

Liberty's report stage briefing on the Immigration Bill: driving offence and powers

Report Stage consideration of the Immigration Bill will continue on **Tuesday 15th** and **Monday 21st March**. The Bill includes a package of proposals which would facilitate discrimination, increase exploitation and destitution and make rights protections practically inaccessible to many.

Clause 42 creates an offence of driving whilst in the UK unlawfully, attracting a maximum custodial sentence of 51 weeks and/or a fine. The Bill provides for vehicle seizure where a person is arrested and for a court to order forfeiture on conviction. The implications of this provision can only be fully understood when considered in conjunction with search and seizure powers. Clause 41 provides a power for an authorised officer (police, immigration officers or third parties designated by the Secretary of State) to search premises – including a vehicle or residence an individual occupies or is present in when encountered – where the officer has “*reasonable grounds for believing*”: (i) an individual is in possession of a driving licence and is not lawfully resident; and (ii) the licence is on the premises. Authorisation should be sought from a senior officer where “*reasonably practicable*”. A further power in similar terms would allow police, IOs and designated third parties to search an individual for a driving licence.¹ The Bill also makes provision for seizure and retention of licences.²

Following a robust Committee stage debate, the Government has now tabled an amendment to the Bill which would provide for a defence to the offence of driving whilst unlawful in cases where an individual is not aware that they are unlawfully in the UK. Strict liability offences can cause serious injustice and the insertion of a defence is a positive step, however, this amendment does not address Liberty's core concern about the impact of clauses 41 and 42.

¹ Where the officer has reasonable grounds for believing the person is not lawfully resident, is in possession of a licence and that licence may be concealed on the person.

² The driving licence must then be passed on to the Secretary of State. Where the licence is not ultimately revoked it must be returned to the holder.

Liberty's principle concern lies in the enforcement of a criminal offence of this nature in conjunction with evidence that traffic stop powers are already used disproportionately against ethnic minority drivers. The Government has sought to allay concerns about enforcement action by a commitment to draft guidance on the use of powers which will be open to public consultation.

There are stop and search powers on the statute book which are subject to detailed guidance, but – thanks to the nature of the power – continue to operate in a discriminatory fashion. Section 60 of the Criminal Justice and Public Order Act 1994, provides a power to stop and search without suspicion. Statistics produced by the Metropolitan Police at the beginning of the year show that, whilst the use of this power has dropped significantly, for the period January 2015-January 2016, 72% of section 60 stops involved Black people – 242 stops – compared to the 59 stops conducted in relation to White people. Black Londoners make up just 16% of London's population.³ Section 60 is subject to detailed guidance, set out at PACE Code A, including the requirement that "*officers must take care not to discriminate unlawfully against anyone on the grounds of any of the protected characteristics set out in the Equality Act 2010.*"⁴ This clear guidance has consistently failed to prevent discriminatory outcomes.

It is the responsibility of Government and Parliament to ensure that police powers are not structured in a way which invites discrimination. A section 60 search can be triggered without any individual suspicion of criminality, leaving additional room for stereotype and personal prejudice to creep into enforcement decisions. In the same way, section 163 of the Road Traffic Act 1988 gives police a broad power to stop and search without suspicion, or even a particular reason. On the Government's own analysis, the powers set out in clause 41 will be used in conjunction with the lax power set out at section 163 of the Road Traffic Act which already disproportionately affects ethnic minority drivers.⁵ The use of immigration checks in relation to those stopped under section 163 and the creation of a criminal offence of driving whilst in the UK unlawfully will create the clear potential for an increase in the use of traffic

³ Metropolitan Police, *Stops and Searches Monitoring Mechanism*, January 2016, page . Available her

⁴ PACE Code A, paragraph 2.14A.

⁵ HMIC, *Stop and search powers 2: are the police using them effectively and fairly?*, March 2015.

Available at: <https://www.justiceinspectorates.gov.uk/hmic/wp-content/uploads/stop-and-search-powers-2.pdf>. HMIC commissioned a survey of 10,094 members of the public about the use of the power. The survey indicates that 7-8% of white drivers who responded were stopped in their vehicles in the last two years compared with 10-14% of Black and minority ethnic drivers. The survey also suggested that BME drivers were more likely not to be provided with a reason for the stop and are more likely to have their vehicle searched. Yet, white drivers are proportionately more likely than BME drivers to be arrested or prosecuted which suggests that BME drivers are more likely to be stopped for no reason.

stop powers against those of a particular appearance. Even where stops are conducted on an objective enforcement basis, the insertion of routine immigration stops into the process will increase the perception of discrimination. 73% of black drivers already believe police use traffic stop powers to target those from ethnic minorities.⁶

The Government has also committed to conduct a pilot evaluation of the use of enforcement powers set out in clause 41. The Government's pilot evaluation of the right to rent scheme does not inspire confidence that a pilot will be properly conducted or that evidence of discrimination will be taken seriously. The right to rent pilot was carried out over a short, sixth month period, at a quiet time in the rental market. The rental market in the pilot area was further less competitive than that in other areas of the country, most notably London, and quantitative results produced by the survey were seriously undermined by the fact that the tenant group was largely comprised of students. Despite failures in research methodology, evidence of discrimination was found.⁷ Regardless, the Government intends to implement the national roll-out of right to rent, combined with a significant escalation of the scheme through the introduction of criminal sanctions and summary eviction powers in the present Bill.

The National Black Police Association has expressed real alarm at the potential of clauses 41 and 42 to undermine decades of vital work promoting good relations between police and the communities they serve. The NBPA has warned of:

an unwelcome return to the bad old days of SUS Laws...The potential impact of this legislation will be an undermining of community cohesion and a stirring up of racial

⁶ HMIC, *Stop and search powers 2: are the police using them effectively and fairly?*, March 2015. Available at: <https://www.justiceinspectrates.gov.uk/hmic/wp-content/uploads/stop-and-search-powers-2.pdf>.

⁷ The evaluation accepted that risks of discrimination were identified in focus group discussions which spanned "attitudes towards potential tenants with time-limited leave to remain, with one apparent instance of a tenancy being refused for this reason; a preference for tenants whose right to rent was easy to check...a preference for 'lower risk' tenants (for example people with local accents) for whom landlords felt they need not carry a Right to Rent check." One landlord expressed the view that "if the applicants were White and had a 'Brummie' accent, they didn't need to put them through the [Right to Rent] process" and focus groups of landlords found "a lack of understanding among some landlords (but not letting agents) around the right to rent of prospective tenants with limited leave to remain in the UK". Some of the landlords included in the focus groups suggested that they would not rent to potential tenants with limited as opposed to permanent leave to remain in the UK, including one who gave an example of turning down a tenant because he had eight months leave to remain left on his visa.⁷ A focus group of letting agents produced evidence that some landlords had instructed them not to let to non-EEA nationals or to any 'foreigners'.

*hatred and suspicion between different racial and religious groups....and will result in the police becoming the whipping boy for the immigration service.*⁸

During Committee stage consideration of the Bill, former Deputy Assistant Commissioner of the Metropolitan Police, Lord Paddick, who policed the Brixton riots as a constable in the 1980s, stressed:

*...police will come under pressure to proactively enforce immigration law for the first time in almost 30 years – 30 years after the police service made a conscious decision to back away from proactive immigration law enforcement because of the damage that it was causing to police community relations.*⁹

He was joined in opposition to clauses 41 and 42 by Baroness Doreen Lawrence, who has spent many years campaigning against discriminatory use of police powers. During Committee stage consideration of the Bill, Baroness Lawrence made clear that:

*The Government argue that this new offence is about cracking down on unlawful immigration but it will affect countless British citizens. Inevitably, black and Asian Brits will bear the brunt. The enforcement of this offence, together with lax traffic powers, will lead to discriminatory interference with the right to private life of these citizens.*¹⁰

As observed by the NBPA, the potential of clauses 41 and 42 to foster distrust and disharmony between police and the public is deeply concerning. These provisions will help to reinforce the concern that police are involving themselves in the enforcement of the immigration system, an assumption which has historically inflamed tensions between police and minority ethnic communities. Liberty is disappointed that a Home Secretary who has taken significant steps towards resolving issues of discrimination associated with stop and search, would pursue a measure which will damage race relations and undermine trust in the police.

Liberty urges Peers to vote for amendments 74 and 78 in the names of Lord Paddick and Baroness Sheehan.

⁸ NBPA Press Release, Monday 14th December 2015: <http://www.nbpa.co.uk/wp-content/uploads/2015/12/Final-NBPA-Press-statement-Immigration-Bill-14-December-2015.pdf>.

⁹ Lords Hansard - 1 Feb 2016 : Column 1590.

¹⁰ Lords Hansard, 1 Feb 2016 : Column 1593.