



HM Government

NEW PLAN

FOR IMMIGRATION

Consultation on the New Plan for Immigration: Government Response

July 2021

CP 493



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Consultation on the New Plan for Immigration: Government Response

Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

July 2021



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Chapter 1: Consultation process and methodology

On 24 March 2021, the UK Government published the New Plan for Immigration which set out plans to introduce a fair but firm asylum and illegal migration system. The Government launched a consultation the same day delivered in partnership with Britain Thinks, an independent insight and strategy company. Stakeholders and members of the public were invited to participate in the following ways:

- An online questionnaire, available via a dedicated consultation portal accessible by anyone wishing to respond;
- Eight targeted engagement sessions with invited stakeholders, covering the detail of the policies;
- Six focus group sessions with members of the public from across the UK; and
- Interviews and small group discussions with those who have experience of the UK asylum and modern slavery systems.

In total, there were 8,590 respondents to the online questionnaire, which included 7,399 individuals who identified themselves as members of the public and 1,191 who identified themselves as stakeholders. These totals include organised campaign responses. Where identically worded responses were received, they have been treated as organised campaign responses. In total, there were 1,798 public and 84 stakeholder respondents treated in this way.

A more detailed breakdown of the respondents is included at Annexes A – C.

In interpreting the findings, it is important to note that while the consultation questionnaire was open and available to everyone, respondents were self-selecting. Given this, they may skew towards those who have strong views on the proposals and were motivated to express these views. Responses cannot be viewed as being representative of all stakeholders and the public population as a whole. Instead, the consultation and its findings represent the opinions of those who have chosen to respond.

Alongside this consultation, officials from the Home Office and the Ministry of Justice undertook 48 separate engagement sessions with targeted stakeholders, including on the more technical areas of the plan.

The results of the consultation were carefully considered before relevant policy decisions were finalised and ahead of the introduction of the Nationality and Borders Bill in Parliament on 6 July 2021.

Chapter 2: Overview

The Government welcomes the participation in this consultation as it seeks to build a fair but firm asylum and illegal migration system. The consultation process itself has been extensive and wide-reaching, helping to inform the Government's ambitions to:

- increase the fairness and efficacy of our system so that we can better protect and support those in genuine need of asylum;
- deter illegal entry into the UK, thereby breaking the business model of people smuggling networks and protecting the lives of those they endanger; and
- remove more easily from the UK those with no right to be here.

The consultation has shown that there is some support for these broad ambitions, more so from members of the public. However, the responses sent into the Government consultation also show that around three quarters of those who responded said they opposed many of the policies set out in the New Plan for Immigration. A similar view was also taken by those with direct experience of the asylum system. Having considered the findings from the consultation, the Government recognises that building a system that is fair but firm will require tough decisions, some of which may be unpopular with certain individuals and/or groups. While the consultation has shown that there is some support for proceeding with the high-level vision that has been set, the Government has also listened to the concerns raised. However, the pressures of the current system cannot be ignored, requiring urgent and decisive action. The Nationality and Borders Bill introduced in Parliament on 6 July has set out the Government's legislative intentions – these will now be subject to parliamentary scrutiny. Throughout that process and beyond, the Government will continue to listen, engage and work with stakeholders as it overhauls the current system.

As this is taken forward, there are areas from the consultation that will require closer consideration as part of any further policy implementation and operational planning. This includes:

- There being a general lack of detail and explanation of the policies, and an evidence base for these.
- The 'fairness' elements of the new plan not being sufficient or balanced, when set against the 'firm' elements.
- The potential for the plan to contribute to greater inefficiencies in the system.

- The potential for equalities impacts and needing to adjust existing safeguards and protections in the system to support those who may be vulnerable; and mitigate against any potential unintended consequences.
- The requirement for improved guidance and/or stronger operational processes.

These are issues of importance which the Government will keep under review during the passage of the Nationality and Borders Bill and as part of ongoing work, including with stakeholders. This will enable the Government to identify and mitigate any potential unintended consequences, ensure sufficient safeguards are in place to protect the vulnerable and ensure compliance with our equalities responsibilities, and maintain the efficiency of the system – putting people first. Beyond this, we will need to monitor the operation of these policies and evaluate their effectiveness.

Chapter 3: Consideration by policy area

Protecting those fleeing persecution, oppression, and tyranny

The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (the 2020 Act) included a statutory obligation to review legal routes to the UK from the European Union (EU) for protection claimants, including publicly consulting on the family reunion of Unaccompanied Asylum-Seeking Children (UASC). This consultation duty has been fulfilled via this consultation. As committed to in Parliament during the passage of the 2020 Act, the review went beyond those who are in the EU, reflecting our new global approach to the immigration system and included looking at our future approach to resettlement. To comply with this commitment and our statutory duties, we have carefully considered the consultation responses and completed our review on safe and legal routes. Under section 3(5)(b) of the 2020 Act, the Government has now prepared a separate report on the outcome of the review which is being published and laid before Parliament today as an Act paper. Some key points from the review are included below.

Feedback from the consultation has shown there to be broad support for the Government's ambitions in this area, especially around integration proposals and resettlement. Many of the proposals were felt to be effective in providing safe and legal ways for refugees in need of protection. However, there was a desire for greater detail, including a numerical target for the number of refugees the UK would resettle each year. There were some areas in the consultation that were identified as being less effective – this included reviewing refugee family reunion rights. Those with experience of the asylum system raised concerns around the definition of a 'safe and legal' route of entry to the UK, particularly for those fleeing persecution, who may not have access to such routes.

Government Response

Whilst the Government recognises the desire for a numerical target, we must take account of the other pressures on housing and local services, including the impact of supporting those who seek asylum through illegal entry. Currently, more people claim asylum in the UK each year than we can offer protection to through safe and legal routes. We want to reverse that and, in time, achieve a more balanced, fair system that can provide greater protection and integration support to people coming directly from regions of conflict and instability, rather than safe European countries, through safe and legal routes. All whilst reducing unmeritorious asylum claims from those who have entered illegally and do not have permission to be in the UK.

The Government will continue to work with the United Nations High Commissioner for Refugees (UNHCR) to ensure our resettlement schemes are accessible and fair, resettling refugees from countries where the need is greatest. We will ensure a broad range of those in need of resettlement can access it, including groups such as persecuted Christians. We will continue to resettle those refugees identified by the UNHCR as in need of resettlement and we will work with the UNHCR to ensure that refugees referred to the UK for resettlement have the best chance of thriving in the UK.

The Government will pilot an Emergency Resettlement Mechanism, starting in the autumn, to enable refugees in urgent need to be resettled more quickly so that life-saving protection is provided in weeks rather than months. Beyond this, the Government will provide more flexibility to help people in truly exceptional and compelling circumstances by using the Home Secretary's discretion to provide rapid assistance.

We will support the integration of those arriving through our safe and legal routes so that individuals have the best chance of thriving in the UK. This will include growing the Community Sponsorship Scheme and an enhanced integration support package to enable refugees in England to become self-sufficient. Relevant funding will be provided for refugees in Scotland, Wales and Northern Ireland. The Government has also established a £14 million Refugee Transitions Outcomes Fund to pilot integration projects.

Family reunion rights including for Unaccompanied Asylum-Seeking Children

The consultation demonstrated broad support for reuniting children with family members in the UK, with an expectation that unaccompanied children would be treated equally regardless of where they are travelling from. However, there were some concerns about the UK Immigration Rules on these matters being more restrictive compared to the EU mechanism under the Dublin III Regulation (despite the latter being about transfer arrangements between EU Member States in the context of examining asylum claims, rather than rules on grants of leave to enter and remain in the UK). Consultation feedback included views that any process for family reunion should be accessible, transparent, quick and efficient, with the requirement for some checks and balances including ensuring family members in the UK are self-sufficient.

Government response

The Government have carefully considered the extent of the UK's legal obligations including under Article 8 of the European Convention on Human Rights (ECHR) and, we consider that our existing family reunion policy is compliant with those obligations. Indeed, Article 8 does not require us to facilitate all family reunions. However, we recognise that some applicants do not meet the current Rules and, in some cases, there will be exceptional circumstances which warrant a grant of leave. To strengthen our existing policy, we will provide additional clarity in the Immigration Rules on the exceptional circumstances in which we would grant leave to a child seeking to join a relative in the UK.

Ending anomalies and delivering fairness in British Nationality Law

The consultation showed broad support for the reforms being proposed to correct historical anomalies in British Nationality Law. Stakeholder and public respondents to the consultation questionnaire said proposed reforms to British Nationality Law will be effective in correcting historical anomalies, including giving the Home Secretary discretion in certain cases. There were some concerns about the registration route for stateless children, albeit in this instance stakeholders held more mixed views than the public.

Government response

The Government will take forward the reforms set out in full. The proposal to change the registration route for stateless children who were born in the UK and have lived here for five years is not intended to affect refugee children or those who cannot reasonably acquire their parents' nationality.

Disrupting criminal networks and reforming the asylum system

The consultation has shown that there is public support for the need to disrupt the criminal activity that underpins illegal migration, but there was some uncertainty about whether the reforms would achieve this. There were concerns from stakeholders and the public as well as those with experience about the overall differentiated approach to asylum, in addition to proposals around inadmissibility, setting clearer standards for establishing a well-founded fear, and changing the definition of a ‘particularly serious crime’ for the purposes of removing refugees who commit crimes.

Government response

The Government recognises the strength of feeling reflected by many of the respondents. However, we also recognise that urgent action is needed to reform the current system. Central to that system is that those seeking asylum do so in the first safe country they reach, or to make use of safe and legal routes to the UK. We have considered whether changes to the proposed policies on inadmissibility and differentiation would be appropriate in light of the concerns raised. Given these reforms are designed to affect those who travel through safe third countries to reach the UK, or (additionally, in the case of differentiation) overstay their visa and lodge late asylum claims, as well as being a deterrent to those considering making a dangerous journey to the UK, we do not propose any changes to the underlying policies. However, the Government will ensure that individual circumstances are always considered sensitively and thoroughly by caseworkers and the relevant clauses in the Bill provide this flexibility. Furthermore, the Government will also ensure that asylum seekers and failed asylum seekers housed in accommodation centres are provided with a full package of support that ensures their essential living needs are met while their claim for protection is being decided. We will engage further on the design of the support package through the established forums used to consult stakeholders on support matters.

The Government has taken note of the specific, potential impacts arising from some of the policies, including how the well-founded fear test may affect those who share protected characteristics. We have considered how we can utilise training of and guidance for decision-makers to mitigate any differential impacts and ensure that these groups are adequately supported to evidence their claim to the relevant standard.

Whilst the Government notes the concerns regarding the proposed definition of a ‘particularly serious crime’ for the purposes of Article 33(2) of the Refugee Convention, there are some serious offences which will be captured by the revised threshold. Furthermore, the existing provision has an in-built mechanism whereby an individual’s ongoing threat to the community in the UK is also assessed. Only where an individual has committed a particularly serious crime and constitutes a danger to the community in the UK will their removal be considered.

On age assessment specifically, the Government has heard and considered the feedback from those consulted and recognises the complexities of the reforms. Whilst many of those consulted expressed concern at the reforms, there was also some stakeholder support for these measures, notably around creating a right of appeal for age assessments and enabling local authorities to make referrals to the proposed National Age Assessment Body. Given the

importance of these reforms, and the continued commitment to safeguarding children, the Government will undertake further work to define the placeholder Bill provisions as it passes through Parliament.

Streamlining asylum claims and appeals to make the system fairer and faster

The majority of public and stakeholder respondents were sceptical that these reforms will make the asylum and appeals system faster and fairer. However, public focus group participants supported speeding up processes such as faster removals or providing people with certainty more quickly. There was all-round recognition, including from stakeholders, that the proposals to provide more generous access to legal advice will be effective.

Government response

Whilst the Government acknowledges the sentiments raised in consultation feedback, we believe that system reform is needed in this area. Our reforms cannot happen in isolation and need to include the end-to-end appeals and judicial processes.

The Government has listened to the feedback on proposals for a new accelerated detained appeals route. We remain of the view that it is right to introduce a faster timeframe for suitable cases, through the accelerated detained appeals route, so that some appeals are decided more quickly in the interests of a more efficient asylum and removal process. We have, however, built in safeguards to ensure that this is not at the expense of fairness and access to justice, and that the system is flexible.

On the provision of legal aid, the Government has considered appropriate remuneration to ensure sufficient market capacity. The proposals have been adapted to allow more flexibility in the number of hours and how they are used, to better reflect the needs of individual clients. We have also reflected on the remuneration arrangements, with payment being made at hourly rates to properly reflect the work that is done. The Government will continue with its proposal to expand legal aid to include advice on modern slavery referral (the National Referral Mechanism) where individuals are receiving immigration advice, to ensure that potential victims of modern slavery are identified and supported at an early opportunity.

We will introduce an evidence notice and a 'slavery and trafficking' information notice to support individuals to bring all relevant information and evidence to fully assess their situation. In addition to this, we will create a Priority Removal Notice which will be accompanied by a legal aid offer to support individuals to bring forward all matters relevant to their immigration status. We will create an expedited judicial process to deal with legal challenges which follow 'late' claims.

The Government will proceed with the proposal to introduce a 'Good Faith' requirement, but with some changes to the proposed policy to ensure that claimants will not be penalised for the conduct of their legal representatives. In tackling where legal representatives do not act in good faith, the Government has considered options for sanctioning behaviour that unreasonably disrupts and delays the work of the Tribunals. This would involve proposing that the Tribunal Procedure Committee (TPC) make procedure rules, to ensure that judges consider issuing Costs Orders to parties who behave unreasonably, as well as giving a new power to the Tribunal to allow it to recoup costs from a party that wastes Tribunal resources. The Tribunal's use of this new power will be subject to new Tribunal rules on which the TPC will need to consult in the same way as for other rules.

A new system of 'Fixed Recoverable Costs' would provide additional certainty to both sides by setting out in advance the amount in legal costs that the winning party can recover from the losing party. We intend to deliver this by proposing that the TPC and Civil Procedure Rules Committee consider making new Rules.

The Government has decided not to establish a panel of experts but intends to take forward work on the joint instruction of experts in immigration and asylum proceedings through proposing changes to the Tribunal Procedure Rules.

Supporting victims of modern slavery while ensuring the system is not open to misuse

The consultation has shown broad support for the reforms. Most stakeholder and public respondents thought the proposals will be effective in building a resilient system, which identifies victims of modern slavery as quickly as possible and continues to strengthen the criminal justice response to modern slavery. However, some stakeholders questioned the inclusion of modern slavery reforms in a bill that largely concerns immigration matters. Stakeholders questioned whether the trauma experienced by victims had been fully considered. Those with experience of modern slavery processes shared some concerns about support services, any potential prolonged mental health impacts, and barriers to presenting reasons for why they need protection, but they were supportive of any proposals that would speed up decision-making.

Government response

The Government is committed to achieving end-to-end reform of the asylum system. The interaction of the modern slavery system with the asylum and immigration systems is an important one. In March 2021, the Government published a report on the issues raised by individuals in detention.¹ It shows that 16% of people detained within the UK following immigration offences in 2019 were referred as potential victims of modern slavery (up from 3% in 2017), and that 99% of these detentions ended in release. This raises legitimate concerns that some referrals are being made late in the process to frustrate immigration action and that legitimate referrals are not being made in a timely way. A further update to this data will be published shortly. This is why the Government is seeking to include measures on modern slavery (where referrals have more than doubled between 2017 and 2020 from 5,135, to 10,613) to identify and protect potential victims, and to prevent any potential misuse.

There was support from the public for clarifying the Reasonable Grounds (RG) threshold, and whilst stakeholders raised some concerns, the Government assesses that this is a necessary measure, aligning the statutory threshold with international obligations and bringing England and Wales in closer alignment with the Scottish and Northern Irish definitions.

Despite reservations from those consulted, the Government also believes that greater clarification is needed for what is meant by 'public order' in the context of withdrawing support and protection from removal for potential victims of modern slavery. It is important that the Government is able to balance its safeguarding duties with considerations of public order. The circumstances of each case will be carefully considered when making decisions about withdrawing support or protections. The Government will continue to engage with partners when operationalising this measure.

There was also general support for proposals around providing temporary leave to remain for potential victims of modern slavery, but there were some concerns raised about what this measure would mean in practice for victims, particularly children. The Government will provide further detail on the application of the measure through the Nationality and Borders Bill and corresponding Immigration Rules.

¹ [Issues raised by people facing return in immigration detention - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/94444/Issues_raised_by_people_facing_return_in_immigration_detention_-_GOV.UK_(www.gov.uk).pdf)

Disrupting criminal networks behind people smuggling and deterring illegal migration

The consultation has shown that most respondents oppose the reforms in this chapter. Stakeholders and public respondents question whether the proposals will deter illegal entry and suggest that making it more difficult to enter the UK by illegal means could prevent asylum seekers in need of protection from seeking help.

However, in public focus groups, participants welcomed a focus on those who facilitate illegal migration and people smuggling. There was also some agreement from those who participated in the consultation that there should be a penalty for Foreign National Offenders (FNOs) who re-enter the UK after deportation. There were also concerns that increased sentences could over-stretch the criminal justice system and increase costs.

Stakeholders welcomed the review of the current vehicle security Code of Practice and looking to articulate the required standards more clearly. There was also support for the existing Accreditation Scheme; greater enforcement against repeat offenders and those with unpaid civil penalty debt; and to increase the Clandestine Civil Penalty amount from the current £2,000 per clandestine entrant.

Government response

The Government will set out further details during the passage of the Nationality and Borders Bill to further develop the reforms in these areas, including around operational processes and explaining how the Electronic Travel Authorisation (ETA) scheme, which is a core component of our wider universal permission to travel requirement, will operate and secure the UK border.

The Bill will introduce a new civil offence of the failure to adequately secure a goods vehicle, whereupon the Secretary of State may impose a civil penalty. This will be supported by Regulations which specify the actions to be taken to adequately secure a goods vehicle. Before making these Regulations, the Secretary of State must consult with appropriate persons in line with the required statutory duty, and this will include further engagement with the sector in early 2022.

Enforcing removals, including Foreign National Offenders (FNOs)

The consultation has shown that most stakeholder and public respondents think the reforms will be ineffective in promoting compliance with our immigration laws or ensuring the swift return of those with no right to remain in the UK. Some public focus group participants welcomed efforts to remove those with no right to be in the UK more quickly; however, they felt more detail was needed, including on how the intended reforms would work in practice. Some participants also felt a minimum notice period for migrants to access justice before enforced removal was important, and a fundamental right. Feedback also highlighted that some respondents felt some of the proposals were deliberately vague.

Government response

The Government is committed to reforming the end-to-end system. Whilst noting the concerns raised in the consultation, the Government believes, on balance, that proposals in this area should continue to be pursued.

The processes for enforcing removals, including for FNOs, is central to this. On notice periods, the Government is looking at how best to ensure individuals are provided with information on how to access legal advice appropriately.

Equalities considerations

Feedback from the consultation is that the areas of intended reforms present disproportionate impacts and present the greatest equalities considerations on individuals protected by the Equality Act 2010. These impacts were felt most acutely in the feedback relating to Protecting those fleeing persecution, oppression and tyranny and Streamlining asylum claims and appeals to make the system fairer and faster. Several stakeholders flagged that whilst the reforms may have an impact on all protected groups, women, children and LGBT individuals are most likely to be affected, as well as those who have experienced trauma, including where there are mental health issues. Respondents felt that this will make it harder for them to access safe and legal routes into the UK, potentially displacing them into more dangerous routes. Similar concerns were highlighted in relation to the overall differentiated approach to asylum and admissibility. These are vital considerations in policy changes going forward.

The Government has completed an Equality Impact Assessment (EIA) in line with its public sector equality duty, which it will keep under constant review. The EIA is a document which sets out the consideration of a wide range of data and evidence, including the analysis from the consultation on the New Plan for Immigration. The EIA sets out an assessment of protected characteristics that are relevant to meet our public sector equality duty, namely age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race (colour; nationality; and ethnic or national origins); religion and belief; sex; and sexual orientation. Our analysis is that with appropriate mitigation and justification, any impacts would not amount to unlawful indirect discrimination. Mitigating actions will include appropriate training of relevant staff, including first responders, and in particular social workers and carers, who will assist in the identification of vulnerable individuals, clear guidance to operational teams on areas such as interviewing and ensuring someone will be able to choose the gender of their interpreter and interviewer.

The EIA will continue to be developed as the Bill passes through Parliament and as policies are developed further. It will be an ongoing assessment process through continued stakeholder engagement and will be used to inform the parliamentary scrutiny process, as well as implementation and operationalisation of the policies.

Annex A: Demographic breakdown of responses from members of the public who participated in the online questionnaire

| Demographic characteristic | No. of responses ² |
|---|-------------------------------|
| Gender³ | |
| Male | 2,446 |
| Female | 3,598 |
| Age | |
| 16 - 34 | 1,433 |
| 35 - 64 | 2,647 |
| 65+ | 2,283 |
| Ethnicity | |
| White British/Irish/Other | 5,657 |
| Mixed/multiple ethnic groups | 192 |
| Asian/Asian British | 97 |
| Black African/Black Caribbean/Black British | 51 |
| Other ethnic group | 100 |
| Location | |
| England | 5,771 |
| Scotland | 390 |
| Wales | 238 |
| Northern Ireland | 47 |
| Outside the UK | 86 |

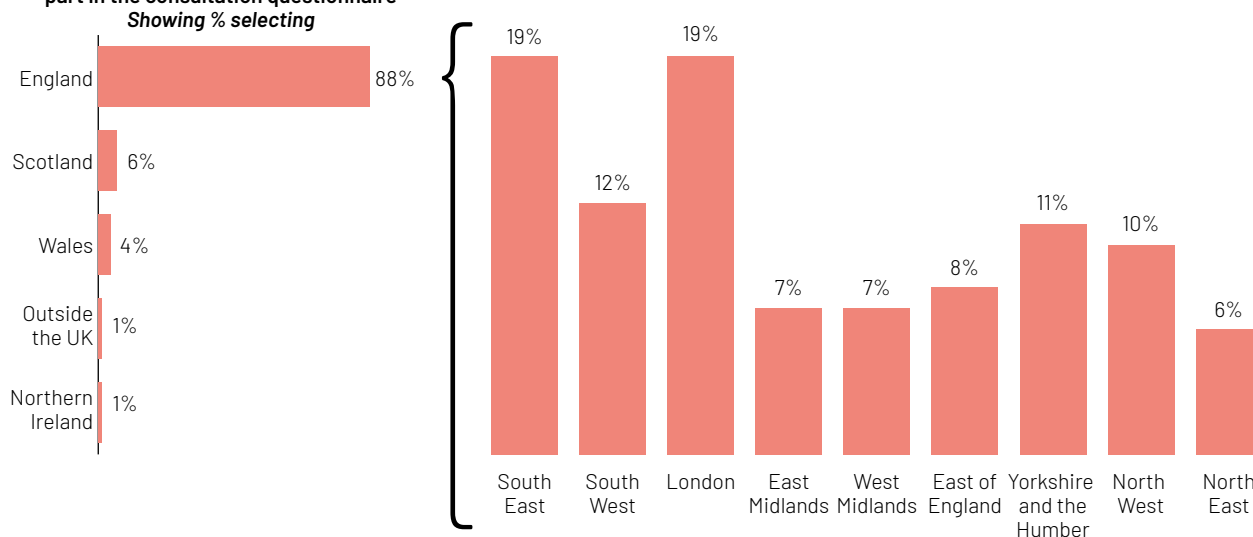
² Figures do not necessarily sum to the total number of respondents identifying as members of the public. All questions in the consultation questionnaire were voluntary and not all respondents chose to submit demographic information.

³ Respondents were asked 'Which of the following describes how you think of yourself?'. The options for answering this question were: 'Male', 'Female' and 'Other'. In total, 86 individuals responded to this question as 'Other', but there were a number of respondents who chose not to answer the question.

| Demographic characteristic | No. of responses ² |
|---------------------------------|-------------------------------|
| Education | |
| No formal qualifications | 88 |
| GCSE and below | 361 |
| A level or equivalent | 462 |
| Bachelor's Degree or equivalent | 2,356 |
| Master's | 1,721 |
| PhD | 572 |

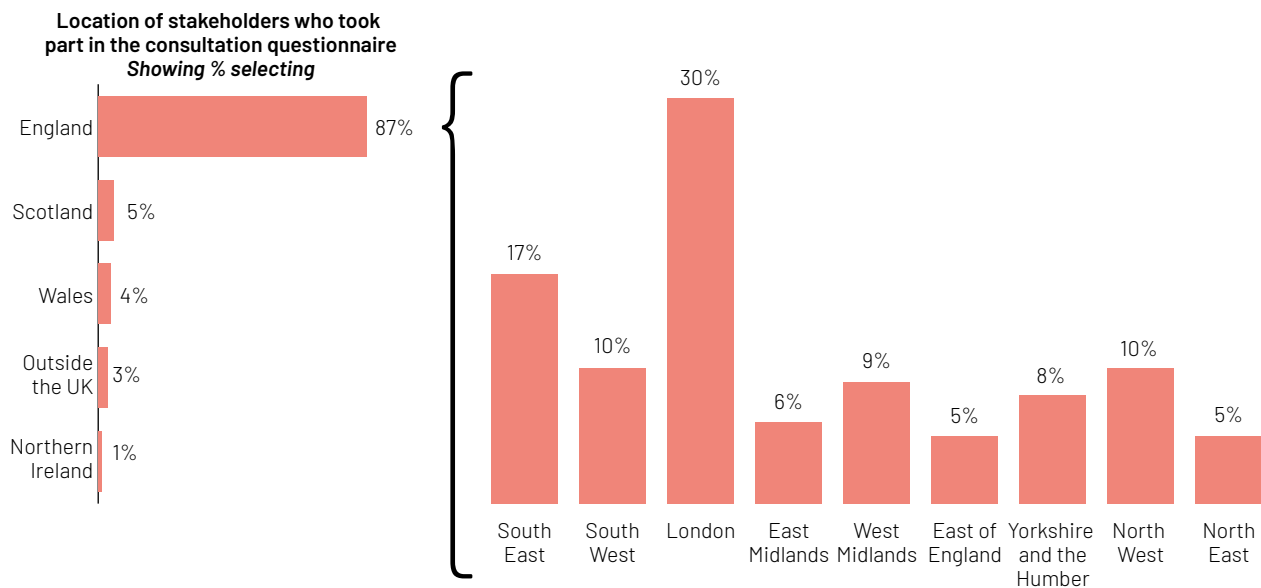
The majority of public respondents live in England – and of those around half live in London and the South

Location of members of the public who took part in the consultation questionnaire

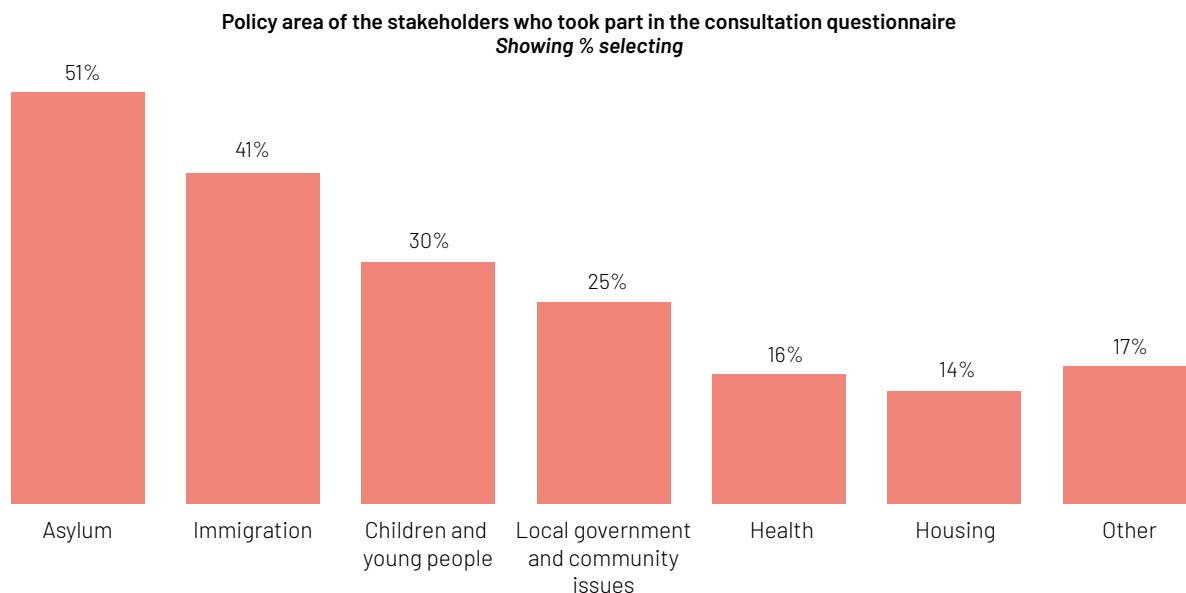


Annex B: Demographic breakdown of responses from stakeholders who participated in the online questionnaire

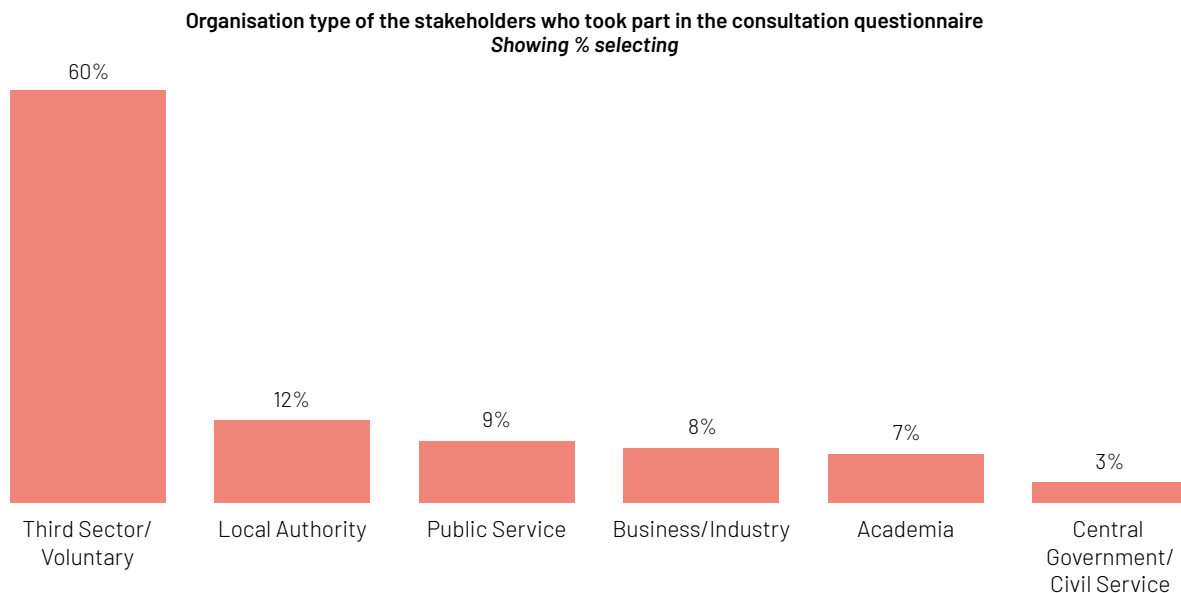
The majority of stakeholders who responded to the consultation questionnaire are in England – and of these 3 in 10 are based in London



Half of stakeholders who submitted a response to the consultation questionnaire work in asylum and immigration policy areas



3 in 5 stakeholders who submitted a response to the consultation questionnaire work in the third sector or for voluntary organisations



Annex C: Demographic breakdown of responses from public focus group participants

The focus groups were split by socio-economic group (SEG), age and location:

| | Aged 18-34 | Aged 35-54 | Aged 55+ |
|----------|---|--|---|
| SEG ABC1 | Participants drawn from Scotland and the Midlands | Participants drawn from London and the North of England | Participants drawn from Midlands and Wales |
| SEG C2DE | Participants drawn from London and Wales | Participants drawn from South East of England and Northern Ireland | Participants drawn from North and East of England |

Across the sample, participants were recruited to ensure a spread by:

- **Gender**, with an equal split of men and women in each group;
- **Ethnicity**, with a minimum of 1 x ethnic minority participant in each focus group, and 10 ethnic minority participants across the sample (recruited to be reflective of the make-up of the local population of each group);
- **Living situation**, with a spread by marital status and of parents and non-parents across the sample;
- **Health and disability**, with 7 participants across the sample who have a long-term illness, health problem, disability or impairment that limits their daily activities.

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