

A Fairer Pathway to Settlement

Response from the Law Society
of Scotland's Immigration and
Asylum Sub-Committee

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Background

1. Are you responding to this survey as an individual or as a representative of an organisation?

Organisation

2. [If organisation] Are you responding on behalf of an organisation based in the UK?

Yes

3. [If organisation] Which of the following best describes your type of organisation?

Other

4. [If organisation] Does your organisation provide immigration advice or support services?

Don't know / prefer not to say

5. [If organisation based in the UK] Has your organisation ever sponsored employees to work in the UK on a visa?

Yes – we currently sponsor employees

Yes – we have sponsored employees in the past

No – we have never sponsored employees

Don't know / prefer not to say

6. [If organisation based in the UK] Does your organisation intend to sponsor employees to work in the UK on a visa in the future?

Yes

No

Don't know / prefer not to say

7. [If organisation based in the UK] How many people work for your organisation across the UK as a whole?

Under 10

10-49

50-249

250+

Don't know / prefer not to say



8. [If organisation currently sponsors employees to work in the UK on a visa] How many employees are currently sponsored via a UK visa at your organisation?

Under 10

10-49

50-249

250+

Don't know / prefer not to say

9. [If organisation] Which of the following best describes the industry sector your organisation operates in?

Professional, scientific and technical activities

10. [If organisation based in the UK] In which part of the UK is your organisation mainly based?

Scotland

11. [If individual] What is your current immigration or citizenship status in the UK?

N/A

12. [If individual] What is your age?

N/A

13. [If individual] What is your sex?

N/A

14. [If individual] Is the gender you identify with the same as your sex registered at birth?

N/A

15. [If individual] How would you describe your ethnicity?

N/A

16. [If individual] Where in the UK do you currently live?

N/A

17. [If individual] which of the following best describes your current or most recent occupation?

N/A

Earned Settlement

1. Overall, how clear do you find the proposed changes to the settlement framework?

Somewhat unclear

2. [If unclear] Which aspects of the proposed changes to settlement are not clear?

Other (please specify)

- 1) Is there a general baseline qualifying period or is it different baseline periods for different categories? If a general baseline period, then how long is it?
 - 2) Will there be transitional provisions
 - 3) We welcome the news that family members of UK citizens will be exempt but it is not clear if / how the changes will affect family members of settled persons.
 - 4) How will any new rules re Eng language qualifications be applied to
 - a. nationals of other English speaking countries and
 - b. graduates who have degrees from UK / English-medium universities?
 - 5) How will the proposed changes apply to dependants and children
 - 6) Has there been an equality impact assessment and, if so, will it be published?
3. Overall, to what extent do you agree or disagree with the proposed changes to the settlement framework?

Disagree

Character

This question focuses on 'Character', the first of the four core pillars designed to ensure that applicants make a meaningful contribution to UK society and meet clear, measurable standards.

To be eligible for settlement, applicants will need to meet the suitability requirements set out in the existing Immigration Rules (Part Suitability) [and applicants must have no current litigation, NHS, tax or other government debt].

This reformed system will, as now, provide for the refusal of applications where core requirements relating to their character and conduct (for example, having a criminal conviction, non-compliance with immigration requirements and

considerations pertaining to the public good). It will be mandatory to meet such requirements and there will be no ability to trade with other considerations to determine the qualifying period.

1. Do you have any comments on how 'Character' should be considered in relation to settlement?

The proposed blanket, permanent ban on anyone with any criminal regard ever qualifying for ILR might be regarded as disproportionate (eg. in terms of ECHR Article 8) and therefore vulnerable to legal challenges. A rule that was more consistent with, say, the periods set out in the Rehabilitation of Offenders Act or the current Suitability requirements of the rules might be deemed fairer and more proportionate.

Furthermore, a permanent ban will force people to re-apply indefinitely to extend their leave to remain which is likely to cause financial hardship and could have the unintended effect of causing criminality as a result of overstaying through oversight (especially for, eg, elderly migrants in this situation).

Finally, it is not clear if or how the proposed changes will co-exist with the current grounds for refusal of ILR set out in "Part Suitability" of the current Immigration Rules.

(144 words)

Integration

This section focuses on 'Integration'. To be eligible for settlement applicants will need to demonstrate meaningful engagement with British society. This includes passing a Life in the UK test and speaking English at an upper intermediate level (B2 standard under the Common European Framework of Reference for Languages).

1. What do you think about a 1-year reduction for applications who can demonstrate advanced English language ability (at C1 standard)?

The reduction doesn't go far enough (it should be longer than 1 year)

2. How do you think integration should be assessed? (please select all that apply)

Through a formal test (such a revised Life in the UK Test)

Through gathered ongoing evidence (such as participation in certified English Language education or employment/volunteering evidence)

Through completing a cultural orientation course once arrived in the UK

Through character references from public services professional and British Nationals

Through evidence of learning and participation within the wider community (including testimonies from relevant organisations/groups)

In another way (please specify)

Don't know / prefer not to say

3. Do you have any further comments on how 'Integration' should be considered in relation to settlement?

There is no "perfect way" to assess settlement so, ultimately, the fairest / least unfair method of assessment is probably best. A test has the advantage of being objective. However some improvements to the current test could be made, including:

- a) Making it relevant (currently some questions are quite obscure)
- b) Ensuring the questions are objective and fact-based
- c) Ensuring it represents all parts of the UK equally (applicants have commented that the current content is Anglocentric)
- d) Fairer exemption criteria (the current approach seems to be that exemption will only be granted if it is physically impossible to do the test – as opposed to those for whom it is extremely difficult. People with disabilities (eg. hearing impaired, partially-sighted), mental health problems, and learning difficulties) often find it unduly difficult to benefit from the current exemption criteria.

Finally, it has been observed that practical experiences such as studying and working /volunteering in the UK do more to aid integration than studying for a textbook-based test. To reflect this perhaps there should be exemptions or alternatives to a test based on activities such as working/ volunteering or studying in the UK.

(190 words)

Contribution

This section focuses on 'Contribution'. This reinforces the principle that settlement should be earned through active participation in the economy and wider society. To be eligible for settlement applicants must:

- Have contributed to the Exchequer by having annual earnings above £12,570 for a minimum of 3 to 5 years (subject to this consultation), in line with the current thresholds for paying income tax and National Insurance Contributions (NICs), or an alternative amount of income. Please note, however, that these income-related thresholds would not track future changes to the tax system.

- Have no outstanding litigation, NHS, tax or other government debt.

1. Do you think the following groups should be exempt from the requirement to have earned above £12,750 for at least 3 to 5 years?

Those on maternity leave or long-term illness/disability

Yes

Those in certain occupations with different pay arrangements (e.g. Ministers of Religion)

Yes

2. Are there any other groups that you think should be exempt from the requirement to have earned above £12,750 for at least 3 to 5 years?

You may list up to five separate groups. If you think there are more than five groups that should be exempt from the requirement then please list the five that you most strongly feel should be provided with an exemption from this requirement. [200 words max]

- 1) Exemptions based on age. For example for adults aged over 65 and children / young persons aged under 21 (as entitlement to national living wage does not start until the age of 21).
- 2) Those in full-time education.
- 3) Carers
- 4) Single parents
- 5) Dependent partners of individuals who have met the earnings requirement (to avoid indirect discrimination against spouses who stay out of full-time work in order to run a household, bring up children, etc).

Can we also suggest that the proposed exemption for those with long-term illness / disability be applied more broadly than the current exemptions to the financial requirements at Appendix-FM to the Immigration Rules. For example, a fair application of the exemption would include those who are not physically unable to work but who have an illness / disability which makes it difficult for them to work full-time or for extended periods.

3. To what extent do you agree or disagree that migrants who have worked in an occupation below RQF level 6 should have their standard qualifying period for settlement set at 15 years? Occupations skilled to RQF level 6 are those which require a qualification equivalent to degree level or higher. You can read more about what kind of qualifications this includes here.

- Disagree

4. To what extent do you agree or disagree that applicants who earn a taxable income above £50,270 should be eligible for a reduction in their time to settlement?

Neither agree nor disagree

5. What do you think about the proposed reductions for applicants based on their annual taxable income?

7-year reduction for applicants who earn a taxable income above £125,140

Don't know/Prefer not to say

5-year reduction for applicants who earn a taxable income above £50,270

Don't know/Prefer not to say

6. Do you think those employed in a public service occupation (i.e. health and education occupations where going rates are based on national pay scales) should be eligible for a reduction in their qualifying period to settlement?

Yes

Under the proposed reforms, applicants who claim public funds (e.g. benefits and housing assistance) would face a penalty depending on the length of time they claimed public funds during their route to settlement. The Home Office recognises that some applicants (such as those from vulnerable groups) may have extenuating circumstances to claim public funds. Later questions will explore whether specific groups should be exempt from the proposed reforms.

7. What do you think about the proposed penalties for applicants claiming public funds?

Ensuring that the UK can remain compliant with its international obligations, these penalties would exclude migrants covered by Trade Continuity Agreements and Social Security Coordination Agreements.

5-year penalty for applicants who claim public funds for less than 12 months during their route to settlement?

There should be no penalty for these applicants

10-year penalty for applicants who claim public funds for more than 12 months during their route to settlement

There should be no penalty for these applicants

8. To what extent do you agree or disagree that once someone has been granted settlement in the UK they should be eligible to claim public funds (e.g. benefits and housing assistance)?

Ensuring that the UK can remain compliant with its international obligations, any change would need to take account of migrants covered by Trade

Continuity Agreements, Social Security Coordination Agreements and other international obligations.

Strongly agree

9. To what extent do you agree or disagree that giving back to the local community (e.g. by volunteering) should be considered as a contribution that can reduce the length of time required to qualify for settlement?

Agree

10. [If organisation] Does your organisation currently accept or manage volunteers?

Yes

11. [If organisation with volunteers] How easy or difficult do you think it would be for applicants to provide evidence of giving back to the community?

Very easy

12. [If organisation with volunteers] Considering any potential benefits or challenges, what would be the overall impact of recognising giving back to the community as a contribution towards settlement for your organisation? Would this have...

A somewhat positive impact

13. Do you have any further comments on how 'Contributions' should be considered in relation to settlement, including any potential benefits or challenges of recognising giving back to the community as a contribution towards settlement?

Re. volunteering, we are concerned that these proposals could create a risk of exploitation – eg. by employers using migrants as free labour. Therefore we respectfully suggest that any immigration benefit for volunteering be accompanied by

- a) a definition of volunteering that prevents volunteers being used in lieu of paid staff; and
- b) restricting any such benefit to those who volunteered for only certain organisations (eg. those listed at S.44 of the National Minimum Wage Act 1998).

Regarding the proposed penalty for those who claim benefits it does not appear appropriate to penalise people for receiving benefits to which they have been assessed as lawfully entitled and of which they are genuinely in need. There is a clear risk that the proposals would push individuals (including children) into poverty, by incentivising them to forego benefits which they require. There is also a risk that many individuals would be advised to claim benefits to which

they are entitled by advisers (eg. Jobcentre Plus staff, benefits advisers, etc) who are unaware of any negative immigration implications this could create.

We are also acutely concerned about the proposal to exclude people with ILR being eligible to claim benefits. This also risks pushing people into poverty.

Residence

This section focuses on 'Residence'. This pillar aims to recognise lawful, continuous residence in the UK. In order to meet the qualifying period for settlement, applicants will need to have spent the required time in the UK on a route, or routes, that leads to settlement as set out in the existing Immigration Rules.

Under the proposed reforms, a person's pathway to settlement will also depend on their history of compliance with immigration laws. Applicants who arrived in the UK illegally (e.g. via a small boat), arrived in the UK on a visit visa, or who have overstayed their visa for 6 months or more, will have additional time added to their standard qualifying period for settlement, or prevented from settling in the UK altogether.

1. Which of the following penalties do you think should be applied to each of the following applicants?

	A penalty of 20 years	A penalty of 10 years	A penalty of 5 years	There should be no penalty for these applicants	Don't know / prefer not to say
Applicants who arrived in the UK illegally					X
Applicants who initially entered the UK on a temporary visit visa (typically this visa permits stays of up to 6 months for tourism, visiting family or friends or short-term business activities)					X

Applicants who have overstayed their original visa by 6 months or more					X
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2. Do you have any further comments on how 'Residence' should be considered in relation to settlement?

It is our view that the following categories should be exempt from any of the proposed penalties:

- 1) Refugees and persons in need of Humanitarian Protection ("HP");
- 2) Victims of Trafficking;
- 3) Persons who were children when they arrived in the UK or overstayed their visa.

We are suggesting this because all people within these categories have, by definition, little or no real choice in the manner in which they arrived in the UK. Refugees / persons in need of HP have been forced to come to the UK in order to flee persecution or other forms of severe ill-treatment. Victims of Trafficking present in the UK have, by definition, been brought to the UK against their own free will. Similarly children arriving in the UK almost always do so as a result of the decisions of adults who brought or sent them here.

In the case of refugees it should be pointed out that to impose the proposed penalties on refugees would be contrary to Articles 31 and 34 of the Refugee Convention. Legislating in a manner contrary to international law undermines the rule of law.

Eligibility and Equalities

This section focuses on whether specific groups (including potentially vulnerable groups) should be exempt from, or receive reductions to, the proposed earned settlement reforms.

1. Where the standard qualifying period is proposed to increase from 5 to 10 years, which option for you think should apply to each of the following visa holder groups?

	Reduction (of 5 or 7 years from the	Apply full change	Don't know / prefer not to say
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	Standard qualifying period of 10 years)	(standard qualifying period of 10 years)	
Applicants who currently require 3 years continuous residence under the Global Talent route	X		
Applicants who currently require 5 continuous years residence under the Global Talent route	X		
Applicants who currently require 3 continuous years residence under the Innovator Founder route	X		
Applicants on humanitarian visa routes (e.g. Syrian, Afghan)	X		

2. To what extent do you agree or disagree that dependants of migrants who hold Global Talent or Innovator Founder visa status should retain their current 5-year path to settlement?

Agree

3. To what extent do you agree or disagree that there should not be transitional arrangements for those already on a pathway to settlement? Transitional arrangements refer to temporary measures which are designed to ease the impact of the new rules for those already in the UK and on an existing pathway to settlement.

Strongly disagree

4. Do you think the following vulnerable groups should retain their current arrangements and be exempt from the proposed settlement changes?

	Yes	No	Don't know / prefer not to say
Victims of domestic violence and abuse	X		
Bereaved partners	X		
Children and young adults who grew up in the UK without immigration status	X		

Adults with long-term care needs	X		
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5. Are there any other vulnerable groups that you think should be considered as part of this consultation?

You may list up to five separate groups. If you think there are more than five groups that should be exempt from the requirement then please list the five that you feel will be most affected by these changes.

- 1) Refugees and persons in need of Humanitarian Protection;
- 2) Victims of Trafficking
- 3) Children

NOTE: We are suggesting these categories for the same reasons as explained in response to Q.2 of this section (ie. Q.2 of the Section on “Residence”).

6. Do you think the following Armed Forces groups should retain their current time period to settlement or should further reductions be available to this group?

	Retain current arrangements	Further reductions should be applied	Don't know / prefer not to say
Members of HM Armed Forces	X		
Immediate family members of HM Armed Forces	X		

7. To what extent do you agree or disagree that dependant partners of migrants should earn settlement in their own right?

Strongly Disagree

8. To what extent do you agree or disagree that dependant children of migrants should earn settlement in their own right? (with employment-related requirements waived if they were admitted as a dependant under 18)

Strongly Disagree

9. To what extent do you agree or disagree that resettled refugees should have a 10-year route to settlement? Resettled refugees are those who have been granted protection and moved to the UK through official resettlement programmes.

Disagree

10. [If organisation providing immigration advice or support services] As an organisation which provides immigration advice or support services, are there any migrant groups in particular that you think will face barriers in demonstrating their eligibility or meeting new requirements for settlement?

- 1) Children
- 2) Those in full-time education.
- 3) Carers
- 4) Single parents
- 5) Dependent partners of individuals who have met the earnings requirement
- 6) Adult dependent relatives
- 7) Victims of Domestic Violence
- 8) Bereaved Partners
- 9) Persons with illnesses and disabilities
- 10) Persons on parental leave
- 11) Refugees / persons in need of Humanitarian Protection
- 12) Victims of Trafficking

For all categories this is, firstly, for the reasons stated previously within this response. Secondly, for vulnerable persons (which includes most of the above categories) they are more likely to be disproportionately adversely affected by the additional complexities inherent in the new proposals.

11. [If organisation providing immigration advice or support services] What are the main barriers that you think this group / these groups will face? (please select all that apply)

- Complexity of requirements
- Language barriers
- Financial barriers
- Health-related barriers
- Limited access to advice/support

12. Do you have any further comments on how specific should be considered in relation to settlement? We particularly welcome views on how the proposed changes could affect children in the UK.

We are concerned about the adverse impact many of the proposed changes will have on children.

If people on benefits are to be penalised or if people with settlement are unable to access benefits, then this is likely to have an unfair, adverse impact on children of low income families. There is a clear risk that children will be pushed into poverty if the proposed penalties for recipients of benefits and the proposed restrictions on people's eligibility for benefits are implemented.

Impact on organisations

This section focuses on how the proposed earned settlement reforms may impact your organisation.

1. [If organisation] To what extent, if at all, do you think the proposed reforms will impact your organisation in the following ways?

N/A

2. [If organisation with intention to sponsor in future] To what extent, if at all, do you think the proposed reforms will affect your organisation's plans to sponsor employees to work in the UK on a visa in the future?

N/A

3. [If education provider organisation with intention to sponsor in future] To what extent, if at all, do you think the proposed reforms will affect your organisation's plans to sponsor students to study in the UK on a visa in the future?

N/A if it is an option – otherwise don't know / prefer not to say

4. [If organisation with intention to sponsor in future] To what extent, if at all, do you think the proposed reforms will affect your organisation's plans to sponsor refugees and displaced people to work in the UK on a visa in the future? (e.g. such as visa a community sponsorship scheme)

N/A if it is an option – otherwise don't know / prefer not to say

5. [If organisation] Please provide any evidence you may have on whether the proposed changes might influence visa applicants' or visa holders' decisions to come to or remain in the UK.

As mentioned previously, refugees, Victims of Trafficking and children arriving in the UK all tend to have little or no choice about coming here. Insofar as refugees have some limited choice in the matter our experience is that they tend to be motivated by the immediate goal of securing safety for them and their families (rather than longer-term, more remote issues such as how long it will take for them to get indefinite leave to remain). As such, it seems likely



that the proposed reforms will have little or no impact to the number of people coming to the UK in these categories.

6. [If organisation] Do you have any further comments on the potential impacts on your organisation in relation to the proposed changes to settlement?

No further comments re the potential impacts on Law Society of Scotland.

For further information, please contact:

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