the age difference in days between the couples ages.

The graph below has pulled out data related to the criteria of age difference between the couple only. It shows a direct correlation between couples with greater age differences (greater than 5 years) proportionally failing triage and proportionally not complying with the Home Office process or being deemed sham following investigation.



Consideration has been given to all the protected characteristics when considering this process. Marriage notifications specifically ask (and record information) about an applicant's:

- nationality,
- age,
- sex,

and do not explicitly request information about:

- maternity status,
- gender reassignment status,
- disability status,
- sexual orientation (this may be implied when compared to the partner),
- religion/belief.

3A. Consideration of limb 1 of the duty: Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act

The new triage process (late 2019 onwards) replaces a highly manual approach and is built to recommend a manageable list of cases for Immigration Intelligence to consider for interview.

A best practice, evidence-based approach is used to select the features of a referral that are used in the triage process, the criteria are listed above. In this way the Home Office can justify why specific features are used and significantly reduce the opportunity for explicit discrimination that a rules-based approach can introduce.

The triage process does not make direct use of any protected characteristics identified in paragraph 149(7) of the Equality Act 2010. However, the current version of the process does require knowledge of the difference in age between members of the marriage referral. This age difference value is then used in combination with several other non-protected characteristics when deciding which referrals to recommend for interview.

AGE

We have not identified any **direct** impact on the grounds of age through introduction of the automated triage process. We will keep this under review.

There is the potential for **indirect** discrimination based on age as the triage process uses the age difference between couples. Couples with a partner in the younger or older brackets are more likely to have a greater age gap with their partner and therefore may be more likely to fail the triage process and have their notification period extended. It is possible to justify as the data shows an increase proportion of sham marriages in couples that have an age gap over five

years (see graph above). The age gap is one criterion alone, and would never be the sole cause of a couple to fail the triage. A combination of criteria is required for a fail outcome.

Any **direct** or **indirect** discrimination on the grounds of age is not unlawful where it can be justified as proportionate to achieving a legitimate aim.

DISABILITY

No **direct** or **indirect** discrimination has been identified by using this triage process. We will keep this under review.

No data exists to demonstrate the relationship between disability status and triage outcomes. Disability is not collected as part of the marriage notification or Section 24 process. It is not expected that any direct or indirect discrimination on visible or unseen disabilities will occur through the use of this triage process.

GENDER REASSIGNMENT

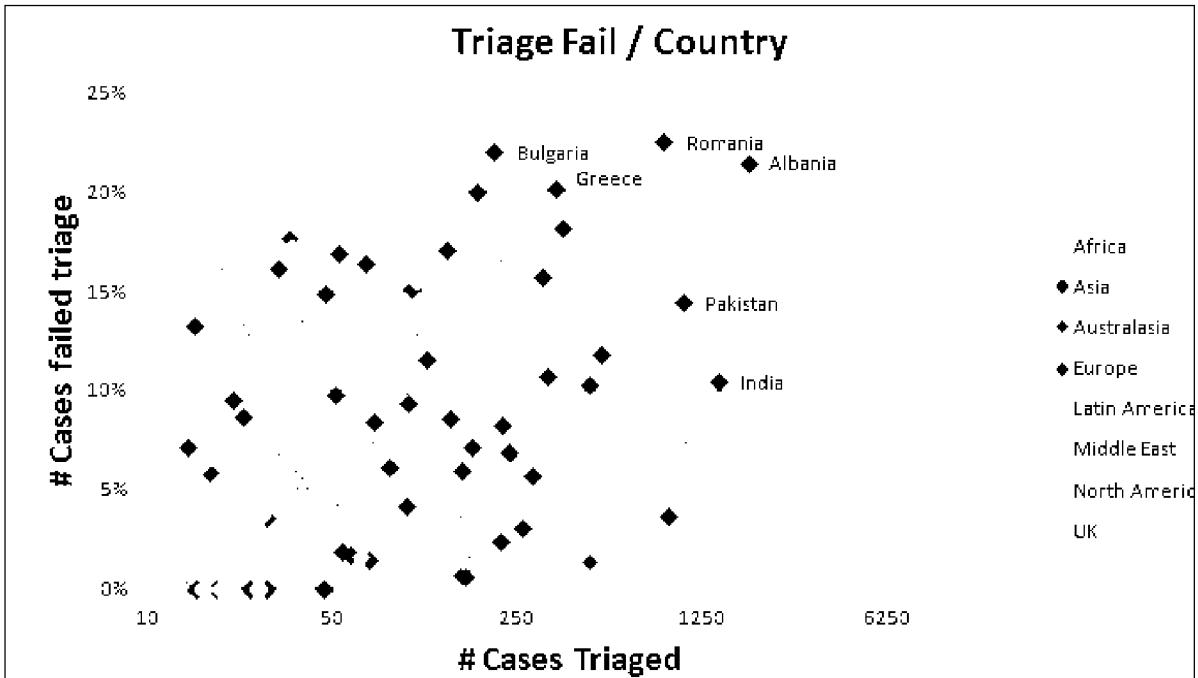
No **direct** or **indirect** discrimination has been identified by using this triage process. We will keep this under review.

No data exists to demonstrate the relationship between gender reassignment and triage outcomes. Gender reassignment details are not collected as part of the marriage notification or Section 24 process. It is not expected that any direct or indirect discrimination on gender reassignment will occur through the use of this triage process.

RACE (including colour, nationality, or ethnic or national origins)

Nationality is collected as part of the marriage notification process. Only couples that include one or more person who is not a 'relevant national' (a relevant national is someone who is British Citizen, Swiss National, or EEA national) are required to follow the notification process as set out in Part 4 of the 2014 Immigration Act. Beyond that nationality is not used as a criterion of the triage process and there is no direct discrimination on this basis.

A review of the nationalities involved has been conducted.



This includes the nationalities of both partners, hence the inclusion of Bulgaria, Romania, Greece and UK as nationalities. Pakistan and India are identified as being involved in large numbers (over 1,250) of marriages whilst Bulgaria, Greece, Romania and Albania are identified due to over 20% of marriages involving these nationalities failing triage. While it is clear that some nationalities have a greater chance of failing the triage process than others, this is not on the basis of their nationality. The combination of criteria that work together to produce an outcome are more likely to be present in notifications to marry from couples that have one of these nationalities present. This is not considered, in itself, to be indirect discrimination but a record of those nationalities involved. It is important to keep reviewing these outcomes and the criteria that are driving these outcomes to ensure there is no direct discrimination and where there may be indirect discrimination it is justified by the overall aims and outcomes of the process.

RELIGION OR BELIEF

No **direct** or **indirect** discrimination has been identified as a result of this triage process. We will keep this under review.

It is possible that a relationship between religion or belief status and nationality may occur however no published data exists and religion or belief status is not captured as part of the marriage notification process to enable a review. It is not anticipated that any discrimination will arise as a result of this triage process.

SEX

No **direct** or **indirect** discrimination has been identified as a result of this triage process. We will keep this under review.

Currently, no data exists to demonstrate the relationship between the couple's gender and the triage process. The relationship between these characteristics is not the subject of published data. It is not anticipated that any discrimination will arise as a result of this triage process.

PREGNANCY AND MATERNITY

No **direct** or **indirect** discrimination has been identified as a result of this triage process. We will keep this under review.

Pregnancy or maternity status do not fall within the risk factors or information gathered for the purpose of the triage process, consequently no data exists, and the relationship between these characteristics is not the subject of published data. It is not anticipated that any discrimination will arise as a result of this triage process.

SEXUAL ORIENTATION

No direct or indirect discrimination has been identified as a result of this triage process. We will keep this under review.

Currently, no research has been conducted to demonstrate the relationship between the couple's sexual orientation and the triage process. The relationship between these characteristics is not the subject of published data. It is not anticipated that any discrimination will arise as a result of this triage process. Information on this may be inferred when the gender of both individuals giving notice to marry are compared, however this comparison doesn't take place as part of the triage process and it has no bearing on the outcome of the triage.

3B. Consideration of limb 2: Advance equality of opportunity between people who share a protected characteristic and people who do not share it

This limb of the duty does **not** have to be considered in relation to immigration and nationality functions in respect of race (excluding colour), religion or belief and age.

With the exception of Nationality, age and sex the other protected characteristics are not characteristics that the Home Office collects information about from marriage notification. However, we have considered other data sources where

available. The DSA have reviewed the outcomes of the triage process for the first seven months of its operation. An average of 75% of those notices to marry that failed the triage process and were extended were deemed to be sham marriages following the ICE investigations. This shows a high performing process. It also suggests, though more work may be required to evidence, that the process is allowing genuine couples to pass through with minimal impact on their marriage or civil partnership plans.

Equality of opportunity for all giving notice to marry, or form a civil partnership, has been increased by the development of the triage process as the criteria used are based on evidence historical immigration interactions and the referrals from GROs who have the opportunity to interact with the couple at first.

3C. Consideration of limb 3: Foster good relations between people who share a protected characteristic

A community impact assessment is not required for triage process as this is not an outwards (customer) facing process and is anticipated to have minimal impact on couples.

The implementation of the triage process has ensured that couples giving notice to marry who are more likely to be in genuine subsisting relationships or more likely to be involved in sham marriages will be identified earlier in the process. This enables a quicker customer service for genuine couples and enables better allocation of resources for those parts of the Home Office who are conducting the marriage investigations

4. Foreseeable impacts of policy proposal on people who share protected characteristics

There is no evidence that indicates the operation of this policy will have an impact on groups or individuals with any of the protected characteristics. Data on disability, gender reassignment, pregnancy and maternity, religion or belief, and sexual orientation is not collected or held.

Information regarding a person or couple's age, sex and nationality is held. The DSA regularly reviews the service to ensure it is acting fairly. The DSA submitted the model to the Home Office Analytical Quality Assurance (AQUA) Board in 2020 and passed. An annual AQA review is conducted. The AQA process encompasses the performance of the service against the requirements to follow the respective legislation including EDA and DPIA.

5. In light of the overall policy objective, are there any ways to avoid or mitigate any of the negative impacts that you have identified above?

There are no obvious negative impacts identified. The triage process does not discriminate or act solely on the presence of any single protected characteristic. The process seeks to support extension of the marriage notification period from 28 to 70 days for high risk couples.

If, the investigation concludes that couple are deemed to be entering into a sham marriage, or civil partnership, the policy does not allow Immigration Enforcement to prevent the marriage or civil partnership from taking place. However, we will

- take **appropriate enforcement action** following *any* determination someone has entered, attempted to enter or assisted another person to enter a marriage, civil partnership or durable partnership of convenience
- refuse any application under the Immigration (European Economic Area) Regulations 2016 (the regulations) or the Immigration Rules which is based on the relationship
- seek the prosecution of those involved in a criminal offence, such as perjury or facilitation of illegal immigration, by consultation with or reference to, the relevant prosecuting authority

The negative impact of this process is therefore in the extension of the notification and not in the potential consequences of the outcome.

6 Review date

I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that due regard has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations.

SCS sign off

Name/Title [REDACTED]

Directorate/Unit Immigration Intelligence – Immigration Enforcement

Lead contact [REDACTED]

Date

30/11/2020

All completed EIAs must be sent to the <u>Talent and Inclusion team</u>	30/11/2020
Date sent to Talent and Inclusion Team?	

Part 2 - Policy Equality Sign-off

The EIA can be completed throughout the development of a policy but is only signed at the point the policy is made public namely finalised and implemented.

To assist in evaluating whether there is robust evidence that could withstand legal challenge, the following questions must be asked prior to sign-off.

Q. Has 'due regard' been made to the 3 aims of the General Duty (Section 149 of the Equality Act 2010)?

- **Eliminate unlawful discrimination**, harassment, victimisation and any other conduct prohibited by the Act;
- **Advance equality of opportunity** between people who share a protected characteristic and people who do not share it; and
- **Foster good relations** between people who share a protected characteristic.

Q. Have all the **protected characteristics** been considered?:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race (includes ethnic or national origins, colour or nationality)
- religion or belief (includes lack of belief)
- sex
- sexual orientation

Q. Have the relevant stakeholders been involved and/or consulted?

Q. Has all the relevant **quantitative and qualitative data** been considered and been subjected to **appropriate analysis**?

Q. Have lawyers been consulted on any legal matters arising?

Q. Has an appropriate date been established for reviewing the policy?

