Written evidence from Dr Angus Holford and Dr Dawn Liu (COV0076)

In this submission, we address the breach of article 12 of the Human Rights Act (1998)\(^1\) and European Convention on Human Rights (ECHR)\(^2\) caused by the Government’s failure to protect the right to marry in their response to COVID-19.

In summary:

The Government’s ban on social gatherings includes marriage ceremonies, which are the only way to legalise a marriage in the UK. (At minimum, a marriage ceremony must be conducted by a registrar, with two witnesses in attendance, in addition to the bride and groom.) With no other provision in national law to enable marriages to take place, couples due to be married face the removal of their marriage rights for the foreseeable future.

We present three case studies of couples affected as evidence of the damaging impact of this breach on individuals. Prompt response by the Government is needed to prevent further damage to couples affected.

**What will the impact of specific measures taken by Government to address the COVID-19 pandemic be on human rights in the UK?**

Article 12 protects the rights of individuals to marry and found a family. Unlike other Human Rights (e.g., respect for privacy, freedom of assembly), the right to marry cannot be limited by concerns about public health\(^3\). Although the right is governed by national law (in the UK this is the Marriage Act, 1949\(^4\)), national law must not be so prohibitive as to restrict marriage entirely\(^3,5-8\). Further, courts have previously upheld that prohibitive fees (in the case, it was £295\(^3\)), delays\(^7\) and failure to provide facilities for marriage\(^8\) were injurious to the right to marry. This means that the COVID-19 act infringes the right to marry because it prohibits all means to conduct a legal marriage ceremony for the foreseeable future and incurs additional costs for couples who should have been married in this period.

**Which groups will be disproportionately affected by measures taken by the Government to address the COVID-19 pandemic?**

The effects of the Government’s ban on marriage ceremonies disproportionately affects three groups of couples:

First, British citizens and their non-EEA partners who need to switch visas to a family visa, but are unable to do under Home Office rules without their certificate of marriage.

Second, British citizens and their non-EEA partners who have fiancé visas (valid for six months, during which marriage must take place), who are now unable to fulfil the requirements of their visas.

For these two groups, prolonged postponement of their marriages incurs substantial costs of securing temporary visas (which are also not guaranteed), during which the non-EEA partner is barred from work, creating loss of income. For them, marriage is made impossible without substantial delay and cost.
Third, any couple due to be married whose Notice of Intent to be Married expires during the ban. They now have to schedule (and pay for) another Notice appointment and wait the subsequent Notice Period. This subjects their marriage to further lengthy delay and additional cost due to the Government’s measures.

What steps need to be taken to ensure that measures taken by the Government to address the COVID-19 pandemic are human rights compliant?

We propose three alternative measures the Government can take to bring the COVID-19 response into compliance with article 12 and mitigate the disproportionate effect on couples.

First, basic marriage ceremonies could be made exempt from the ban. This means that the legal minimum required for ceremonies can take place, with appropriate measures (e.g., all persons wearing masks and gloves, and maintaining 2m distance from each other). This is in accordance with measures taken by countries like Australia, which exempted weddings with maximum five people from their ban on public gatherings. Enabling these ceremonies also aligns with guidelines in the UK to allow funerals with limited numbers (in practice, up to 10 people). At the very least, marriages can be prioritised during the easing of restrictions as an essential service by registrars. Ceremonies could be offered to couples on a needs basis, to balance the need to minimise numbers of ceremonies conducted with the disproportionate impact on the three groups of couples identified.

Second, parliament can approve a legal alternative to certify marriages. For example, relaxing the requirement to be married ‘in situ’, and using video conferencing for registrars to conduct the ceremony. This is not extraordinary, given that parliament and courts are already convening using video conferencing. Cities like New York have adopted this option for marriages, in recognition of the legal benefits the right to marry confers.

Third, even if the Government believes in good faith that marriage cannot be legalised through the above means, it should still protect couples who should have been married by conferring on them the essence of marriage. This means no-cost extension of Notice Periods, immigration permissions, and/or the ability to apply for family visas as if already married, so that the couples are not doubly penalised for the Government’s actions. This in no way affects the Government’s interests with regards to immigration policy, as any individuals affected have already secured permission to be married in this country.

Case Study 1

Dr Liu (a Singaporean national) and Dr Holford (a British national) were due to be married at the Essex Register Office on 6 April 2020, in accordance with national law. Their Notice of Intent to be Married is valid until 19 September 2020. Dr Liu has lived in the UK for four and a half years, and holds a valid Tier 2 (Work) visa that expires on 14 July 2020. Upon their marriage, the couple would meet all the requirements for a Tier 2 (Family) visa.

The ban on marriage ceremonies, first enacted for three weeks from 23 March 2020, covered the couple’s marriage date and prevented from marrying in the first instance. Subsequent extension of the ‘lockdown’ (on 16 April 2020) means at present there is an indefinite delay to resumption of marriage ceremonies. The Essex Registration Service warned that it may not be possible to marry them until after the expiry of Dr Liu’s visa, and possibly after the expiry of their Notice Period. Under these circumstances, they are unable to be married or give...
another Notice without first securing a different class of visa, which is costly, detrimental to Dr Liu’s welfare if it restricts her ability to work or requires her to leave the country, and impossible because new Notice and visa appointments are both also on hold. The effect is a disproportionate restriction to the couple’s right to marry, that exists solely due to failures in the Government’s COVID-19 response to recognise this right.

This case highlights the disproportionate impact to couples in group 1 (British citizens with non-EEA partners who need to switch visas) and group 3 (couples whose Notice of Marriage may expire before they are allowed to marry).

**Case Study 2**

Ms Chen (a Chinese national) and Mr Kong (a British national) were due to be married on 23 April 2020 at Cambridge Registry Office, in accordance with national law. Their Notice of Intent to be Married is valid until 10 March 2021. Ms Chen holds a valid Tier 2 (Fiancé) visa that expires on 15 July 2020.

Cambridge Registry Office cancelled the couple’s scheduled ceremony, thereby preventing their marriage in the first instance. With marriage ceremonies indefinitely on hold, the couple may lose the opportunity to be married within the remit of their visa. This will incur additional cost and delay because new visa applications are also on hold. Further, requiring payment for an additional visa when the Government’s COVID-19 response prevented the couple from marrying levies a charge on marriage targeted only at migrants despite the genuine nature of their relationship.

**Case Study 3**

Ms Abshire (a US national) and Mr Bogdev (a British national) were due to be married on 23 March 2020 at Hendon Town Hall in Barnet Council. Their Notice of Intent to be Married is valid until 13 February 2021. Ms Abshire holds a valid Tier 2 (Fiancé) visa that expires on 9 July 2020. The conditions of her visa are such that she cannot work in the UK prior to their marriage. Upon their marriage, this condition would be lifted.

Barnet Council cancelled the couple’s scheduled ceremony with two days’ notice. With marriage ceremonies indefinitely on hold, Ms Abshire will not be able to work for an indefinite period of time. The loss of income to the couple is a result of the Government’s removal of their right to be married. Further uncertainty around when marriage ceremonies will be reinstated means that the couple may need to apply to extend their visa at a cost of £1,033 in each instance—a prohibitive sum to retain a right that the Government failed to protect.

Cases 2 and 3 highlight the disproportionate impact to couples in group 2 (British citizens with non-EEA partners on 6-month fiancé visas).

29/04/2020

**References**

2. [https://www.echr.coe.int/Documents/Convention_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)
3. [https://publications.parliament.uk/pa/ld200708/ldjudgmt/jd080730/rhome-1.htm](https://publications.parliament.uk/pa/ld200708/ldjudgmt/jd080730/rhome-1.htm)