

# “Driving while black”: Liberty and StopWatch’s briefing on the discriminatory effect of stop and search powers on our roads



## About StopWatch

Since forming in 2010, StopWatch has led a wide-ranging campaign against the disproportionate use of stop and search, the increasing use of exceptional stop and search powers and the weakening of accountability mechanisms. This includes legal and policy analysis, media coverage and commentary, political advocacy, litigation, submissions to national and international organisations and community organising. The unique mix of academics, activists, young people and lawyers challenge the current use of the tactic and draw attention to the realities for those on the receiving end of police powers.

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## About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research. Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

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# Executive Summary

Section 163 of the Road traffic Act 1988 allows police to stop any vehicle without justification or reason. The evidence suggests that this lax power is already used in a discriminatory way. A new offence, not yet in force, of “driving when unlawfully in the UK”, together with search powers, will increase the risk of discriminatory traffic stops, undermining police-community relations. Liberty and StopWatch urge the Government to implement a reform agenda that increases protections against the misuse of existing powers and to refrain from bringing dangerous new provisions into force.

## Key concerns:

- Despite the fact it is used around 5.5 million times a year, section 163 stops are not subject to basic safeguards such as reporting requirements and Codes of Practice which govern other police powers.
- Section 163 is an unacceptably broad and lax power and it appears to be used to circumvent the suspicion requirements of some search powers.
- According to data from Her Majesty’s Inspectorate of Constabulary and the British Crime Survey, ethnic minority drivers are disproportionately stopped by police on our roads.
- The use of Automatic Number Plate Recognition (ANPR) cameras in road traffic policing lacks adequate governance. The procedure of ‘marking’ cars is widely misused and leads to members of the public being subjected to repeated stops without good reason.
- New immigration enforcement provisions set out at sections 43 and 44 of Immigration Act 2016, including an offence of “driving when unlawfully in the UK”, will be used in conjunction with section 163, increasing the risk that drivers will be stopped on the basis of generalisations, stereotypes and racial prejudice.
- Liberty and StopWatch have serious concerns about the reliability of a Home Office pilot of the use of immigration search powers in road traffic policing.

## Recommendations:

- The new offence and search powers included in the Immigration Act 2016 should be repealed as they risk increasing discriminatory stop and search on our roads.
- PACE Code A, the stop and search Code of Practice, should be extended to cover section 163. It should confine the reach of the power to road safety and traffic control purposes.

- Officers should be trained on the appropriate use of a newly restricted section 163, and in particular its proposed restricted application to road traffic issues.
- A new, mandatory scheme should be created to regulate stop and search including traffic stops.
- The recording of section 163 should mirror the recording of other powers to stop and search.
- Guidance should be produced advising forces on the proper analysis of traffic stop data. Appropriate training should be provided alongside this guidance.
- Research should be conducted into the use of Automatic Number Plate Recognition (ANPR) systems for traffic stops.
- Guidance should be produced as to how “intelligence markers” are placed on vehicles, what constitutes “intelligence” in this respect and the process for removing “markers” from vehicles.
- Further mechanisms should be put in place to ensure that there is adequate external oversight and community scrutiny of ANPR and its use in road traffic policing.

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# “Driving while black”: discriminatory stop and search powers on our roads

01. The police are disproportionately targeting black and minority ethnic drivers for road traffic stops. During her time as Home Secretary, Theresa May acknowledged that if you are black you are more likely to be stopped – even though you are proportionately less likely to be arrested or prosecuted.<sup>1</sup> But, rather than increasing protections against the misuse of existing powers, in 2016 the Government pushed through dangerous new provisions which risk exacerbating the problem. A new offence of “driving when unlawfully in the UK”, and associated powers to search drivers and their vehicles for driving licences, threaten to compound discrimination and undermine police-community relations.

## HOW DO TRAFFIC STOPS WORK?

02. Section 163 of the Road Traffic Act 1988 gives a uniformed officer a broad power to stop drivers without suspicion, or even a particular reason. Failure to stop is a criminal offence and during a stop an officer can demand to see your driving licence.<sup>2</sup> Section 163 is drafted so broadly that the courts have held that, unless a stop is ‘arbitrary and capricious’, it will not be ruled unlawful.<sup>3</sup> As traffic stops are not routinely recorded and have not been subject to the same scrutiny and reform as other stop and search powers, it is impossible to know whether even this low threshold is met in practice. Traffic stops regularly lead to searches of vehicles and passengers, with officers able to use broad powers to search, sometimes without even needing reasonable suspicion that someone has done something wrong.<sup>4</sup>
03. Traffic stops are often conducted on the basis of Automatic Number Plate Recognition (ANPR).<sup>5</sup> ANPR-triggered traffic stops are meant to enable officers to stop vehicles that are suspected of being used in criminal activity or to gather intelligence to investigate crimes.<sup>6</sup> The absence of recording mechanisms for traffic stops means there is no way of assessing whether vehicles targeted are actually associated with such criminal activity. We do not know how vehicles are ‘marked’ as having been involved in criminal activity, what quality of intelligence has been used, or how long a ‘marker’ will stay on

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1 The Times, Driving while black is not a crime, May warns police, 26 March 2016. Available at: <http://www.thetimes.co.uk/tto/news/uk/crime/article4721886.ece>

2 Section 164 (1) gives constables the power to demand a driving licence from: people driving a car, persons reasonably suspected to have been driving a car when an accident occurred, a person believed to have committed an offence related to a motor vehicle and someone supervising a provisional licence holder.

3 R (Smith) v DPP [2002] EWHC 113 (Admin); Miller v Bell 2004 SCCR 534; R (Beckett) v Aylesbury County Court [2004] EWHC 100 (Admin); and R (Rutherford) v Independent Police Complaints Commission [2010] EWHC 2881 (Admin)

4 Suspicionless search powers include section 60 of the Criminal Justice and Public Order Act and section 47A of the Terrorism Act 2000. Although the authorisation for both powers is limited to a specific geographic area, for a limited time period, individual officers are not required to have any basis of reasonable suspicion.

5 Cameras, which can be mobile, portable or placed at fixed locations, capture the details of the vehicle and its number plate. This information is then automatically checked against a national database in order for the police to assess whether the vehicle is insured and if the vehicle or owner has any relation to criminal activities.

6 ANPR Working Group (2012) The police use of Automatic Number Plate Recognition, Association of Chief Police Officers.

a vehicle. Anecdotal evidence suggests that, once a vehicle has been ‘marked’, those driving it are likely to be subject to repeat stops. There has been a significant increase in the use of ANPR cameras, but no research has been carried out to assess whether the use of ANPR results in disproportionate stops of black and minority ethnic drivers.

04. There is no police data on how often, why and how effectively the traffic stop power is used. However, we can draw estimates on the use of the power from the British Crime Survey. The Survey indicates that, over the last decade, around 10 per cent of adults in England and Wales were stopped in a vehicle by police per year.<sup>7</sup> We can estimate that there were approximately 5.5 million road traffic stops in 2010/11.<sup>8</sup> This makes it by far the most widely used stop power and a significant use of police time. Approximately five million of these stops went unrecorded because they did not involve a search.

## DISCRIMINATION ON OUR ROADS

05. While the Home Office does not provide data on the circumstances of an initial stop, in 2014 Her Majesty’s Inspectorate of Constabulary (HMIC) commissioned a survey of 10,094 members of the public about police use of the traffic stop power.<sup>9</sup> Seven to eight per cent of white drivers who responded were stopped in their vehicles in the last two years, compared with 10-14 per cent of black and minority ethnic drivers. Of those individuals who had been subject to a traffic stop, seven per cent reported that no reason had been given and 21 per cent said they had been given a reason other than criminal suspicion, vehicle defect or ownership check.<sup>10</sup> The survey also suggested that black and minority ethnic drivers are less likely to be provided with a reason for a stop and more likely to have their vehicles searched than white drivers.
06. This confirms the findings from other public surveys. A 2012 study based on an analysis of the British Crime Survey, found that that people from mixed black and white ethnicities, Asian Muslim and black Caribbean ethnicities were more likely to report being stopped than those with white ethnicities.<sup>11</sup> The survey also shows that those from mixed black and white, Asian Muslim and black Caribbean communities are significantly less satisfied than white people with how the police dealt with them during traffic stops. These findings are similar to an analysis of the British Crime Survey data from 2000 which found that: “black, Pakistani and Bangladeshi people are more at risk

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7 Moon D., Flatley J., Parfremment-Hopkins J., Hall P., Hoare J., Lau I., and Innes J. (2011) Perceptions of Crime, Engagement with the Police, Authorities Dealing with Antisocial Behaviour and Community Payback: Findings from the 2010/11 British Crime Survey, London: Home Office. The Crime Survey of England and Wales (previously the British Crime Survey) no longer fields questions about vehicle stops.

8 These estimates were calculated by applying the figures reported by Moon et al (2011) to the number of adults aged 16 years and above, in England and Wales as recorded by the 2011 census. Allowance has also been made for multiple stops – of the British Crime Survey respondents who had been stopped in a vehicle, 74 per cent had been stopped once, 16 per cent had been stopped twice and nine per cent had been stopped three times or more (for the purposes of the calculation it was assumed that those in this group had been stopped three times).

9 HMIC, Stop and search powers 2: are the police using them effectively and fairly?, p61. Available at: <https://www.justiceinspectores.gov.uk/hmic/wp-content/uploads/stop-and-search-powers-2.pdf>.

10 Ibid

11 Bradford B., Delsol R. and Shiner M. (2012) More than a simple inconvenience: a paper examining the effects from stop and search on individuals, on communities, and on policing and public security in the United Kingdom, draft paper.

of being stopped in their cars, even after many other relevant factors have been taken into account".<sup>12</sup>

07. The concern that suspicion-less powers give rise to arbitrary and discriminatory use is borne out by the experience of section 44 of the Terrorism Act 2000, repealed by the Coalition Government in 2012.<sup>13</sup> Like section 163, the Terrorism Act power did not require police to have any grounds for suspicion before stopping – and in this case searching – an individual. The overly broad nature of this power led to misuse and discrimination. It was ultimately found to violate the right to respect for private and family life,<sup>14</sup> prompting Theresa May to say: *"I will not allow the continued use of section 44 [of the Terrorism Act] in contravention of the European Court's ruling and, more importantly, in contravention of the civil liberties of every one of us."*<sup>15</sup>
08. Media accounts and complaints received by StopWatch support our concerns about disproportionality.<sup>16</sup> A common thread that runs through these complaints is concern at a lack of satisfactory reasons for the stops, along with disrespectful and unprofessional conduct during the stop.

## Stuart Lawrence

A complaint by Stuart Lawrence – Stephen Lawrence's brother – against the Metropolitan Police Service centred on repeated road traffic stops. In a newspaper interview, Lawrence described his experience: *"I'm a hard-working, law-abiding taxpayer, but the chances of my being stopped by police are much higher than for my white friends"*.<sup>17</sup> The Independent Police Complaints Commission (IPCC) determined that one officer who had stopped Lawrence had a case to answer for misconduct in relation to race discrimination.<sup>18</sup>

## Section 163 stop in Peckham

A recent complaint to Stopwatch involved a young black male who was stopped under section 163 in Peckham, London, while driving. The absence of any explanation left the person to conclude that he was stopped for "driving while black."

12 Clancy A., Hough M., Aust R. and Kershaw C. (2001) Policing, Crime and Justice: the experiences of ethnic minorities, Findings from the 2000 British Crime Survey (Home Office: London).

13 Section 59 of the Protection of Freedoms Act 2012.

14 Gillan and Quinton v United Kingdom (Application no. 4158/05), European Court of Human Rights. In violation of Articles 8 of the European Convention on Human Rights as protected by the Human Rights Act 1998.

15 Theresa May today tells Parliament that the government will change how stop and search powers are used under the Terrorism Act, 8 July 2010 <https://www.gov.uk/government/news/changes-to-police-search-powers>.

16 See, for example:

- "A middle-class black man raised by white parents, Ben had always respected the police. Until one night they stopped his car..." Daily Mail, 15 March 2013
- "They presumed my car was stolen": Lions rugby star Ugo Monye claims he was victim of racism after being stopped by police" Daily Mail, 27 June 2011
- "England star Jermain Defoe sues 'racist' police because he's always stopped in his car" Daily Mail, 14 August 2009
- "Jamelia: I'm always stopped by racist police" Metro, 21 June 2011.

17 The Guardian, "Stephen Lawrence's brother lodges racism complaint against Met police", 9 January 2013.

18 BBC News, "Stuart Lawrence race complaint against Met upheld", 12 October 2013.



Following the stop, the driver and his passenger were searched for drugs under section 23 of the Misuse of Drugs Act, including a strip search in the back of a police van. When nothing was found, he was allowed to leave. Following the stop, the man brought a civil action and a complaint against the police. The civil claim was ultimately settled.

## Section 163 stop in Paddington

In another case reported to StopWatch, a man was stopped under section 163 while driving a hired car a little after midnight in Paddington, London. Police questioned him, suggesting that gangs had begun to employ drivers with clean records to transport illicit material in hired cars. This left the individual feeling he was being 'profiled' as a gang member and that the stop was racially motivated.

Following the stop, the man was searched for drugs due to an alleged odour of cannabis, and for weapons. He was then strip searched. These searches did not lead to the discovery of drugs, weapons or any prohibited items. Throughout the stop and search, the man had been compliant and following the searches of his person he was allowed to go on his way. Following the stop, he brought a civil claim against the police and received compensation

## NEW POWERS, NEW DISCRIMINATION RISKS

09. The Immigration Act 2016 includes new powers which risk significantly increasing the potential for discriminatory traffic stops and searches. A new offence of "driving when unlawfully in the UK", not yet in force, will be committed if a person drives a vehicle with knowledge or reasonable cause to believe that he or she is in the UK without valid immigration status.<sup>19</sup> Accompanying powers will allow officers to search premises (including vehicles) and individuals where they have reasonable grounds for believing a person is in possession of a driving licence, is in the UK illegally and that the search will lead to discovery of the licence.<sup>20</sup>
10. Searches under the new powers are to be carried out by immigration officers, police officers or other individuals authorised by the Home Secretary.<sup>21</sup> It is not clear which civilian actors would be authorised to use these intrusive powers. Recent news reports suggest that uniformed civilians deployed by Highways England are to receive new police-like powers. This suggestion has attracted criticism from the Police Federation on the grounds that it would reduce accountability in a sensitive policing area.<sup>22</sup>

19 Section 44. Sections 43 and 44 insert new provisions section 24C, 25CA, 25CB and 25CC into the Immigration Act 1971.

20 Section 43, which also includes a driving licence seizure power. These powers are not yet in force nationally, but have been commenced in some areas of the country as part of a pilot exercise.

21 Immigration Officers will be required, where reasonably practical, to gain the authorisation of an immigration officer not below the rank of Chief Immigration Officer. Other authorised individuals who are neither police nor immigration officials would be required to seek authorisation from an individual designated by the Home Secretary. Police officers will not be required to seek authorisation from a senior officer.

22 The Times, "Traffic wombles 'to get police powers', 31 January 2017.

11. Section 163 is already a broad power that facilitates speculative and discriminatory stops based on ethnicity. The 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. As Baroness Doreen Lawrence argued when opposing the introduction of the Immigration Act offence and search powers, the new provisions:

*... 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.*<sup>23</sup>

This concern is intensified by recent revelations that one in five people stopped by immigration enforcement teams in big cities across Britain is a UK national.<sup>24</sup> The argument that immigration-related stops are “intelligence-led” is significantly undermined by these figures, revealing the worrying leeway for discriminatory factors to enter decision-making.

12. More worrying still, senior police officers have suggested that the new search powers may result in a move to embed immigration checks in roadside stops. In evidence to Parliament, Chief Inspector David Snelling explained how the suspicion could be generated to trigger a search:

*We have a power to stop any vehicle to ascertain ownership and driver details. What we would then do is inquire into whether the driver has authority to drive that vehicle... To fall within the provisions of the [Immigration Act 2016], we would most likely need to do a further check with the immigration authorities, which at that stage would give us reasonable grounds... to believe that that person is driving as an illegal immigrant.*<sup>25</sup>

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.

13. The offence and search powers in the Immigration Act may incentivise discriminatory stops. By mainstreaming the use of immigration checks in the traffic stop process they may also increase the perception of discrimination. Even before these new provisions arrived on the statute book, 73 per cent of black drivers surveyed by HMIC agreed or strongly agreed with the statement that the police unfairly target people from ethnic minorities for traffic stops.<sup>26</sup> The National Black Police Association (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*

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23 Lords Hansard, 1 Feb 2016: Column 1593.

24 The Guardian, “One in five stopped by immigration enforcement is a UK citizen, figures show”, 8 October 2017.

25 Immigration Bill Deb, 20 October 2015, column 66 (Q145, afternoon of 20 October).

26 HMIC, Stop and search powers 2: are the police using them effectively and fairly?, 24 March 2015. P 53.

*hatred and suspicion between different racial and religious groups... and will result in the police becoming the whipping boy for the immigration service.*<sup>27</sup>

14. These provisions reinforce the concern that police are involving themselves in in-country immigration enforcement, an assumption which has historically inflamed tensions between police and minority ethnic communities. Former Deputy Assistant Commissioner of the Metropolitan Police Lord Paddick, who policed the Brixton riots as a constable in the 1980s, made this point in a contribution to the parliamentary debate on the new laws:

*...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.*<sup>28</sup>

15. The Government has sought to allay concerns about these new powers with the promise of a pilot of the search powers and guidance on their use. But there are significant concerns about the reliability of the government's pilot exercise (considered at Annex A). We also do not believe that guidance will neutralise the dangerous potential of these provisions. There are already stop and search powers on the statute book which are subject to detailed guidance, but thanks to the nature of the power they continue to operate in a discriminatory fashion. Section 60 of the Criminal Justice and Public Order Act 1994, a broad power to stop and search without suspicion, is subject to detailed guidance, 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.*" This clear guidance has consistently failed to prevent discriminatory outcomes: you are almost 21 times more likely to be stopped and searched under section 60 in London if you are black than if you are white.

It is the responsibility of Government and Parliament to ensure that laws do not invite discrimination. Liberty and StopWatch believe that section 163 fails this test and the new Immigration Act offence and search powers will exacerbate the problem. We recommend that the provisions set out at sections 43 and 44 of the Immigration Act 2016 be repealed as they risk increasing discriminatory stops and searches on our roads and further damaging relations between the police and black and minority ethnic communities.

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

28 Lords Hansard, 1 Feb 2016: Column 1590.

## GOVERNMENT REFORMS – TOO SOFT, TOO SLOW

16. The Best Use of Stop and Search Scheme (BUSSS) was announced by then Home Secretary Theresa May in April 2014.<sup>29</sup> BUSSS promised greater transparency, community involvement and improved stop and search outcomes. Among the scheme's provisions are requirements to collect more data about stop and search and to monitor its impact on black and minority ethnic groups and young people.<sup>30</sup> However the BUSSS Scheme has failed to provide the promised improvements in stop and search outcomes and community monitoring.
17. Liberty and StopWatch welcome the large reductions in the numbers of stop and search, and the slight improvement in the arrest rates resulting from a stop and search – but it remains disproportionate and ineffective.<sup>31</sup> Our most pressing concern is the fact that BUSSS is an administrative exercise without any sanction if forces do not meet standards. Additionally, forces need only demonstrate that they have the provisions of the scheme in place and not the quality of those provisions and their outcomes.
18. As part of its 2015 PEEL legitimacy inspection, HMIC found that only 11 of 43 police forces were compliant with all elements of the scheme. Thirteen forces were failing to comply with three or more elements of the scheme. As a result, in February 2016 Theresa May suspended those 13 police forces from the scheme, temporarily removing the obligation to comply with the requirements of BUSSS. A follow-up HMIC inspection of the 13 failing forces reported back in September 2016. At the time of the re-inspections between June and August 2016, only six forces of the 13 were found to be compliant with all features of the scheme.
19. A further follow-up HMIC inspection in November 2016 revisited those 19 forces that were not complying with one or two features of the scheme in 2015. HMIC found that 15 of these 19 forces are now complying with those features of the scheme. However four forces are still not complying: Derbyshire Constabulary, Greater Manchester Police, Northamptonshire Police and South Yorkshire Police.<sup>32</sup> In March 2017, Derbyshire Police were suspended from the scheme for failing to be able to provide full data linking searches to their outcomes.<sup>33</sup>
20. Forces have failed to take the BUSS Scheme and its provisions seriously. Beyond being publicly suspended from a voluntary scheme there are no repercussions for forces' failure to meet the low standards of this scheme and no obvious benefit for them to then meet these standards and re-join.

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29 Rt Hon Theresa May, Oral Statement to Parliament, Comprehensive package of reform for police stop and search powers, available at: <https://www.gov.uk/government/speeches/stop-and-search-comprehensive-package-of-reform-for-police-stop-and-search-powers>.

30 Home Office and College of Policing, Best Use of Stop and Search Scheme.

31 See Home Office statistics for the year ending March 2016, available here: <https://www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-year-ending-31-march-2016>.

32 Her Majesty's Inspectorate of Constabulary (HMIC), Best Use of Stop and Search Scheme (BUSS), February 2017. Available at: <https://www.justiceinspectors.gov.uk/hmic/wp-content/uploads/best-use-of-stop-and-search-scheme-19-forces-revisits.pdf>.

33 The Derby Telegraph, "Derbyshire Police criticised for how they use Stop and Search powers", 14 March 2017.

21. In March 2016, in response to concerns about the discriminatory use of section 163, Theresa May committed to address the use of traffic stops in a revised scheme known as BUSSS 2.0.<sup>34</sup> However, traffic stops were not included in a draft of BUSSS 2.0 circulated earlier this year.<sup>35</sup> Liberty and StopWatch understand that provisions urging forces to monitor the use of traffic stop powers will be set out in a voluntary adjunct to the non-binding BUSSS 2.0 scheme. A National Police Chiefs Council-run pilot of traffic stop recording requirements is under way, but Liberty and StopWatch have concerns about the reliability of the pilot (considered further at Annex B).

## THE NEED FOR FURTHER REFORM

### Limiting section 163

22. Section 163 is too broad, giving the police latitude to stop any vehicle on the road and facilitating discriminatory misuse. Liberty and StopWatch recommend that section 163 be limited to road safety and traffic control purposes, such as halting traffic after an accident or highlighting a vehicle defect. This limitation should be set out in the Code of Practice governing stop and search: Police and Criminal Evidence Act 1984 (PACE) Code A.<sup>36</sup> Officers should be trained on the appropriate use of this limited power.

### Broader police traffic stop powers

Police would not be left without the necessary powers if section 163 were limited to road safety and traffic control purposes. In addition to an explicitly limited section 163, police would be able to draw on a range of other powers to stop vehicles when they suspect a crime or want to search for illegal items, including:

- Section 23 of the Misuse of Drugs Act 1971 which provides the power to *“search any vehicle...in which the constable suspects that the drug may be found, and for the purpose require the person in control of the vehicle...to stop it”*.
- Section 47 of the Firearms Act 1968 which gives a constable who has reasonable cause to suspect there is a firearm in a vehicle the power to *“search the vehicle and for that purpose require the person driving or in control of it to stop it”*.
- Following the designation of an area by an officer of or above the rank of inspector, section 60 of the Criminal Justice and Public Order Act 1994 gives a constable in uniform the power to *“stop any vehicle and search the vehicle, its driver and any passenger for offensive weapons or dangerous instruments”*.

34 The Times, “Driving while black is not a crime May warns police”, 26 March 2016.

35 StopWatch and Release, Response to the Home Office’s proposed revised ‘Best Use of Stop and Search Scheme’ (‘BUSSS 2.0’), available at: [http://www.stop-watch.org/uploads/documents/StopWatch\\_Release\\_response\\_to\\_HO\\_consultation\\_on\\_stop\\_and\\_search.pdf](http://www.stop-watch.org/uploads/documents/StopWatch_Release_response_to_HO_consultation_on_stop_and_search.pdf).

36 The only exception to this rule should be in the specific circumstances set out at section 4 of PACE and discussed below.

- Section 47A of the Terrorism Act 2000 gives a constable the power to “stop a vehicle” in a specified area designated by a senior officer and “to search the vehicle, the driver of the vehicle, a passenger in the vehicle [and] anything in or on the vehicle or carried by the driver or a passenger.”
- Section 59 of the Police Reform Act 2002 gives a constable the power to stop, seize and remove a vehicle, using force if necessary, where the constable has reasonable grounds to believe that (i) a person is committing the offence of careless and inconsiderate driving or is driving off-road, and (ii) he or she is driving in a way that is causing or is likely to cause alarm, distress or annoyance to members of the public.
- Section 4 of PACE provides for police to carry out road checks for the purpose of ascertaining whether a vehicle is carrying a person who has committed an indictable offence,<sup>37</sup> a person who is a witness to such an offence, a person intending to commit such an offence, or a person who is unlawfully at large. Section 4 provides for the extension of the section 163 stop power to give effect to a road check in these defined circumstances.<sup>38</sup>
- Section 1 of PACE provides for a constable to search a vehicle, detaining it for the purpose if necessary, for stolen or prohibited articles. It can be exercised where a constable has reasonable grounds for suspecting that he or she will find such articles. While section 1 does not explicitly refer to stopping a vehicle, PACE Code A envisages the use of the power in this way.<sup>39</sup>
- Section 24 of PACE which gives police officers the power to arrest a person for involvement, suspected involvement or attempted involvement in the commission of a criminal offence.<sup>40</sup> An officer can use ‘reasonable force’ in exercising the power of arrest. Liberty and StopWatch interpret this as including the power to stop vehicles.<sup>41</sup>

## A reformed, mandatory BUSSS Scheme

- 23.** Stop and search, including the use of traffic stops, should be regulated by strong, legally enforceable standards. In April 2014, Theresa May promised that if the BUSS scheme failed to deliver the necessary results, she would bring forward primary legislation. It

<sup>37</sup> Other than a road traffic or vehicle excise offence

<sup>38</sup> Liberty and StopWatch believe that it should continue to make this provision. To the extent that any further clarification is required around the interaction of the road check power with an explicitly limited section 163, this can be provided for in statutory guidance.

<sup>39</sup> PACE Code A states: “[r]easonable grounds for suspicion is the legal test which a police officer must satisfy before they can stop and detain individuals or vehicles to search them under powers such as section 1 of PACE (to find stolen or prohibited articles)”. Section 2(9) (b) of PACE specifies that “[n]either the power conferred by section 1 above nor any other power to detain and search a person ...is to be construed as authorising a constable not in uniform to stop a vehicle”. The section clearly envisages the use of section 1 by a constable in uniform to stop a vehicle. To the extent that a lack of clarity exists around the use of section 1 to stop vehicles, this should be clarified in PACE Code A.

<sup>40</sup> Where the officer has grounds for believing that the person’s arrest is necessary.

<sup>41</sup> PACE, section 117. To the extent there is a lack of clarity around the use of section 24 to stop a vehicle, this should be clarified in PACE Code G.

is clear that membership of a voluntary scheme has not driven the desired change. The time has come for a new statutory scheme which provides meaningful standards that improve outcomes rather than just measure the provisions forces have in place. A meaningful consultation exercise should be conducted to determine the scope of a revised scheme. As a minimum it should:

- include sanctions for individuals and forces failing to meet prescribed standards;
- require recording of traffic stops which target an individual,<sup>42</sup> including ethnicity data and the outcome of a stop (e.g. a search, an arrest, a complaint);
- provide for an individual to receive a record of a stop, including the name and badge number of the officer involved;
- require forces to collate and publicly share data regarding the use of section 163; and
- place a responsibility on police leaders to monitor the use of the powers and involve local communities in that scrutiny.

24. The recording of section 163 provided for in a new, mandatory scheme should mirror the recording of other stop and search powers. This can be done efficiently without creating additional bureaucracy, by using handheld devices which capture the details of stops at the same time that officers check the driver and vehicle details. Records of a stop should include:

- the circumstances of the stop (date, time, duration and location of a stop);
- demographic information about the subject of a stop (age, gender and ethnicity);
- reasons for the stop (broad categories should be supplemented by the requirement for officers to provide a free-text reason);
- outcomes (eg. summons, fixed penalty, caution, unlawfully held items discovered, vehicle seized, driver or passenger arrested, the specific stop and search powers used, arrest or other positive outcome, words of advice, intelligence report, no further action, specified other outcome); and
- whether force or restraint was used (e.g. control tactics or handcuffs).

25. The Government should also direct the College of Policing, in consultation with academics, civil society and communities, to provide guidance for forces on how to analyse traffic stop data and appropriate benchmarks for comparison.

## ANPR analysis

26. Research should be conducted into the use of ANPR systems in relation to section 163 traffic stops. Guidance should be produced as to how “intelligence markers” are placed on vehicles, what constitutes “intelligence” in this respect and the process for removing

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42 As opposed to roadblocks which may see numerous drivers stopped, for example at the scene of an accident.

“markers” from vehicles. Further mechanisms should be put in place to ensure that there is adequate external oversight and community scrutiny of the use of ANPR.

## **SUMMARY OF RECOMMENDATIONS:**

### **Repeal the offence of driving when illegal and related search powers**

01. As yet uncommenced provisions set out at section 44 and section 43 of the Immigration Act 2016 should be repealed as they risk increasing discriminatory stop and search on our roads.

### **Reform of section 163**

02. PACE Code A should be amended to include traffic stops and to explicitly limit their reach to road safety and traffic control purposes.<sup>43</sup>
03. Officers should be trained on the appropriate use of this more limited traffic stop power.

### **A revised, mandatory scheme to regulate stop and search**

04. A new, mandatory scheme should be created to regulate stop and search including the use of traffic stops. The scheme should include detailed recording requirements, sanctions for failing to meet standards and the requirement for an individual to receive a record of a stop.
05. Traffic stops should be recorded in the same way as other powers to stop and search, including requirements to record adequate information about the circumstances of the stop, demographic information, the reasons and outcomes of a stop and whether force of restraint was used.
06. Guidance should be produced advising forces on the proper analysis of traffic stop data and appropriate training provided.

## **ANPR**

07. Research should be conducted into the use of ANPR systems for traffic stops.
08. Guidance should be produced as to how “intelligence markers” are placed on vehicles, what constitutes “intelligence” in this respect and the process for removing “markers” from vehicles.
09. Mechanisms should be put in place to ensure that there is adequate external oversight and community scrutiny of the use of ANPR in road traffic policing.

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<sup>43</sup> Such as halting traffic after an accident or highlighting a vehicle defect if necessary. Statutory guidance can be amended to clarify that the power to search vehicles under section 1 of PACE and the power to arrest without warrant under section 24 of PACE, include the power to stop a vehicle.



# Conclusion

27. We already have a broad and unregulated traffic stop on the statute book. Increased legal protections against misuse of section 163 are urgently required. New laws which tie traffic stops to the immigration system will, in the words of Baroness Doreen Lawrence, *“ramp up discriminatory impacts and inflame existing grievances”*.<sup>44</sup> Rather than pursuing a dangerous experiment which will place domestic police at the heart of immigration enforcement, we urge Government to do more to tackle the discrimination that already exists in road traffic policing.

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<sup>44</sup> Lords Hansard: column 1764, 15 March 2016.

## ANNEX A

### Pilot implementation of the Immigration Act search powers

In February 2017, the Home Office confirmed that a pilot evaluation of the use of the Immigration Act search powers would be carried out in Kent and West Yorkshire. Liberty and StopWatch are not aware of any consultation with parliamentarians and affected groups as to the shape and scope of the pilot exercise.

We understand that a baseline period of data collection (prior to the introduction of the search powers) is underway. The Home Office predicts this will last in the region of two to three months. The second phase of the pilot, also expected to last around two to three months, will monitor the impact of the Immigration Act search powers. It will monitor both police and immigration officer use of the powers.

Liberty and StopWatch have concerns about the reliability of a pilot set to be conducted over such a short period of time. We also have concerns about the scope of the data the Home Office intends to collect. In the first phase of the pilot, the data collected will be largely the same as that collected by the National Police Chiefs Council in their pilot of new BUSSS reporting requirements described above. Additionally, data about the gender of the driver and possibly some information about the location of a stop will be collected. While the collection of data on gender is positive, it is disappointing that no data will be collected, during the baseline data collection period, on whether a search results from a section 163 stop.

Following the implementation of the Immigration Act search powers, the second phase of the pilot will begin. Data will be collected on both police and immigration officers' use of the new Immigration Act search and seizure powers. Immigration Officers will be required to record if a person or premises was searched and whether a licence was seized. Police conducting section 163 stops will be required to additionally record if there were reasonable grounds for believing the driver stopped was an illegal immigrant, what those grounds were, and whether immigration enforcement were contacted.

The Home Office anticipates that selected findings from the pilot evaluation will be published as part of a consultation on the guidance the Government intends to publish on the new powers. In addition to concerns about the short projected duration of the pilot exercise, it is concerning that the Home Office has not committed to publish in full the findings of the evaluation.

A partial publication of a selection of findings is likely to prompt serious concerns about the validity of the analysis and transparency. Liberty and StopWatch are also concerned that, as the pilot is limited to the Immigration Act search powers, it will not

assess the impact of the creation of a new offence of “driving when in the country unlawfully” on the use of section 163 by police.

The Home Office has no plans for independent oversight of the evaluation or its methodology. The department should follow the good practice developed by the College of Policing for their recent evaluation of the College’s stop and search training.<sup>45</sup> The College created an external academic expert group who revised and reviewed the methodology. They also used the community reference group set up to accompany the College’s work on stop and search to provide ongoing advice and scrutiny and respond to preliminary and overall findings.

The experience of the pilot implementation of the right to rent scheme, which requires landlords to verify the immigration status of their tenants, intensifies our concerns about the the Government’s approach to piloting controversial new provisions. The pilot itself was carried out over a short, six month period, at a quiet time in the rental market. The rental market covered was less competitive than that in other areas of the country, most notably London. The quantitative results produced by the survey were seriously undermined by the fact that the tenant group surveyed was very small (just 68) and unrepresentative, being largely comprised of students.<sup>46</sup>

The Home Office did not disclose the full data collected for its evaluation, choosing to provide a “summary” instead. Even with these limitations, evidence of discrimination was found, but ultimately ignored by Government. We are concerned that a similarly superficial pilot exercise may be carried out in relation to the Immigration Act search powers.

## **ANNEX B**

### **Pilot implementation of the requirement to record section 163 stops**

This year, the National Police Chiefs Council ran a pilot implementing section 163 reporting requirements in five police force areas: Northumbria, Cambridgeshire, West Yorkshire, Sussex and Surrey. No information has been made public about the pilot

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45 Quinton P. and Peckham D. (2016) College of Policing Stop and Search Training Experiment – an Overview London: College of Policing. Available at: [http://whatworks.college.police.uk/Research/Documents/SS\\_training\\_OVERVIEW\\_Final\\_report.pdf](http://whatworks.college.police.uk/Research/Documents/SS_training_OVERVIEW_Final_report.pdf)

46 Home Office, Evaluation of the Right to Rent scheme Full evaluation report of phase one, October 2015. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/468934/horr83.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468934/horr83.pdf). For Liberty’s analysis see: Liberty’s briefing on the Immigration Bill for Second Reading in the House of Lords, December 2015.

and results have not been shared. Pilot forces were required to report on the ethnicity of those stopped under section 163, their age, the reason for the stop, the outcome of the stop and whether there is a “link between reasons and outcome”.

We are concerned about the scope and specifications of the pilot exercise. Although we understand that the pilot has been helpful in demonstrating that it is possible to collect traffic stop data without increasing bureaucracy,<sup>47</sup> the focus has been on feasibility rather than transparency and accountability. There has been no consultation on the pilot and no independent evaluation. Our key concern is that the pilot is failing to collect enough information to allow us to analyse who is being stopped, why they are stopped, the outcome and whether the stop leads to a search.

The only demographic data collected is on ethnicity and broad age categories and not, for example, gender. The pilot requirement to record “*Reasons for the section 163 stop*” is limited to “*traffic offence, other offence, ANPR, intelligence, welfare, other reason or routine check*”.<sup>48</sup> Justifications such as “*intelligence*”, “*welfare*” and “*routine check*” are unacceptably broad and vague and there is no requirement to indicate which suspected criminal offence triggers a stop. The “*outcomes*” which police will be required to record are limited to “*offence committed*”, “*traffic offence committed*”, “*referred to another agency*” or “*no further action*”. There is no requirement to be specific about the agency to which an individual is referred or the type of offence committed. There is also no distinction between instances where an offence is suspected with guilt to be determined by a court, and circumstances where an out-of-court disposal mechanism – such as a fixed penalty notice is used by police. The current pilot further does not include a requirement to specify whether the traffic stop resulted in a search. Such a requirement is necessary because of the potential for stops to be used to develop reasonable suspicion to go on to search and for this escalation to disproportionately affect black and minority ethnic drivers.

Crucially, the scheme has missed the opportunity to introduce a requirement that officers, where reasonably possible, provide anyone stopped under this power with a receipt detailing the circumstances of the stop. The importance of such records for improving accountability was recognised by the Macpherson Report.<sup>49</sup>

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47 The pilot is being conducted using handheld devices such as airwaves or mobile phones, which allow officers to collect information quickly by feeding into existing processes they already use without increasing bureaucracy. Feedback from participating police officers was that the collection of data did not add significant time to the stop and interfere with the interaction.

48 National Police Chiefs Council, Response to FOI Request Reference 000227/16, 26 October 2016.

49 Macpherson Report, Recommendation 61 at p381: “61. That the Home Secretary, in consultation with Police Services, should ensure that a record is made by police officers of all “stops” and “stops and searches” made under any legislative provision (not just the Police and Criminal Evidence Act). Non-statutory or so called “voluntary” stops must also be recorded. The record to include the reason for the stop, the outcome, and the self-defined ethnic identity of the person stopped. A copy of the record shall be given to the person stopped.”

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