

# New Plan for Immigration:

## Response to stakeholder questionnaire

### Foreword

<p><b>1</b> <b>The foreword provides a high level outline of the New Plan for Immigration, including reforms to make the system fair, but firm.</b></p> <p><b>Overall, how far do you support or oppose what is being said here?</b></p>	<ul style="list-style-type: none"> <li><input type="radio"/> Strongly support</li> <li><input type="radio"/> Tend to support</li> <li><input type="radio"/> Neither support nor oppose</li> <li><input type="radio"/> Tend to oppose</li> <li><input checked="" type="radio"/> <b>Strongly oppose</b></li> <li><input type="radio"/> Don't know</li> </ul>
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### Chapter 1: Overview of the Current System

<p><b>3</b> <b>Please use the space below to give further detail for your answer. In particular, if there are any other objectives that the Government should consider as part of their plans to reform the asylum and illegal migration systems.</b></p> <p>We do not agree with the objectives. We propose the following objectives instead:</p> <ul style="list-style-type: none"> <li>• To increase the fairness and efficacy of our system so that we can better protect and support everyone in need of asylum.</li> <li>• To open up more safe routes for people seeking asylum to get to the UK; and</li> <li>• To ensure all the reasons that people have for wanting to live in the UK are fairly assessed and legal aid increased to support individuals with their claims and applications.</li> </ul> <p>The following principles should be the foundation for implementing the objectives:</p> <ul style="list-style-type: none"> <li>• Effective access to the asylum process – all people seeking protection should have the opportunity to be able to do so.</li> <li>• A fair, humane and efficient asylum system – all people seeking asylum should have their claims assessed fairly, humanely and efficiently.</li> <li>• Reception conditions that promote dignity, liberty, empowerment and integration – support provided during the asylum system must ensure liberty, promote dignity, empower people and support their integration in the community from the moment of arrival.</li> <li>• Integration – policies should support people to realise their full potential and empower them to make a positive contribution to their communities.</li> <li>• Dignity, liberty and humanity for those found not to be in need of protection – people refused asylum should not be detained and be treated in a safe, dignified and humane way at all times.</li> <li>• Global solidarity and responsibility sharing – the UK should play a role in providing sustainable solutions to forced migration.</li> </ul>
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## Chapter 2: Protecting those Fleeing Persecution, Oppression and Tyranny

7	<p><b>Please use the space below to give further feedback on the proposals in chapter 2.</b></p> <p>LGBTQI+ refugees should be included in resettlement programmes.</p>
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## Chapter 4: Disrupting Criminal Networks and Reforming the Asylum System

20	<p><b>To protect the asylum system from abuse, the Government will seek to reduce attempts at illegal immigration and overhaul our domestic asylum framework.</b></p> <p><b>In your view, how effective, if at all, will the following proposals be in achieving this aim?</b></p> <ul style="list-style-type: none"><li>• <b>Changing the rules so that people who have been convicted and sentenced to at least one-year imprisonment and constitute a danger to the community in the UK can have their refugee status revoked and can be considered for removal from the UK.</b></li><li>• <b>Supporting decision-making by setting a clearer and higher standard for testing whether an individual has a well-founded fear of persecution, consistent with the Refugee Convention.</b></li><li>• <b>Creating a robust approach to age assessment to ensure the Government acts as swiftly as possible to safeguard against adults claiming to be children and can use new scientific methods to improve the Government's abilities to accurately assess age.</b></li></ul>	<ul style="list-style-type: none"><li><input type="radio"/> Very effective</li><li><input type="radio"/> Fairly effective</li><li><input type="radio"/> Not very effective</li><li><input checked="" type="radio"/> Not at all effective</li><li><input type="radio"/> Don't know</li></ul>
21	<p><b>The UK Government intends to create a differentiated approach to asylum claims. For the first time how somebody arrives in the UK will matter for the purposes of their asylum claim.</b></p> <p><b>As the Government seeks to implement this change, what, if any, practical considerations should be taken into account?</b></p> <p>Everybody seeking asylum should be treated with dignity and respect, and have their claim assessed sensitively and fairly. There should be no differentiation based on route of entry.</p>	
22	<p><b>The UK Government intends on introducing a more rigorous standard for testing the “well-founded fear of persecution” in the Refugee Convention.</b></p> <p><b>As the Government considers this change, what, if any, practical considerations should be taken into account?</b></p>	

	<p>We vehemently oppose changing the standard for “well-founded fear of persecution”. Proving who you say you are to the standard of “balance of probabilities” would be extremely problematic for LGBTQI+ people. It is notoriously difficult to prove your sexual orientation, gender identity, gender expression or sex characteristics (SOGIESC) to a rigorous standard. Because of that it is also more difficult for LGBTQI+ people to be believed about events amounting to past persecution. Persecution of LGBTQI+ is also underreported globally, making it unfair to expect LGBTQI+ people to show to a higher standard of proof both past persecution (balance of probabilities) and future persecution (“systemic and widespread” persecution). LGBTQI+ people are already routinely disbelieved and raising the bar in this way would put more people at risk of being returned to a situation of danger, and at risk of self-harming or attempting to take their own lives in the face of being refused refugee status.</p>
25	<p><b>Please use the space below to give further feedback on the proposals in chapter 4. In particular, the Government is keen to understand:</b></p> <p class="list-item-l1">(a) If there are any ways in which these proposals could be improved to make sure the objective of overhauling our domestic asylum framework is achieved; and</p> <p class="list-item-l1">(b) Whether there are any potential challenges that you can foresee in the approach being taken around asylum reform.</p> <p>We do not agree that the asylum system should be “preserved for the most vulnerable”. Asylum is for anyone who needs protection from persecution.</p> <p>We oppose the introduction of reception centres. Such facilities are damaging to mental health and rife with LGBTphobic bullying, harassment and abuse. People should live in communities among the general population.</p> <p>The use of immigration detention should come to an end, not be continued.</p> <p>People in the UK should have their asylum claims processed here. We oppose offshore processing.</p> <p>We are concerned for the safety of LGBTQI+ people if the government removes them to “safe countries”. Countries that the government deems “safe” are in fact often dangerous for LGBTQI+ people.</p> <p>We oppose the introduction of temporary protection status with fewer entitlements and family reunion rights. All people in need of asylum should have a chance to rebuild their lives safely, with their loved ones and with hope for their futures. We are concerned that a large proportion of LGBTQI+ refugees will only be given temporary protection.</p> <p>We oppose any introduction of fast-track appeals. People should have adequate time to prepare for and gather evidence for appeals, and this is particularly necessary in asylum claims based on SOGIESC.</p>

## Chapter 5: Streamlining Asylum Claims and Appeals

30	<p><b>Please use the space below to give further feedback on the proposals in chapter 5. In particular, the Government is keen to understand:</b></p> <p class="list-item-l1">(a) If there are any ways in which these proposals could be improved to make</p>
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**sure the asylum and appeals system is faster, fairer, and concludes cases more effectively;**

**(b) Whether there are any potential challenges that you can foresee in the approach the Government are taking around streamlining appeals.**

The proposed “good faith requirement” and “one-stop process” would be acutely detrimental to LGBTQI+ people. There are a myriad of reasons why an LGBTQI+ person may not say that they need asylum on the grounds of their SOGIESC immediately, including fear of disclosing such information to authorities, shame and/or a cultural background of not discussing such matters, and not knowing that SOGIESC is grounds for asylum.

## Public Sector Equality Duty

- 42 From the list of areas below, please select any areas where you feel intended reforms present disproportionate impacts on individuals protected by the Equalities Act.**
- Please expand on your answer for any areas you have selected, providing data (where applicable), further information and detailed reasons.**
- Protecting those Fleeing Persecution, Oppression and Tyranny (Chapter 2)
  - Ending Anomalies and Delivering Fairness in British Nationality Law (Chapter 3)
  - Disrupting Criminal Networks and Reforming the Asylum System (Chapter 4)
  - Streamlining Asylum Claims and Appeals (Chapter 5)
  - Supporting Victims of Modern Slavery (Chapter 6)
  - Disrupting Criminal Networks Behind People Smuggling (Chapter 7)
  - Enforcing Removals including Foreign National Offenders (FNOs) (Chapter 8)
  - None of these

The following extracts from “UNHCR’s Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees” expand on the answers we have given to the questionnaire on chapters 4 and 5, and explain the disproportionate impact on LGBTQI+ people of these proposals:

*“Sur place claims may also arise due to changes in the personal identity or gender expression of the applicant after his or her arrival in the country of asylum. It should be noted that some LGBTI applicants may not have identified themselves as LGBTI before the arrival to the country of asylum or may have consciously decided not to act on their sexual orientation or gender identity in their country of origin. Their fear of persecution may thus arise or find expression whilst they are in the country of asylum, giving rise to a refugee claim sur place. Many such claims arise where an LGBTI individual engages in political activism or media work or their sexual orientation is exposed by someone else”.*

*“Discrimination, hatred and violence in all its forms can impact detrimentally on the*

*applicant's capacity to present a claim. Some may be deeply affected by feelings of shame, internalized homophobia and trauma, and their capacity to present their case may be greatly diminished as a consequence. Where the applicant is in the process of coming to terms with his or her identity or fears openly expressing his or her sexual orientation and gender identity, he or she may be reluctant to identify the true extent of the persecution suffered or feared. Adverse judgements should not generally be drawn from someone not having declared their sexual orientation or gender identity at the screening phase or in the early stages of the interview. Due to their often complex nature, claims based on sexual orientation and/or gender identity are generally unsuited to accelerated processing or the application of "safe country or origin" concepts".*

*"Relevant and specific country of origin information on the situation and treatment of LGBTI individuals is often lacking. This should not automatically lead to the conclusion that the applicant's claim is unfounded or that there is no persecution of LGBTI individuals in that country. The extent to which international organizations and other groups are able to monitor and document abuses against LGBTI individuals remain limited in many countries. Increased activism has often been met with attacks on human rights defenders, which impede their ability to document violations. Stigma attached to issues surrounding sexual orientation and/or gender identity also contributes to incidents going unreported. Information can be especially scarce for certain groups, in particular bisexual, lesbian, transgender and intersex people".*

In addition, despite decades of experience in running immigration detention centres, the UK has not achieved in making them a safe and dignified environment, but one where LGBTQI+ people, precisely because of their protected characteristics, experience discrimination and abuse. Reception centres are an environment of the same class where LGBTQI+ people may well be exposed to similar treatment.

Various sources of international law have warned of the high risk of harm to LGBTQI+ people in detention:

- The UN Working Group on Arbitrary Detention has stated that the detention of LGBTI persons "must not take place"<sup>1</sup>.
- The UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment – alongside the Chair of the UN Subcommittee on Prevention of Torture; the Chair of the UN Committee against Torture; and the Chairperson of the Board of Trustees of the UN Voluntary Fund for Victims of Torture – have called on Member States to redouble their efforts to prevent the ill-treatment and torture faced by LGBTI people in places of detention<sup>2</sup>.
- The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has raised similar concerns, stating that LGBTQI+ people were at the 'bottom of the hierarchy' in detention<sup>3</sup>.
- The Yogyakarta Principles plus 10<sup>4</sup> on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex

<sup>1</sup> [https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation\\_AdvanceEditedVersion.pdf](https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf)

<sup>2</sup> [http://www.un.org/apps/news/story.asp?NewsID=54309#.Wi5HkIVI\\_IU](http://www.un.org/apps/news/story.asp?NewsID=54309#.Wi5HkIVI_IU)

<sup>3</sup> [https://digitallibrary.un.org/record/1306972/files/CAT\\_C\\_57\\_4-EN.pdf](https://digitallibrary.un.org/record/1306972/files/CAT_C_57_4-EN.pdf)

<sup>4</sup> <http://www.yogyakartaprinciples.org/principles-en/yp10/>

	<p>characteristics, include obligations to ensure that asylum seekers are detained only as a measure of last resort and for the shortest possible time.</p> <ul style="list-style-type: none"> <li>• The vulnerability of LGB asylum seekers in detention has also been recognised by the European Court of Human Rights<sup>5</sup>.</li> <li>• The UN Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity and UNHCR's Assistant High Commissioner for Protection have identified that: “<i>access to adequate housing in safe settings with adequate sanitation facilities are particularly crucial for LGBTI people, as they are exposed to risk of harassment, abuse and violence in reception centres, collective shelters and camp settings</i>”<sup>6</sup>.</li> </ul>
44	<p><b>Thinking about any potential equality considerations for the intended reforms in each of the areas, are there any mitigations you feel the Government should consider?</b></p> <p>The only way to mitigate the impact on LGBTQI+ people is not to implement these proposals.</p>

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<sup>5</sup> O.M. v Hungary, Application no. 9912/15, 5 July 2016<sup>5</sup>.

<sup>6</sup> <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24764&LangID=E>