

## Update on the Immigration Bill 2015/16 [November 2015 briefing]

In September 2015, we reported on the new Immigration Bill 2015/16 published on 17/9/15. We also said that the proposals, if implemented, are likely to encourage the [hostility, racism](#), discrimination, exploitation and serious human rights breaches too often faced by refugees, asylum seekers and the UK's Black and Minority Ethnic (BME) communities but do nothing to reduce or address the ongoing and increasing humanitarian refugee and migrant [crisis](#). This briefing updates readers on the Bill's progress, government factsheets, a series of inadequate government Policy Equality Statements published during October and two associated consultations launched by the Government. We hope that those interested in, or concerned about, the provisions will respond to the consultations.

### 1. The Bill's parliamentary progress and timetable

The Immigration Bill 2015/16 was [published](#) on 17/9/15. Following debate in the House of Commons a revised version of the Bill was [published](#) on 18/11/15. The Bill's report and third reading stages, in the Commons, are expected to take place on 1/12/15.<sup>1</sup> We know that the House of Lords rises for Christmas on 22/12/15 and will reconvene on 11/1/16; however, as at 26/11/15, the Bill's timetable for the House of Lords has not been published. We think that the Bill may receive its first and second reading in the Lords in December and the Lords will consider the Bill in detail during January 2016, possibly from 11/1/16.

### 2. Factsheets, information, deficient equality assessments and the Bill

A series of government ['factsheets'](#) were published alongside the Bill on 17/9/15. During October three Policy Equality Statements were published alongside these factsheets.

Immigration Bill: part 1 - labour market and illegal working		27/10/15
Immigration Bill: part 2 - access to services	PES	27/10/15
Immigration Bill: part 3 - enforcement		17/9/15
Immigration Bill: part 4 - appeals	PES	30/10/15
Immigration Bill: part 5 - support for certain categories of migrants	PES	25/11/15
Immigration Bill: part 6 - border security		17/9/15
Immigration Bill: part 7 - language requirements for public sector workers		14/10/15
Immigration Bill: part 8 - fees and charges		17/9/15
Immigration Bill 2015-16: overarching documents <sup>2</sup>		21/9/15

<sup>1</sup> Information on the parliamentary stages of this Bill can be located on [the website pages](#) for the Bill.

<sup>2</sup> a) a factsheet overviewing the Bill; b) information on delegated powers and the Bill; c) a memorandum on compliance with the European Convention on Human Rights; and d) an impact assessment document.

Policy Equality Statements (PESs) have been published on just three of the nine parts of the Bill - [appeals](#) (27/10/15), [access to services](#) (23/10/15) and [Reforming support for failed asylum seekers and other illegal migrants](#) (30/10/15). Unfortunately, despite the Bill having completed its Committee Stage in the Commons, as of 26/11/15, there is no comprehensive PES for the Bill. Furthermore, whilst an [overarching impact assessment](#) was published on 17/9/15, this predates all three PESs published during October and makes no reference to discrimination, equality, race, racism, the PSED or the Equality Act 2010. Given the extensive equality issues raised by the Bill and equally extensive concerns raised in the [written evidence](#) presented to the House of Commons, the absence of a comprehensive PES is unacceptable. Furthermore the fitness for purpose of the PESs that have been written is questionable. For example, the PES on [access to services](#), comments on the provisions on residential tenancies, it refers to a lack of 'hard evidence of systematic discrimination'; this reference to 'hard evidence' of 'systematic discrimination' is particularly worrying. The test to comply with the PSED should be whether proper steps have been taken to ensure that the policy contributes to eliminating unlawful discrimination, advances equality of opportunity and fosters good relations. Despite evidence of discrimination in the Home Office's evaluation of the Right to Rent Scheme and JCWI's independent report, the Home Office has decided just to continue to provide guidance but not to take additional action to ensure proper compliance with its duties under the Public Sector Equality Duty (PSED).

**Extract page 5: PES Immigration Bill 2015 – Access to Services**

*'The evaluation found no hard evidence of systematic discrimination towards foreign nationals from letting agents or landlords, or that their access to the housing market was restricted as a result of the scheme. At an overall level there did not appear to be major differences for White British and BME shoppers in accessing accommodation between the phase one location and the comparator area. There was evidence of differences at particular stages of the process of renting a property, although these were not necessarily indicative of discrimination against BME shoppers. A very small number of potentially discriminatory attitudes were reported. Whilst the evaluation did not find hard evidence of systematic discrimination, the government will continue to provide clear guidance on how to avoid acting in this manner. Any landlord who discriminates is acting unlawfully and liable to prosecution.'*

The PES makes no reference to JCWI's independent assessment of the Right to Rent Scheme or to the evidence of discrimination presented in that report.<sup>3</sup> The PES refers in positive terms to the Code of Practice that is supposed to discourage race discrimination.<sup>4</sup> However this positive assessment of the Code ignores the concerns about said Code reported in the

<sup>3</sup> – ["No Passport Equals No Home"](#) – An independent evaluation of the 'Right to Rent' scheme published by JCWI on 3/9/15. [Evaluation of the Right to Rent Scheme](#) published by the Home Office on 20/10/15.

<sup>4</sup> [Code of practice for landlords](#): avoiding unlawful discrimination when conducting 'right to rent' checks in the private rented residential sector

Home Office's own evaluation report <sup>5</sup> and in JCWI's analysis. Furthermore, despite widespread concerns about racial profiling, race discrimination and the impact on settled BME communities, expressed in the written evidence presented to Parliament, no reference whatsoever is made to racial profiling in the PES.<sup>6</sup> Overall, the PESs fail to fully or properly consider equality related concerns about the provisions in the Bill and the impact on race discrimination, racial profiling, fostering good relations or advancing equality of opportunity. This includes simply failing to consider issues brought to the attention of the Home Office and ignoring, downplaying or inadequately addressing those issues that are explored in the PESs. The approach smacks of an approach which is at odds with the PSED. The Government runs the risk of successfully creating a hostile environment, not only for 'illegal' or undocumented migrants but also for members of recent and longstanding BME communities lawfully resident in the UK.

### 3. Government consultations and the Bill

Two government consultations were launched on 13/10/15 that have significant implications for race equality. The consultation on labour market enforcement to protect workers from exploitation closes on 7/12/15. The consultation on the draft code of Practice on English language requirements for public sector workers closes on 8/12/15. The [written submissions](#) made by a range of civil society organisations raise a range of concerns about the proposals in the Bill which could inform any responses to these consultations. The labour market enforcement consultation seeks views on a range of proposals to improve the effectiveness of the enforcement of employment rights to protect workers from exploitation. These include: a) establishing a statutory Director of Labour Market Enforcement; b) creating a new offence of an aggravated breach of labour market legislation; c) increasing intelligence and data sharing between the existing enforcement bodies; d) widening the remit, increasing the powers and changing the name of the Gangmasters Licensing Authority to enable it to deal with serious exploitation. The consultation on English language requirements for public sector workers states that the *'government is committed to passing legislation to ensure that every public sector worker operating in a customer facing role must speak fluent English.'*<sup>7</sup> It also explains that the Immigration Bill is the vehicle being used to introduce relevant provisions and that a *'draft Code of Practice is intended to support public authorities to comply with this new legal duty, without creating a significant burden or more red tape.'*<sup>8</sup>

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<sup>5</sup> 'A lower proportion (29%, 33 out of 114) of landlords had read the discrimination code. Of those who had read it, 25 (out of 32 responses) found the information helpful.' [Source: Home Office Evaluation Report] '65% of landlords had not read or feel they have not fully understood the Codes of Practice. Of those who had read the codes, 67% found the Code of Practice difficult to understand, while 44% found the Code on Avoiding Discrimination difficult to understand. 30% of landlords in the 'pilot' area had not read either document, despite being obliged to carry out the Right to Rent checks.' [Source: JCWI's Independent evaluation, page 12]

<sup>6</sup> Written Evidence: consolidated pdf version

<sup>7</sup> The factsheet and general information on the English language provisions is available [here](#).

<sup>8</sup> The draft code, impact assessment and some other information are available [here](#).