

Department for Levelling Up, Housing and Communities' Consultation on reforms to social housing allocations
Response of the Immigration Law Practitioners' Association

26 March 2024

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Introduction

1. The Immigration Law Practitioners' Association (ILPA) is a professional association and registered charity, the majority of whose members are barristers, solicitors, and advocates practising in all aspects of immigration, asylum, and nationality law. Academics, non-governmental organisations, and individuals with a substantial interest in the law are also members. ILPA exists to promote and improve advice and representation in immigration, asylum, and nationality law; to act as an information and knowledge resource for members of the immigration law profession; and to help ensure a fair and human rights-based immigration and asylum system. ILPA is represented on numerous government, official, and non-governmental advisory groups and regularly provides evidence to parliamentary and official inquiries.
2. This is a response to the Consultation of the Department for Levelling Up, Housing and Communities ('DLUHC') on reforms to social housing allocations ('the Consultation'), open from 30 January 2024 to 11:59pm on 26 March 2024.¹

¹ DLUHC, 'Consultation on reforms to social housing allocations' (30 January 2024) <<https://www.gov.uk/government/consultations/consultation-on-reforms-to-social-housing-allocations/consultation-on-reforms-to-social-housing-allocations>> accessed 22 March 2024.

3. Our response focuses on the proposals for the United Kingdom (UK) and local connection tests. Please note that the lack of response to any specific question should not be taken as support by ILPA for any of the proposals.
4. We are submitting this response via email rather than through the online survey. If you answer 'no' to Questions 2 or 9 in the online survey, which ask if you agree with the ten-year UK connection test or two-year local connection test, respectively, the only additional information that is requested is 'If no, please detail length of test'. As we disagree with the introduction of these connection tests altogether, and the online survey does not permit the explanation of such an objection, we have provided our response via email.

About you

Full name: Zoe Bantleman
Job title: Legal Director
Email: zoe.bantleman@ilpa.org.uk
Are you responding to this consultation on behalf of an organisation? Yes
Company name/organisation: Immigration Law Practitioners' Association (ILPA)
Address: c/o. SKS Ramon Lee, 93 Tabernacle Street, London, England
Postcode: EC2A 4BA
What is your local authority area? (if applicable): N/A
Address to which the acknowledgement should be sent, if different from above: please email to zoe.bantleman@ilpa.org.uk

UK connection test

Question 2. Do you agree that an individual should have to demonstrate a connection to the UK for ten years before qualifying for social housing (if they do not meet the test otherwise or are exempt)?

5. No.
6. We do not agree with the introduction of a test that requires a connection to the UK, whether it be for 10 years or any period of time, before qualifying for social housing. Therefore, we do not offer exemptions to this test in response to Question 3.
7. The Consultation describes the new test as follows:

To be eligible, the test would require that an applicant for social housing shows either:

(a) that they are a British citizen, Irish citizen, Commonwealth citizen with a right of abode, or EEA or Swiss citizen with equal treatment rights;

(b) that they have recourse to public funds and have been lawfully resident in the UK for a continuous period of ten years; or

(c) that they have arrived in the UK on a safe and legal resettlement or relocation scheme (as specified below). [...]

The government is proposing that those who arrive as part of a safe and legal resettlement or relocation scheme will be exempt from the UK connection test. This includes the UK Resettlement Scheme, Afghan Relocations and Assistance Policy Scheme, Afghan Citizens Resettlement Scheme, and the Ukraine temporary visa schemes (the Ukraine Sponsorship Scheme (Homes for Ukraine), Ukraine Family Scheme and Ukraine Extension Scheme). The Secretary of State will have the power to make further exemptions if and when this is appropriate.

8. The UK connection test would exclude almost all migrants, who have not arrived on the UK's narrow and in many respects dysfunctional resettlement and relocation schemes,² and who have not been lawfully resident in the UK for ten continuous years with their no recourse to public funds condition having been lifted or having settled.
9. **First**, almost all migrants are subject to a no recourse to public funds (NRPF) condition for the duration of their limited leave, with only narrow grounds to apply for this condition to be lifted.³ For individuals with leave granted on the basis of their family or private life or with leave under Appendix Hong Kong British Nationals (Overseas), the only bases to have the NRPF condition changed and access public funds are if they are destitute or at imminent risk of destitution, reasons relating to a child's welfare, or exceptional circumstances affecting income or expenditure. For all other forms of leave, an individual can only apply on discretionary grounds to lift the NRPF ban, if there are particularly compelling circumstances. Therefore, the UK connection test would place a bar on most migrants, with limited leave, accessing social housing until they have continuously resided for ten years (even after they have reached settlement) or until they naturalise or register as a British citizen.

² For example, Stage 2 of Pathway 3 of the Afghan Citizens Resettlement Scheme remains unoperationalised, and the Ukraine Schemes have been narrowed by Statement of Changes, HC 556, 19 February 2024. See 'Joint submission from the Immigration Law Practitioners' Association (ILPA) and the Work Rights Centre' <<https://committees.parliament.uk/publications/43658/documents/216766/default/>> accessed 26 March 2024.

³ Immigration and Asylum Act 1999, s 115; UK Visas and Immigration, 'Guidance on applying to change your permission' (10 January 2024) <<https://www.gov.uk/government/publications/application-for-change-of-conditions-of-leave-to-allow-access-to-public-funds-if-your-circumstances-change/guidance-on-applying-to-change-your-permission>> accessed 26 March 2024.

10. **Second**, even individuals who enter the UK on other routes, such as Skilled Worker, and then switch into one of the listed resettlement or relocation schemes, such as the Ukraine Extension Scheme, would be perversely excluded on the basis they did not ‘arrive’ on the relevant scheme.
11. **Third**, in relation to an ‘EEA or Swiss citizen with equal treatment rights’, footnote 2 in the Consultation states: *‘This means equal treatment rights in matters of housing under the Withdrawal Agreement, the EEA-EFTA Separation Agreement or the Swiss Citizens’ Rights Agreement’*.
12. However, it does not appear to apply to non-EEA/Swiss family members with equal treatment rights. Article 23(1) of the Withdrawal Agreement on Equal Treatment states, *‘The benefit of this right shall be extended to those family members of Union citizens or United Kingdom nationals who have the right of residence or permanent residence.’* Non-EEA family members may have the right of permanent residence and no longer be living with their EEA family member. This test, to which we object in its entirety, would also bar family members from satisfying it in their own right.
13. It is entirely unclear from the Consultation which EUSS status holders DLUHC is of the view should have the right to equal treatment. Jacob Young MP, Parliamentary Under Secretary of State (Department for Levelling Up, Housing and Communities), in response to a question from Catherine West MP regarding whether *‘(a) EEA, (b) Swiss citizens and (c) non-EEA/Swiss family members with pre-settled or settled status under the EU Settlement Scheme (i) have equal treatment rights and (ii) will continue to be eligible for social housing under the proposals set out in that consultation’* stated: *‘If a person has equal treatment protection in matters of housing under the Withdrawal Agreement, the EEA-EFTA Separation Agreement or the Swiss Citizens’ Rights Agreement, they will meet the UK connection test as proposed in the consultation on social housing allocations reform’*.⁴
14. Therefore, it would appear that the Minister fails to appreciate that the Consultation refers only to an *‘EEA or Swiss citizen with equal treatment rights’* and is thus *prima facie* incompatible with Article 23(1) of the Withdrawal Agreement. Additionally, he fails to appreciate that a crucial component of this is that an EU citizen or family member *with pre-settled status* is arguably ‘residing on the basis of’ of the Withdrawal Agreement for the purposes of Article 23(1) and would thus be entitled to equal treatment.⁵

⁴ Social Rented Housing: EU Nationals, Question for Department for Levelling Up, Housing and Communities (UIN 12419, tabled on 31 January 2024)
<<https://questions-statements.parliament.uk/written-questions/detail/2024-01-31/12419>> accessed 26 March 2024.

⁵ The3million, ‘Note on the Withdrawal Agreement: Personal Scope (Article 10) and Equal Treatment (Article 23)’ relied upon in submissions in the case of *C v Oldham* (Case J05MA951)
<<https://the3million.org.uk/sites/default/files/documents/t3m-note-Intervention-PersonalScopeEqualTreatment-11Mar2024.pdf>> accessed 26 March 2024.

15. The Government does not appear to have fully considered or understood the cohort of individuals who will be prevented from obtaining social housing under the proposed measures. It appears that DLUHC wishes to comply, in light of footnote 2 and of the Parliamentary under the Secretary of State for DLUHC's comments in Parliament, with its obligations under the Withdrawal Agreement. If so, it must urgently re-consider the exclusion of non-EEA nationals from the proposed connection test.
16. **Fourth**, the UK connection test would prevent most refugees and individuals in receipt of humanitarian protection from accessing social housing for ten years after their grant of protection, and potentially for even five years after they have settled in the UK. For most, the only way to shorten this period would be to naturalise or register as a British citizen, which may come at the loss of any other citizenship they hold. It would appear that by using the term 'lawfully resident', DLUHC intends to exclude the period of time these individuals, whose protection claims have been accepted, have been awaiting a decision, including due to the Home Office's own backlog in decision-making.
17. Due to the limited available suitable housing, many refugees already face housing insecurity and homelessness. In DLUHC's latest statistics on Statutory homelessness in England, it recorded *'an increase of 109.1% to 920 households in those owed a prevention duty after being required to leave accommodation provided as asylum support'* and *'an increase of 203.8% to 2,370 households in those owed a relief duty after being required to leave accommodation provided as asylum support'*.⁶
18. It is increasingly less common for individuals with newly granted refugee status to be accommodated in social housing. It is those with vulnerabilities, such that they meet the threshold of 'priority need' to obtain local authority support, who rely on social housing and will be locked out by the proposed test. The No Accommodation Network's (NACCOM) 2023 survey revealed that only 17% of the 773 people with refugee status or some other form of leave to remain, who were accommodated in NACCOM members' accommodation, moved onto social housing.⁷ The Chartered Institute of Housing states that Government data shows that 90% of new social housing lettings are allocated to UK nationals.⁸ This suggests that it is disproportionate to prevent such vulnerable individuals from obtaining social housing which

⁶ DLUHC, 'Statutory homelessness in England: July to September 2023 infographic' (29 February 2024) <<https://www.gov.uk/government/statistics/statutory-homelessness-in-england-july-to-september-2023/statutory-homelessness-in-england-july-to-september-2023-infographic>> accessed 26 March 2024.

⁷ NACCOM, 'Annual Survey Briefing 2023' (9 November 2023) <<https://naccom.org.uk/wp-content/uploads/2023/11/NACCOM-Annual-Survey-Briefing-UPDATED-final.pdf>> accessed 26 March 2024.

⁸ Chartered Institute of Housing, 'Government proposals to prioritise "British homes for British workers"' (26 January 2024) <<https://www.cih.org/media/xu1phiuk/housing-sector-letter-to-pm-and-sos-luhc-re-british-homes-for-british-workers.pdf>> accessed 26 March 2024.

would support their inclusion in the UK. For example, there appears to be no exemption under this test for vulnerable cohorts, such as migrant victims of domestic abuse, who it may trap in abusive relationships or make vulnerable to further abuse, or pregnant migrant women, including those with dependent children.

19. Moreover, under the Illegal Migration Act 2023, individuals who have arrived in the UK irregularly, and whose protection and human rights claims are deemed inadmissible, will not be granted refugee status or humanitarian protection. They will only be granted limited leave to remain where failure to do so would contravene the UK's obligations under the European Convention on Human Rights or any other international agreement to which the United Kingdom is a party, or in certain exceptional circumstances.⁹ Therefore, all impacted individuals are held in perpetual limbo, and with the introduction of this test, regardless of whether they have a meritorious protection claim, they will be locked out of access to social housing.
20. **Fifth**, the proposed introduction of the UK connection test would also unduly penalise migrant victims and survivors of human trafficking and modern slavery, who did not choose their means of arrival in the UK. This compounds the impact of the Illegal Migration Act 2023, which removes almost all protections, recovery, necessary assistance, and support for victims and survivors of modern slavery and trafficking with a positive reasonable grounds decision who are targeted for removal. These provisions will empower traffickers, who will have an additional method to coerce victims, on the basis that if they seek to escape exploitation they will not find safety. Therefore, unless a small cohort of survivors, not impacted by provisions of the Illegal Migration Act 2023, have been lawfully resident in the UK for ten years, likely after consecutive grants of leave, and have access to public funds, they cannot access social housing. They may then be left in accommodation, which is inappropriate and unsuitable for their recovery. The combined impact of these measures would severely undermine the UK's duties under Article 12 of the European Convention on Action Against Trafficking, which obliges parties to assist victims with their physical, psychological, and social recovery, including through such measures as the provision of 'appropriate and secure accommodation'.
21. **Sixth**, the Consultation fails to explain how the British citizen children of migrants, who cannot meet the UK connection test, will be impacted by the bar on access to social housing or how this safeguards and promotes the best interests of such children.
22. We harbour no doubt that the introduction of this test will lead to homelessness, due to the difficulty in accessing private rented accommodation, because of their status and particularly if they are in receipt of Universal Credit. Mass homelessness will amplify pressures on local authorities. For instance, local authorities have a duty under section 17 of the Children Act 1989 to provide accommodation where necessary to safeguard the welfare of children in need. Additionally, the negative impact that homelessness has on a migrant's inclusion, by posing

⁹ Illegal Migration Act 2023, s 30.

barriers to stability, employment, and education, has wide ramifications for local communities. The UK connection test may also re-expose migrant victims of trafficking, torture, sexual, and domestic violence to forms of abuse, exploitation, re-traumatisation and re-trafficking.

Local connection test

Question 9. Do you agree that an individual should have to demonstrate a local connection with an area for two years before qualifying for social housing (unless exempt)?

23. No.
24. We do not agree that the government should mandate that an individual demonstrate a local connection with an area, whether it be for 'at least' two years or for any period of time, before qualifying for social housing.
25. As detailed in the Consultation, of the 308 local authorities who replied, 116 have both a local connection and residence test, 115 have only a local connection test, 45 have only a residence test, and 32 have neither. The effect of this new mandated test, would be to take the decision on such qualification criteria out of the hands of the 77 local authorities which have stated they have no local connection test, and the 231 who might wish to change their criteria. We do not see why it is necessary to remove this decision from the hands of local authorities, particularly when it will neither result in full harmonisation nor eliminate disparity. Some local authorities may still have local connection tests of longer than two years.
26. Instead, as described in response to Question 12, it will have the effect of penalising individuals who have not had an opportunity to establish a connection with their local area, which may be due to no fault of their own.

Question 12. Do you think there should be any further exemptions to the local connection test?

27. We wholly object to the introduction of a '*a test for local connection at qualification stage to establish a minimum national level*'. However, if it is to be introduced, there must be further exemptions.
28. We understand there is a proposed exemption for care leavers, domestic abuse victims, and individuals who have arrived or will arrive as part of the UK Resettlement Scheme, Afghan Relocations and Assistance Policy Scheme, Afghan Citizens Resettlement Scheme, and the Ukraine temporary visa schemes (the Ukraine Sponsorship Scheme (Homes for Ukraine), Ukraine Family Scheme and Ukraine Extension Scheme). The latter migrants are excluded only because they '*may otherwise not be able to meet the local connection test anywhere in England because of their recent arrival in the country.*' However, most recently arrived migrants may not be able to meet the test anywhere in England for this same reason.

29. For example, a refugee or a person in receipt of humanitarian protection may be moved and accommodated by the Home Office in various remote places across the United Kingdom, including Ministry of Defence sites and barges, whilst their protection claim is pending. Therefore, another Department's actions may prevent an individual from being able to establish and demonstrate a local connection with a specific area for a period of two years. That two-year period is a crucial time, when such individuals may be seeking work (having only had a restricted right to work after their claim was pending for 12 months) and inclusion in their communities, and a time when this test would place them at risk of homelessness. Therefore, unless there are 'special circumstances' that are applied in such a wholesale manner as to make that term near meaningless, a refugee or person in receipt of humanitarian protection may not meet the proposed local connection test in section 199 of the Housing Act 1996.
30. Victims of modern slavery and human trafficking should also be exempt from the local connection test. They may rightly seek to leave the area with which they had a local connection, in order to avoid being found by their perpetrators of slavery, trafficking and exploitation, and to seek a new, safer area. They should not then be penalised by being denied social housing in that new area. As explained in response to Question 1 these tests will lead to homelessness and place migrants at risk of abuse, exploitation, and violence.

Public Sector Equality Duty

Question 39. Do you expect that any of the policies affecting social housing applicants would have a particular impact on those with a particular protected characteristic? If so, please give further detail on the relevant policy and its impact.

31. Yes.
32. We are particularly concerned that the introduction of the UK connection and local connection test on migrants will discriminate on grounds of:
- a. race, including particularly against migrants of certain non-British and non-Irish nationalities;
 - b. sexual orientation and gender reassignment, against LGBTQI+ migrants, who may face additional difficulties in their housing opportunities and be subject to discrimination or harassment from within their communities or from private landlords;
 - c. disability, as disabled individuals may struggle to find accessible accommodation that meets their needs; and
 - d. sex, for example impacting women survivors of gender-based violence and human trafficking.
33. Accordingly, we are concerned that these proposals are discriminatory and do not comply with the public sector equality duty under section 149 of the Equality Act 2010.

26 March 2024