

‘IS IT BECAUSE I’M BLACK?’ REFORMING THE IMMIGRATION ACT’S DISCRIMINATORY STOP AND SEARCH POWERS

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Discriminatory stop and search practices are not confined to the streets, but also extend to Britain’s roads. A new driving offence and vehicle search power within sections 43 and 44 of the Immigration Act 2016 indirectly discriminate against non-white migrants and place Black and Ethnic Minority (BAME) drivers at increased risk of being racially stereotyped and stopped. The section 43 search power relies on the use of an additional vehicle stop power and the indirectly discriminatory nature of the provisions provides an inducement for officers to conduct racially discriminatory stops. Section 163 of the Road Traffic Act 1988, the power to stop a vehicle without cause, will enable these discriminatory stops. Crucially, institutional racism, which informs racially discriminatory police practices, is an enduring epidemic within British police forces and continues to inform misuse of police powers and investigative failures towards BAME people. Therefore, section 163 must be reformed. Furthermore, it has been suggested that, as

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a result of their indirectly discriminatory nature, sections 43 and 44 must be repealed. The reform of section 163 and repeal of sections 43 and 44 is essential in order to ensure BAME drivers are not discriminatorily targeted for stop and search on Britain's roads.

INTRODUCTION

For a citizen of the United Kingdom to be stopped whilst driving their vehicle and subjected to a roadside immigration check because they have been racially stereotyped as an illegal migrant would be upsetting and humiliating. Unfortunately, a new driving offence and corresponding search power intended to target illegal migrants driving in the United Kingdom puts Black and Ethnic Minority (BAME) drivers at a disproportionate risk of facing this experience. The Immigration Act 2016 introduced punitive immigration enforcement measures that allow police to search individuals or their homes and vehicles. Section 44 of the Act creates a new offence of ‘driving whilst unlawfully in the United Kingdom’ which is committed when an individual drives a motor vehicle when they believe, or have reasonable cause to believe, they are not lawfully resident in the United Kingdom.² Section 43 grants ‘officers’ (which refers to police constables, immigration officers or any other person authorised by the Home Secretary) the power to search a person or ‘premises’ (including vehicles) if they have reasonable belief that a person is not lawfully resident in the United Kingdom and in possession of a driving licence.³ At present, sections 43 and 44 are not yet fully in force. From the 31st July 2017 section 43 has partially been in force in Kent and West Yorkshire for the purposes of

² Immigration Act 2016, s 43 and s 44.

³ *ibid.*

a short pilot.⁴ Nonetheless, when in force, these new provisions pose a significant risk of inducing discrimination against BAME drivers.

THE INDIRECTLY DISCRIMINATORY NATURE OF SECTIONS 43 AND 44

For the purposes of sections 43 and 44, a person is not 'lawfully resident in the United Kingdom' if they 'requir[e] leave to enter or remain in the United Kingdom but [do] not have it.'⁵ However, the demographic of people who are able to fit within the category of those who 'require leave to enter or remain in the United Kingdom' exposes the implicit discrimination written into sections 43 and 44. Migrants from countries within the European Union are currently ineligible for this offence as they do not require leave to enter or remain in the UK. The remaining pool of people who could commit this offence therefore, are non-EU migrants who require leave to enter or remain in the United Kingdom.

Looking at data collected in 2015 and 2016, outside of the European Union the largest groups of foreign-born and foreign-nationality migrants to the UK come from predominantly non-white countries such as India, Pakistan and Jamaica.⁶ The vast majority of asylum seekers come to the United Kingdom from African and Asian countries and the majority of applications for asylum come from people of Iranian, Pakistani, Iraqi,

⁴ Liberty and StopWatch, "'Driving While Black": Liberty and Stopwatch's Briefing On The Discriminatory Effect Of Stop And Search Powers On Our Roads' (Liberty 2017) 13.

⁵ Immigration Act 2016, s 44.

⁶ Dr Cinzia Rienzo and Dr Carlos Vargas-Silva, 'Migrants In The UK: An Overview' (The Migration Observatory at the University of Oxford 2017), 6.

Afghan and Bangladeshi descent.⁷ Similarly, the majority of refugees come from predominantly non-white African and Asian countries.⁸ Finally, Syrians comprised the majority of the 5,000 people resettled in the UK in 2015.⁹ What this data indicates is that people from non-white minority ethnic backgrounds are more likely to be suspected of committing the section 44 offence. Therefore, sections 43 and 44 of the Immigration Act 2016 indirectly discriminate against non-white migrants.

In light of the public discourse on immigration before the Act was passed, the indirectly discriminatory nature of sections 43 and 44 is unsurprising. Concerns that illegal migration was posing a threat to domestic security and straining public resources greatly informed the calls to Government for tougher immigration laws in 2015.¹⁰ The concerns were in response to thousands of migrants from African and Asian countries entering Europe after escaping conflict and political and economic instability.¹¹ The Immigration Act 2016 was in part intended to address these concerns.

When the Act eventually passed into law, Immigration Minister James Brokenshire set out how the Act's punitive immigration enforcement measures would address public concerns, stating that:

⁷'Refugees In The UK' (*Full Fact*, 2017)

<<https://fullfact.org/immigration/uk-refugees/>> accessed 16 February 2018.

⁸ *ibid.*

⁹ *ibid.*

¹⁰ Luke Harding, Philip Oltermann and Nicholas Watt, 'Refugees Welcome? How UK And Germany Compare On Migration' (*The Guardian*, 2 Sep 2015)

<<https://www.theguardian.com/world/2015/sep/02/refugees-welcome-uk-germany-compare-migration>> accessed 16 February 2018.

¹¹ BBC, 'Europe Migrant Crisis: Surge In Numbers At EU Borders' (*BBC*, 18 Aug 2015) <<http://www.bbc.co.uk/news/world-europe-33972632>> accessed 16 February 2018.

The message [of the Act] is clear - if you are here illegally, you shouldn't be entitled to receive the everyday benefits and services available to hard-working UK families and people who have come to this country legitimately...whether it is working, renting a flat, having a bank account or driving a car, the new immigration act...will deter illegal migrants from trying to reach the UK...and make it easier for us to remove those with no right to be here.¹²

Evidently the Act was intended to have a deterrent effect as much as it sought to crack down on illegal migrants currently living in the UK. Critically however, it is significant that the Act was passed against the backdrop of large numbers of migrants entering or attempting to enter European countries from African, Middle-Eastern and Asian countries, the majority of whom were of non-white ethnicities. It is not unreasonable to draw a correlation between this and the indirect discrimination towards non-white migrants present in sections 43 and 44 of the Act.

The increased risk of racially discriminatory vehicle stops

Whilst debating the offence and search powers contained in sections 43 and 44 in the Public Bill Committee, Solicitor General Robert Buckland reflected upon the potential indirectly discriminatory nature of the new offence and search power, stating that when the section 43 power is used on drivers:

“...the police will have cause to stop a vehicle; they may then check the driver's circumstances, and then, if the driver is found to be an illegal migrant, the powers we intend to introduce can

¹²'Immigration Bill Receives Royal Assent - GOV.UK' (*Gov.uk*, 13 May 2016) <<https://www.gov.uk/government/news/immigration-bill-receives-royal-assent>> accessed 16 February 2018.

be used. There will not be a misuse of power, as the action taken will be based on information that is already available...Certainly I, and the Government, will not encourage the authorities to randomly target individuals based on any arbitrary judgment about their status.”¹³

However, the indirectly discriminatory nature of sections 43 and 44 becomes even more problematic in light of the fact that section 43 permits officers to search vehicles but does not permit them to *stop* a vehicle. This means that, as set out by the Solicitor General, in practice section 43 will be used in conjunction with other vehicle stop powers.¹⁴ The issue lies therein. Sections 43 and 44 disproportionately target drivers from non-white ethnic backgrounds and order to be used an external vehicle stop power must be engaged. The Solicitor General explained how the section 43 power would be used where an officer stops a vehicle with *cause*. However, police constables are able to stop vehicles without cause. They are authorised to do so under common law and under section 163 of the Road Traffic Act 1988.¹⁵

Section 163 permits any uniformed constable or traffic officer to ‘compel a vehicle to stop’. Failure to do so is an offence.¹⁶ It is a broad power that requires no grounds of suspicion in order to be lawfully exercised. Aside from stating that stops must not be conducted ‘capriciously or in bad faith’, the

¹³ Immigration Bill Deb 3 November 2015, cols 283.

¹⁴ *ibid.*

¹⁵ *R (on the Application of Rutherford) v Independent Police Complaints Commission* [2010] EWHC 2881 (Admin), 5; Ben Bowling and Coretta Phillips, ‘Disproportionate And Discriminatory: Reviewing The Evidence On Police Stop And Search’ (2007) 70 MLR 236, 938.

¹⁶ Road Traffic Act 1998, s 163.

courts have held that random section 163 stops are lawful.¹⁷ Generally, section 163 stops are predicated on the use of intelligence gained by Automatic Number Plate Recognition (ANPR) or from an officer observing a vehicle defect or incident of suspicious driving for example.¹⁸ However, as a broad and suspicion-less power, the use of intelligence or presence of reasonable grounds of suspicion is not necessary for a section 163 stop to be lawfully conducted.¹⁹ An officer could therefore stop a driver on a prejudicial basis (for example because of their race) and, because they do not have to explain the grounds under which a stop was conducted, this in turn makes it difficult for complainants seeking to challenge a discriminatory section 163 stop by way of a complaint or a civil claim.

The reality is that this wide and arbitrary vehicle stop power is disproportionately and discriminatorily used to stop BAME drivers. Survey data collected from Her Majesty's Inspectorate of Constabulary (HMIC) in 2014; a study based on analysis of the British Crime Survey in 2012; a similar analysis of the British Crime Survey in 2000 and anecdotal evidence taken from media accounts and complaints shared with the campaign organisation StopWatch indicate that BAME drivers are more likely to be stopped than white drivers, less likely to receive a reason for their stop and also more likely to have their vehicle searched following the stop.²⁰ 73 per cent of

¹⁷ *R (on the Application of Beckett) v Aylesbury Crown Court* [2004] EWHC 100 (Admin).

¹⁸ Liberty and StopWatch, "'Driving While Black': Liberty and Stopwatch's Briefing On The Discriminatory Effect Of Stop And Search Powers On Our Roads' (Liberty 2017) 1.

¹⁹ *R (on the Application of Rutherford) v IPCC* [2010] EWHC 2881 (Admin).

²⁰ Liberty and StopWatch, "'Driving While Black': Liberty and Stopwatch's Briefing On The Discriminatory Effect Of Stop And Search Powers On Our Roads' (Liberty 2017) 2.

black drivers agree or strongly agree that the police discriminate against ethnic minority drivers for the purpose of traffic stops.²¹

It is important to note that this trend of disproportionate use of vehicle stop powers against BAME drivers has been consistent for the past decade.²² Additionally, section 163 is not the first example of where a broadly drafted, suspicion-less police stop/search power has been used against BAME people at a shockingly disproportionate rate.²³ A shining example of one such power was section 44 of the Terrorism Act 2000. Part of a raft of post-millennium ‘counter-terrorism’ legislation, the power was exceptionally broad and permitted police the power to stop and search any individual without suspicion within a specific area designated by a senior officer.²⁴ For over a decade section 44 remained on the statute book and in that time, if you were a Black or Asian person you were between 5-7 times more likely to be stopped and searched in comparison to white people.²⁵ Furthermore, there was not a single person stopped under this power that was convicted of a terror offence following the stop and search.²⁶ In January 2010, the European Court of Human Rights held that section 44 was in contravention with rights of privacy under Article 8 of the ECHR.²⁷ As Ben Bowling and Corretta Phillips have made

²¹ Liberty and StopWatch, “‘Driving While Black’: Liberty and Stopwatch’s Briefing On The Discriminatory Effect Of Stop And Search Powers On Our Roads’ (Liberty 2017) 5.

²² Ben Bowling and Coretta Phillips, ‘Disproportionate And Discriminatory: Reviewing The Evidence On Police Stop And Search’ (2007) 70 MLR 236, 943.

²³ Terrorism Act 2000, s 44.

²⁴ *ibid.*

²⁵ ‘Section 44 Terrorism Act’ (*Liberty*) <<https://www.liberty-human-rights.org.uk/human-rights/justice-and-fair-trials/stop-and-search/section-44-terrorism-act>> accessed 16 February 2018.

²⁶ *ibid.*

²⁷ *ibid.*

clear, where police are granted high levels of discretion in the use of stop/search powers, many of the resulting stops and searches are conducted on the basis of generalisations and stereotypes.²⁸

The consequence of section 43 relying on the use of additional vehicle stop powers is this: A broad, suspicion-less vehicle stop power that disproportionately targets BAME drivers may be used in conjunction with an indirectly discriminatory search power that disproportionately targets non-white migrants. This risks catalysing discriminatory stops based on ethnicity, exacerbating the already disproportionate rates of BAME drivers stopped by the police under section 163 RTA 1988.

The legal implications of using section 43 after a vehicle stop without cause under section 163 RTA 1988

It is clear that Government has not considered the full implications of these new statutory provisions. In describing what would occur following a vehicle stop with cause, the Solicitor General set out that a section 43 search would be conducted if, following a check of the driver's 'circumstances', a driver is found to be an illegal migrant.²⁹ However, it is not clearly explained what would happen if a vehicle was stopped *without* cause. Where a vehicle was stopped with cause, for example if the driver was driving dangerously or there was cause to believe the driver and/or occupants were in possession of drugs, in the course of questioning the driver an officer could legitimately inquire about and check a driver's 'circumstances' as part of their inquiries. Alternatively, where a vehicle has been stopped *without cause* and without relation to a

²⁸ Ben Bowling and Coretta Phillips, 'Disproportionate And Discriminatory: Reviewing The Evidence On Police Stop And Search' (2007) 70 MLR 236, 939.

²⁹ Immigration Bill Deb 3 November 2015, cols 283.

crime (as is possible under section 163 RTA 1988), the question arises of the legality of an officer stopping a driver to conduct a check of their ‘circumstances’ to determine their legal status for the purposes of a section 43 search. It seems absurd that it would be considered reasonable for an officer to stop a driver without cause and simply conduct an immigration check. It is not immediately obvious how Government intends to counter this issue. Furthermore, as *StopWatch* and *Liberty* state:

‘Even where an officer ultimately recognises that they do not have grounds to conduct a search, the stigmatising, inconvenient and intrusive experience of a combined traffic stop and immigration check has already occurred.’³⁰

A further problematic situation may arise where a uniformed constable has stopped a vehicle under section 163 RTA without cause and on the basis of racially discriminatory stereotypes. In *R (on the Application of Rutherford) v Independent Police Complaints Commission* [2010] EWHC 2881 (Admin), Ouseley J suggested obiter that where a car is stopped unlawfully under section 163, for example because an officer has an intention to act in an ‘oppressive’ manner, this ‘may also mean that no justification exists for the later exercise of...powers to stop and question an individual or search him or the vehicle.’³¹ There is therefore significant ambiguity over what would occur following a stop without cause under section 163 RTA 1988. Considering that the consequence if a

³⁰ Liberty and StopWatch, “‘Driving While Black’: Liberty and Stopwatch’s Briefing On The Discriminatory Effect Of Stop And Search Powers On Our Roads’ (Liberty 2017) 5.

³¹ *R (on the Application of Rutherford) v Independent Police Complaints Commission* [2010] EWHC 2881 (Admin) 5.

stop is discriminatory is that the officer may be acting unlawfully by questioning or searching the driver, this is a serious weakness in how the Government has envisaged the new section 43 search power will be used.

SUGGESTED REFORMS

Preventing discriminatory vehicle stops

In setting out how they intend to safeguard against discriminatory misuse of the section 43 search power, Government has emphasised the fact that section 43 requires reasonable grounds of suspicion and will be governed by PACE Code A, the statutory code of practice for stop and search powers.³² However, where vehicle stops and searches are discriminatorily conducted, the prejudice informing the stop and any subsequent search comes into play at the point the vehicle *stop* power is exercised. In order for Government to satisfactorily safeguard BAME drivers from discrimination as a result of the new section 44 offence and section 43 search power, the focus therefore rests upon reforming section 163.

Section 163 is long overdue for reform. The power is too broad and is evidently vulnerable to discriminatory misuse. However, section 163 continues to remain outside of PACE Code A. This is despite Government publically acknowledging the discriminatory use of the power and its need for reform.³³ Without reform, BAME drivers will continue to be

³² Home Office, 'Immigration Bill: European Convention on Human Rights' (Memorandum by the Home Office, 2015) 12.

³³ 'Stop And Search: Comprehensive Package Of Reform For Police Stop And Search Powers - GOV.UK' (*Gov.uk*, 30 Apr 2014) <<https://www.gov.uk/government/speeches/stop-and-search-comprehensive-package-of-reform-for-police-stop-and-search-powers>> accessed 16 February 2018.

vulnerable to discriminatory stops predicated on racial stereotypes. Critically, this is due to the enduring epidemic of institutional racism within British police forces.

Institutional racism and racially discriminatory misuse of police powers of stop/search

The use of racial stereotypes to inform the discriminatory use of police stop/search powers has been attributed to institutional racism within British police forces. The report following the inquiry into the death of Stephen Lawrence in 1993 put forward an informed definition of institutional racism that has become the accepted definition. It also drew a direct correlation between institutional racism and disproportionate use of stop and search. Stephen was a 19-year-old Black British student murdered by a group of five white youths in an attack that was described in the inquiry report as 'simply and solely and unequivocally motivated by racism.'³⁴ The findings of the inquiry were damning for the Metropolitan Police Service. It found that the MPS had failed the first investigation into Stephen's murder, missing clear opportunities to pursue viable leads and conduct a thorough and effective investigation.³⁵ The report concluded that one reason for the investigative failures was institutional racism which was defined as:

The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimi-

³⁴ Sir William Macpherson of Cluny, *The Stephen Lawrence Inquiry*' (Cm 4262-I, 1999) Ch 1.11.

³⁵ Sir William Macpherson of Cluny, *The Stephen Lawrence Inquiry*' (Cm 4262-I, 1999) Ch 46.1.

nation through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.³⁶

Drawing the connection between institutional racism and discriminatory use of stop and search the report stated that:

Institutional racism is in our view primarily apparent...countrywide in the disparity in "stop and search figures". Whilst we acknowledge and recognise the complexity of this issue and in particular the other factors which can be prayed in aid to explain the disparities...there remains, in our judgment, a clear core conclusion of racist stereotyping'.³⁷

Since the report was published in 1999, institutional racism has continued to inform racially discriminatory police practices and investigative failures.³⁸ In 2015, then Police Commissioner for the Metropolitan Police Service Bernard Hogan-Howe acknowledged that the charge of institutional racism was still valid not only in relation to the Metropolitan Police Service but also Britain as a whole.³⁹ In 2017, a review into the murder of Iranian refugee Bijan Ebrahimi by the Safer

³⁶ Sir William Macpherson of Cluny, *'The Stephen Lawrence Inquiry'* (Cm 4262-I, 1999) Ch 6.34.

³⁷ Sir William Macpherson of Cluny, *'The Stephen Lawrence Inquiry'* (Cm 4262-I, 1999) Ch 6.45.

³⁸ Michael Shiner, 'Post-Lawrence Policing In England And Wales: Guilt, Innocence And The Defence Of Organizational Ego' [2010] 50 *Brit J Criminol* 935, 936.

³⁹ Josh Halliday, 'Met Chief Admits Institutional Racism Claims Have 'Some Justification' (*The Guardian*, 5 Jun 2015) <<https://www.theguardian.com/uk-news/2015/jun/05/met-chief-admits-institutional-racism-claims-have-some-justification>> accessed 20 December 2017.

Bristol Partnership found Avon and Somerset Police and Bristol City Council to have been discriminatory and guilty of institutional racism.⁴⁰ Bijan was killed in 2013 by a white neighbour who had falsely accused him of being a paedophile. For eight years before his death Bijan had made over forty reports to the police that he had been a victim of racially motivated offences including verbal and actual threats upon his life. Avon and Somerset Constabulary failed to help Bijan, repeatedly siding with his abusers and, in the words of the report, '[officially confirmed] his perceived status as the primary perpetrator, rather than the primary victim'.⁴¹ After Bijan's death, two members of the police force were jailed for misconduct in public office and two further constables were dismissed from the force.⁴² In the report, Safer Bristol Partnership referred to the definition of institutional racism put forward by the Lawrence inquiry 18 years earlier. The conclusion that Bijan's death was enabled by institutional racism within Avon and Somerset Police provided a striking reminder that, in the 18 years since the Stephen Lawrence Inquiry report was published, institutional racism remains endemic within British police forces.

Institutional racism informs the racist stereotyping that BAME people, in particular young Black and Asian men, are likely to be involved in criminal activity or in possession of prohibited substances or articles and are therefore deserving

⁴⁰ Safer Bristol Partnership, 'Multi-Agency Learning Review Following The Murder Of Bijan Ebrahimi' (2017) 36.

⁴¹ *ibid.*

⁴² The Guardian, 'Council Officials Face Investigation Over Bijan Ebrahimi Case' (*The Guardian*, 15 Jan 2018) <<https://www.theguardian.com/uk-news/2018/jan/15/council-officials-face-investigation-over-bijan-ebrahimi-case>> accessed 15 January 2018.

targets for frequent stop and search.⁴³ Once sections 43 and 44 of the Immigration Act 2016 are in force, institutional racism will inform the racial stereotyping encouraged by the provisions' indirect discrimination towards non-white migrants. The result will be an exacerbated rate of BAME drivers stopped by the police under section 163 under prejudicial suspicion of being illegal migrants committing a section 44 offence.

The next steps – Reform of section 163 and repeal of sections 43 and 44

In their joint briefing entitled 'Driving While Black', *Stop-Watch* and *Liberty* directly address Government over their concerns that once in force, sections 43 and 44 risk aggravating the rates of BAME drivers discriminatorily stopped by police under section 163. They expressed the concern that because section 163 is already 'an unacceptably broad and lax power' that 'facilitates speculative and discriminatory stops based on ethnicity'⁴⁴:

[t]he existence of an offence of "driving when unlawfully in the UK" may create an additional impetus for officers to use the traffic stop power on the basis of stereotypes.⁴⁵

⁴³ Ben Bowling and Coretta Phillips, 'Disproportionate And Discriminatory: Reviewing The Evidence On Police Stop And Search' (2007) 70 MLR 236, 954.

⁴⁴ Liberty and StopWatch, "'Driving While Black": Liberty and Stopwatch's Briefing On The Discriminatory Effect Of Stop And Search Powers On Our Roads' (Liberty 2017) 5.

⁴⁵ Liberty and StopWatch, "'Driving While Black": Liberty and Stopwatch's Briefing On The Discriminatory Effect Of Stop And Search Powers On Our Roads' (Liberty 2017) 2.

In *Driving while black*, *StopWatch* and *Liberty* put forward a range of proposals to nullify the risk of inviting further discriminatory traffic stops by introducing the new offence and search powers under sections 43 and 44. These include bringing section 163 under the scope of PACE Code A and limiting its use to road traffic-related stops as well as completely repealing sections 43 and 44.⁴⁶ *StopWatch* and *Liberty*'s proposals for reform are well considered and ought to be properly deliberated by Government and debated within the House of Commons.

It is essential that section 163 is reformed to include a requirement of reasonable grounds of suspicion in order to be exercised and fall under the supervision of PACE Code A. This will allow individual complainants to challenge discriminatory misuse of section 163 and also encourage its proper, non-discriminatory use more generally as well as when it is used in conjunction with vehicle search powers.⁴⁷ The importance of reforming section 163 and repealing sections 43 and 44 of the Immigration Act 2016 is especially pertinent when one considers the anxiety these new powers may cause non-white migrant drivers, especially those who work as drivers on Britain's roads. Data collected by Transport for London in 2017 showed that of the 117,857 private hire and minicab drivers surveyed, 96,310 were from non-white or mixed-ethnicity backgrounds.⁴⁸ Considering that 23% of London's population are non-British nationals (the highest foreign-national population of any other city in the United Kingdom) it can reasonably be inferred that a significant proportion of these

⁴⁶ *Liberty and StopWatch*, "Driving While Black": Liberty and Stopwatch's Briefing On The Discriminatory Effect Of Stop And Search Powers On Our Roads' (Liberty 2017) 8-9.

⁴⁷ Police and Criminal Evidence Act 1984, s 67.

⁴⁸ Shona Ghosh, 'Uber In London Has Become A War Between White Working-Class Cabbies And Non-White Immigrants' (*Business Insider*, 4 Jul 2018) <<http://uk.businessinsider.com/uber-london-war-immigration-2017-7>> accessed 9 January 2018.

96,310 drivers have migrated to the United Kingdom from outside of the EU and require leave to enter or remain in the United Kingdom.⁴⁹ This is just one illustration of the significance of these new indirectly discriminatory statutory provisions in one area of the United Kingdom. Needless to say, non-white migrants *throughout* the United Kingdom who drive are uniquely vulnerable to the discriminatory use of these new powers. Data collected in 2016 showed that of the 9.2 million foreign-nationality people living in the United Kingdom, 5.6 million came from non-EU countries and therefore may be drivers who are eligible to be suspected under the section 44 offence.⁵⁰

CONCLUSION

The new offence and search power within sections 43 and 44 of the Immigration Act 2016 are indirectly discriminatory towards non-white migrants and place BAME citizens of the United Kingdom at further risk of being stopped under racially discriminatory pretences. This is due to the fact that the section 43 search power relies on the use of an additional vehicle stop power. The indirectly discriminatory nature of the provisions provides an inducement for officers to conduct stops based on racially discriminatory stereotypes. The broad and arbitrary power to stop a vehicle without cause, section

⁴⁹ 'Population Of The UK By Country Of Birth And Nationality: 2016' (*Office for National Statistics*, 24 Aug 2017)

<<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/ukpopulationbycountryofbirthandnationality/2016#london-has-the-highest-proportion-of-non-british-nationals>> accessed 16 February 2018.

⁵⁰ 'Population by Country of Birth' (*Migrationwatchuk.org*)

<<https://www.migrationwatchuk.org/statistics-population-country-birth>> accessed 16 February 2018.

163 of the Road Traffic Act 1988 will enable these discriminatory stops.

Section 163 must be reformed to curb the disproportionate rates of BAME drivers stopped under this power due to racial discrimination. Crucially, institutional racism, which informs racially discriminatory police practices, has remained an enduring epidemic within British police forces and continues to inform misuse of police powers and investigative failures towards BAME people. Furthermore, it has been suggested that as a result of their indirectly discriminatory nature, section 43 and 44 must be repealed. Discriminatory stop and search practices are not confined to the streets, but extend to Britain's roads as well. The aforementioned proposals for reform are essential in order for Government and Parliament to ensure BAME drivers are not discriminatorily targeted for stop and search on Britain's roads.