

## Proposed reforms to the social housing allocation system risk compliance with the Human Rights Act

At the British Institute of Human Rights (BIHR) we have serious human rights concerns about the Department for Levelling Up, Housing and Communities (DLUHC) proposed reforms to the social housing allocation system. In the below document we set out our concerns and the concerns of our Lived Experience Committee in two parts:

1. Our concerns with the lack of democratic process, importantly that the Department appears to have failed to ensure they hear from people whose rights may be impacted by these changes.
2. Our concerns that the following reforms set out in the consultation:
  - proposed UK connection test (Section 5);
  - proposed local connection test (Section 6); and
  - proposed grounds for eviction (Section 10) are not compatible with the Human Rights Act (HRA). We are particularly concerned about the implications for the [right to a fair trial \(Article 6, HRA\)](#), the [right to respect for private and family life, home and correspondence \(Article 8, HRA\)](#) and the [right to be free from discrimination \(Article 14, HRA\)](#).

*“Vulnerable groups, people with health conditions, mental health issues, disabilities, language barriers, digital exclusion, people from Black and Ethnic Minoritised communities and those struggling with poverty, have not had sufficient or have very low representation in this consultation process. As a result, people from these groups, with lived experience, who should have been at the forefront of the consultation design process, have very little or negligible input in the recommendations that directly affect their day-to-day lives and future.” BIHR’s RITES Committee member*

### About the British Institute of Human Rights:

The British Institute of Human Rights (BIHR) is a charity working in communities across the UK to enable positive change through human rights. We work to support people with the information they need to benefit from their rights; with community groups to advocate for better protections in their areas or interest groups; and with staff across public services to support them to make rights-respecting decisions. This enables us to call for the development of national law and policy which truly respects people’s experiences of their human rights. This submission is supported by [our RITES Committee](#) (standing for real-life insights, tips, experiences and stories) made up of experts by experience.

The British Institute of Human Rights is a registered charity (1101575) and registered company (4978121).

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## **PART 1: Our concerns with the lack of democratic process**

“The Government has failed to take appropriate steps to ensure that the consultation was widely publicised to reach relevant stakeholders, including front-line voluntary and charity sector professionals working directly with people living in or on the waiting list for social housing allocation.” BIHR’s RITES Committee member

BIHR are concerned that this consultation limits participation, transparency, regulatory quality and accountability. Specifically, we are concerned that the consultation has been written to gather Local Authority viewpoints, limiting the participation of those who will be directly impacted by the reforms and limiting space for reflection and alternative perspectives. Notably:

- The questions are not addressed to the public in a concise way that is easy to interpret or understand.
- The phrasing of ‘do you agree...’ makes the questions leading and having no space for further comments prevents reflection or further views being shared.
- Questions two and nine of the online consultation fail to allow for thorough responses if you answer ‘no’ in objection to the proposed connection or local tests being introduced. This prevents any reasoning or further explanation being considered.
- The questions within the online consultation cover less than 50% of the total consultation questions per section of the reform.
- There is no follow-up information for those who wish to have their voices heard outside of this consultation.

“There seems to be a lack of transparency due to the lack of efforts in ensuring public awareness and participation in the consultation itself.” BIHR’s RITES Committee member

BIHR’s human rights recommendations to DLUHC:

1. Extend the consultation process to ensure broader participation of individuals and organisations with the ability to present their initial concerns with the reform in a more evidential and accessible way.
2. Ensure all information retained through this consultation is used and considered alongside opinions from organisations in the sector in addition to organisations who directly support individuals in social housing.

3. Embed a human rights based approach (HRBA) as a measurable indicator of human rights risks within this reform whereby ensuring there is a rights analysis for all decisions and actions. BIHR would suggest [PANEL](#) (P: participation, A: accountability, N: non-discrimination, E: empowerment, L: legality) as the approach.

*“As always, the main stakeholders, i.e. people who access social housing or are in need of this, are somehow failed to be a part of the consultation process.”* BIHR’s RITES Committee member

## **PART 2: Our concerns that the reforms are not compatible with the Human Rights Act (HRA)**

The HRA is the main human rights protection in the UK and exists to ensure that everyone’s rights are respected. The legal duties imposed by our HRA require that individuals’ interactions with public bodies are conducted in a way that respects and protects individuals’ full enjoyment of human rights. Public authorities, such as the DLUHC, are referred to as duty-bearers and individuals as rights-holders. In the context of social housing reform, the HRA should play a crucial role in ensuring that any changes or policies comply with human rights. We are concerned that this is not the case with these reforms.

This consultation is set to inform secondary legislation under Part 6 of the Housing Act (1996) and due to be passed in Spring 2024. [Section 3 of the HRA](#) requires that secondary legislation be interpreted and applied compatibly with the HRA. It means that any UK laws must be applied in a way which respects our human rights, as far as it is possible to do so. Often referred to as “the interpretive obligation”, this applies to the courts but also to public authorities, who have a legal duty to respect, protect and fulfil human rights in everything they do ([Section 6, HRA](#)). This is a key form of accountability that we believe DLUHC has failed to consider in this reform.

**“This means that incompatible subordinate legislation must simply be ignored ... There is nothing unconstitutional about a public authority, court or tribunal disapplying a provision of subordinate legislation which would otherwise result in their acting incompatibly with a Convention right, where this is necessary in order to comply with the HRA. Subordinate legislation is subordinate to the**

requirements of an Act of Parliament. The HRA is an Act of Parliament and its requirements are clear.”

## [R v Secretary of State for Work and Pensions \(2019\)](#)

BIHR have seen first-hand the crucial role the HRA plays in making rights real for people across the UK and therefore how important it is to ensure that any work to develop human rights protections does so by building on the HRA as a foundation.

Our specific concerns re incompatibility with the HRA

### Section 5

The UK connection test under Section 5 fails to assess individuals on a case-by-case basis risking the right to private, family life, home and correspondence (Article 8, HRA) and the right to be free from discrimination (Article 14, HRA)

The requirements for an individual to be able to demonstrate a connection to the UK for 10 years before being eligible to qualify for social housing seems to be challenging to quantify. BIHR supports the proposal that those who arrive as part of a safe and legal resettlement scheme will be exempt from the UK connection test. However, we believe the Department has failed to consider how application of this UK connection test in practice will ensure compliance with the [right to private, family life, home and correspondence \(Article 8, HRA\)](#) and the [right to be free from discrimination \(Article 14, HRA\)](#). Blanket application of criteria such as this 10-year requirement does not take into account the requirements of the HRA that rights are assessed on a case-by-case basis.

Further to this, Article 14, the right to be free from discrimination may be risked where someone is treated less favourably than someone else in the same situation applying to social housing. The right may also be risked where there is a failure to treat an individual differently when they are in a very different situation to others, for example, where adaptations have not been implemented in the home of a disabled resident.

We are concerned that those granted asylum in less than 10 years, those with dependants who were born in the UK, those individuals who can demonstrate

community – religious or otherwise to an area within the local authority catchment appear to have not been considered in the reforms of this test.

We are concerned about the tagline of “British homes for British workers” surrounding this consultation. This suggests the need to make it more difficult for migrants to access social housing. Figures from last years’ research briefing show that [90% of lead lettings for social housing are awarded to British nationals.](#) It’s crucial to flag with DLUHC that the legal protection under the HRA applies to anyone present in the UK, irrespective of their citizenship or legal status. This reinforces our concern that “British homes for British People” and the accompanying proposals may be incompatible with human rights law.

Local authority staff must respect, protect and fulfil human rights across all decisions and actions irrespective of an individual’s national origin. If staff are not meeting their existing legal duties under the HRA, there is a duty on the public authority directly to properly investigate the reasonings and put measures in place to rectify this through both the Ombudsman and the courts.

*“Some of the recommendations fail to address the inequality and challenges faced by these groups of people.” BIHR’s RITES Committee member*

## Section 6

The local connection test (Section 6) risks the right to private and family life, home and correspondence (Article 8) and the right to be free from discrimination (Article 14)

BIHR is concerned that stating a connection to a local borough for more than two years risks the family life and community components of Article 8, disregarding an individuals’ own belief of the community they associate with when applying for eligibility to an area.

The right to private and family life ensures that any restriction on housing allocations which has the potential of impacting an individuals’ contact with family, their autonomy, well-being and/or participation in a community must be deemed lawful, legitimate and proportionate.

With regards to family life, the local connection test could render residents ineligible to apply in a particular borough of London. This could require them to apply in the neighbouring borough to which they have a connection to based on the Department’s list (such as employment), but this may result in an individual

being allocated a property that is far away from family members. This can include immediate family, but also foster parents, friends, or partners as there is no definition of family in the HRA.

Equally, people seeking asylum may only have a tie to a local area due to their previous Home Office asylum accommodation which is provided on a no-choice basis. This could interfere with the right to autonomy under Article 8. The Department has also failed to consider the intricacies of individuals who may have been homeless and sought refuge in a particular borough for a length of time before moving to an alternate borough – perhaps for their own personal safety – and who are subsequently going to be ‘bounced back’ to the start of a two-year qualification period in another borough.

There is no one size fits all approach to applying human rights to housing law and this makes blanket approaches like those suggested in this reform unworkable upon implementation and in practice. BIHR appreciate that if a list becomes overly prescriptive this may lead to a fault in operationalising reforms practically, however it is crucial that any decisions are made compatibly with the rights in the HRA and we seek reassurance of how this will happen in practice.

As with the UK connection test, we have concerns with the implications for the right to be free from discrimination through the proposed UK connection test. We’d like to better understand what DLUHC will do to ensure decisions around connections are not discriminatory in any way.

BIHR welcome the Department’s commitment to maintain existing exemptions from the local connection test for care leavers and domestic abuse victims.

“Section 6, the local connection test, fails to take into account the challenges faced by women and single mothers fleeing abuse, placed at a temporary accommodation and then not being able to be on the housing register, because they may have been in the area for less than 2 years. These women along with many other vulnerable adults, children and young people do not have access to a safe accommodation in accordance with the Human Rights Act. Constantly moving to new areas also affects their overall mental well-being and right to family life under the Human Rights Act.” BIHR’s RITES Committee member

“Certain groups e.g. people with multiple and complex needs are often excluded from safe social housing due to a lack of support from housing and mental health services. A lot of these people are also constantly moved in different areas where they access

temporary accommodation/hostels and are not able to build local connections due to the rigid rules.” BIHR’s RITES Committee member

## Section 10

Grounds for eviction (anti-social behaviour and terrorist offences) (Section 10) risks the right to a fair trial (Article 6).

BIHR wish to only comment on the matter of anti-social behaviour (ASB) within this section and how this reform has failed to consider individual circumstances and an individual’s [right to a fair trial \(Article 6\)](#).

Under Article 6 an individual has a right to a fair trial if a public authority is making a decision that has an impact on their civil rights. This includes ensuring they are given all the information relevant to them. We also recommend the Department adopts a human rights based approach to these reforms where necessary. It is a fundamental principle of human rights that those affected by policy decisions should be included in decision-making processes.

A [2022 report produced by the Housing Ombudsman](#) surrounding noise complaints found fundamental unfairness emphasising that most noise reports concern household noise rather than ASB. Similarly, as a [2014 report by London Councils](#) has illustrated, many instances of ASB may involve someone with a mental health condition. This should be considered in this reform in terms of how ASB will be considered in relation to eviction. There is a risk that this could also give rise to a restriction on the right to be free from discrimination (Article 14).

**“what a fair trial requires cannot be the subject of a single, unvarying rule or collection of rules. It is proper to take account of the facts and circumstances of particular cases...it is the whole process and the way it actually works in the individual case that have to be judged for the purposes of Article 6”** ([DG v Secretary of State for Work and Pensions, 2010](#))

The court or Ombudsman also needs to consider the different needs of people with disabilities without affecting their right to fair trial. In [Shtukaturov v Russia](#), the Court considered the Article 6(1) impact of a person being found not to have capacity to participate in court proceedings. The Court said, “In the context of Article 6 of the Convention, the Court assumes that in cases involving a mentally ill person the domestic courts should also enjoy a certain margin of

appreciation... However, such measures should not affect the very essence of the applicant's right to a fair trial as guaranteed by Article 6 of the Convention."

A resident abandoned a property due to mental health challenges. A notice was served by a Local Authority but then they failed to apply for possession or for a court date to be set. This risked procedural failings under Article 6 as the individual was unable to be heard. The principles around a right to fair trial should be at the heart of housing law and all those operating within the work. An example from BIHR's direct work in social housing services.

BIHR's human rights recommendations to DLUHC:

1. Set clear guidance on how the UK connection and local test will be assessed on a case-by-case basis to avoid infringing the right to private, family life, home and correspondence and the right to be free from discrimination.
2. The exception for "special circumstances" should be amended to include a non-exhaustive list which demonstrates that households should be assessed on a case-by-case basis, ensuring compatibility with human rights and non-discrimination.
3. Establish a list of safeguards in the case of evictions that are rights-respecting under HRA. If an eviction is lawful, legitimate and proportionate, the individual must have effective recourse to local authority support; evictions should not result in an individual or household becoming homeless or vulnerable to human rights violation.
4. Any challenges of eviction must be accurately risk assessed within a matrix framework considering the level of detriment to the individual, level of the dispute and the severity of harmtr caused in the community.
5. Human rights capacity building training must be provided to all public officials responsible for implementing these reforms.

Conclusion:

There is such an importance of rights being clear within housing laws and policies and it is clear through this consultation that human rights



considerations have not been made by the Department. Under the Government's own [Consultation Principles 2018](#) sections D and F emphasise the importance of consultations being only part of a process of engagement as well as being targeted to a full range of groups for greater representation. We believe the UK Government needs to listen to individuals with lived experience in social housing to amplifying their voices in deciding whether further legislation in this area is the solution. If so, this should also include how such legislation should be designed, implemented and enforced to best ensure the rights of those accessing social housing.

The HRA is an incredibly powerful tool which has the power to create a culture of respect for human rights in the UK. Our work supporting public bodies to implement existing human rights law has demonstrated that simply adding more changes to an already complex piece of legislation is not always the solution.

Our hope for what can happen next

For these proposed reforms to be effective BIHR feel that this consultation period must be reviewed and embedded with human rights law before moving to secondary legislation. The Department must focus on the reality of social housing in the UK rather than rushed reforms as we approach a General Election. As with all reforms, the implementation and practicalities must be considered for all public authorities who will be involved. The implementation process should support individuals in housing to know their rights as well as support operational staff to understand the human rights legislation. Over the last year we have trained over 3,000 staff working in public authorities, many of whom have never received human rights training or have never been told about their duty to uphold human rights before.

BIHR hope that the Department will work with our organisation to embed the HRA into this reform as well as other organisations in the sector to truly prioritise the implementation of a culture of respect for human rights.

**“The Panel strongly recommends to Government, for its consideration, a focus on civic, constitutional education as integral to ensuring that... our human rights framework, as with the rest of our framework develops and is refined to ensure it continues to meet the needs of the society it serves.**

**Independent Human Rights Act Review**

