

Briefing on the Immigration Bill

House of Lords, Committee Stage: February 2014



About CORE and our members¹

CORE is a network that brings together national, regional and other leading race equality focused voluntary and community organisations in England. We are recognised as leaders and experts in race equality and work to challenge racism and particularly systemic racism. Our name stands for coalition, collaboration, collective or caucus for race equality. We call on peers and MPs concerned about tackling racial discrimination and promoting race equality to take the right, moral and sensible action and make fundamental amendments to the Immigration Bill. We ask you to consider and support the amendments listed in this briefing.

Serious concerns about the Immigration Bill

CORE shares the concerns raised by senior [church leaders](#) about the tone of the debate around immigration. Talk of creating a **hostile environment** for unlawful migrants is dangerous because it encourages a hostile environment for all visible migrants, which includes anyone from a Black and Minority Ethnic (BME) community. We also share the concerns of key partners - [the Joint Council for the Welfare of Immigrants \(JCWI\)](#), [the Movement Against Xenophobia \(MAX\)](#), [the Immigration Law Practitioners Association \(ILPA\)](#), [the Migrants Rights Network](#), [the National AIDS Trust \(NAT\)](#)/ [the Entitlement Working Group \(EWG\)](#), [the Northern Ireland Council for Ethnic Minorities \(NICEM\)](#) and [BEMIS Scotland](#)² - about this Bill's extensive and negative equality and human rights implications. We have summarised some of the most serious and adverse equality implications in this briefing.

Serious flaws and the consequences of implementing the Immigration Bill unamended

Without significant and fundamental amendment, this flawed Bill will not reduce unlawful immigration, nor result in the removal of those without the right to be in the UK because it does little to nothing to address the fundamental³, [longstanding](#) and [growing](#) problems of

¹ The Afiya Trust, Black Minority Ethnic Community Organisations Network (BECON), Black South West Network, BME National, Black Training & Enterprise Group, Coalition for Racial Justice UK (CRJ), Croydon BME Forum, Equanomics UK, Friends, Families and Travellers, JUST West Yorkshire, OLMEC, Operation Black Vote, Race On the Agenda, the Runnymede Trust, the Race Equality Foundation and Voice4Change England.

² [BEMIS Scotland](#) is the national Ethnic Minorities led umbrella body supporting the development of the Ethnic Minorities Voluntary Sector in Scotland.

³: *"The Border Agency backlogs, by the time it was wound up, had fallen to 432,000. However, most of the 70,400 reduction was achieved by simply loading pending cases onto the computer, and in some categories ... the backlog had actually grown."* *"If the Government wants to get tough on illegal immigrants it needs to take effective action. ... Currently only 6 in 100 reports of illegal immigrants result in an actual investigation and only 1.5 in 100 result in removal. This is a very poor record and does not give confidence to those who go out of their way to help the Home Office."* [Home Affairs Committee, November 2013]

the defunct UK Borders Agency and its Home Office successor. To rub salt into the wound, we believe that the implementation of the Bill's provisions, in their current form, will:

- create a toxic and racist environment for access to housing and healthcare, [aggravating existing race discrimination in private rented housing](#) , [increasing homelessness](#) and [adding to existing barriers to healthcare access](#);
- encourage racial profiling across a much wider range of services than at present, leading to racial disproportionalities similar to those that exist in relation to stop and search;
- encourage other serious equality and human rights breaches;
- impact not only on undocumented and short-term migrants, but wider migrant and BME communities;
- reduce access to healthcare for those directly targeted by the NHS proposal and also people from wider BME communities who are likely to face new barriers to access;
- place a greater burden on all patients to prove their eligibility for free NHS services, including when seeking emergency healthcare;
- increase the potential for the spread of serious infectious disease⁴ (e.g. HIV, TB) which already disproportionately affect BME people, within and beyond BME communities;
- be, in effect, a charter for [racial and other forms of harassment and abuse](#) where people encounter rogue decision-makers (e.g. rogue landlords);
- give a wide range of landlords and ordinary employees in the NHS and other services access to sensitive information, raising serious data protection questions;
- make a range of service providers and individuals into unpaid (and untrained) immigration officials;
- encourage a climate that will make it more difficult for the most vulnerable, including victims of trafficking, to seek and get help;
- encourage the demand for identity papers on a previously unforeseen scale as individuals are asked to prove their entitlement to public services; these checks will disproportionately impact on migrants and wider BME communities;
- cost rather than save money and be financially wasteful in a time of ongoing economic austerity;
- result in new red tape across vast swathes of the private, public and voluntary sectors;
- require data gathering and information checks on a previously unforeseen scale;
- raise serious, and possibly insurmountable, data protection and privacy concerns;
- be unworkable and/or an administrative nightmare for those administering the provisions.

⁴ [Opportunistic](#) testing for infectious disease in hospital as well as GP settings is key to diagnosis. Some migrants will have to pay for hospital and A&E services, and all patients will have to prove eligibility for free NHS care.

Amendments to the Immigration Bill supported by CORE			
Important amendments supported by CORE	Bill ref.⁵	Laid by	Briefing
Part 1: Removal, enforcement and other powers			
Removal of individuals: Purpose is to ensure that a person is given written notice of their removal (decision) and relevant details of the decision.	Clause 1	Baroness Hamwee & Lord Avebury	ILPA part 1 brief
Removal of family members: A person being removed as a family member must be given notice of their removal and any such provision must be introduced on the face of the Bill and not by regulation.	Clause 1	Baroness Smith of Basildon & Lord Rosser	ILPA part 1 brief
Powers of immigration officers: Purpose is to maintain the status quo whereby immigration officers can use reasonable force only when exercising powers under the Immigration Act 1971 and the Immigration and Asylum Act 1999, rather than, as per this paragraph, in the exercise of all powers under any of the Immigration Acts.	Clause 2 Schedule 1	Lord Roberts of Llandudno	ILPA part 1 brief
Presumption of liberty: Purpose is to put into a law a presumption of liberty for those in immigration detention.	Clause 3	Baroness Hamwee & Lord Avebury	ILPA part 1 brief
Automatic bail hearings: Purpose is to provide for automatic bail hearings eight and thirty-six days after detention.	Clause 3		ILPA part 1 brief
Biometric information: Purpose is to oppose the provisions that would allow biometric information to be taken not only from persons detained, but anyone liable to be detained.	Clause 5	Baroness Smith of Basildon & Lord Rosser	ILPA part 1 brief
Retaining information: Purpose is to ensure that the use of information for a purpose other than that for which it was gathered be set out on the face of the Bill and scrutinised by parliament.	Clause 8		ILPA part 1 brief
Retaining information: Purpose is to oppose clause 8 (extending the range of information about a person's physical characteristics that could be taken and stored as long as this does not specify information about a person's DNA).	Clause 8	Baroness Smith of Basildon & Lord Rosser	ILPA part 1 brief
Retaining information: Purpose is to remove the proposed power to indefinitely retain photographs of a person who is naturalised or registered as a British citizen.	Clause 10	Baroness Smith of Basildon & Lord Rosser	ILPA part 1 brief
Part 2 Appeals etc.			
Right of appeal: Purpose is to oppose the inclusion of clause 11 and maintain the current position whereby	Clause 11	Baroness Smith of Basildon &	ILPA part 2 brief

⁵ Given the need for parliamentary scrutiny and consideration, we ask peers to consider consequential amendments to the National Health Services Act 2006 – referred to in this briefing as the NHS Act 2006.

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decisions can be appealed as unlawful, rather than restricting appeals to the grounds of human rights and asylum only.		Lord Rosser	
Appeals & deportation: Purpose is to remove provisions allowing someone facing deportation to be removed before their appeal is finally determined e.g. on the grounds removal would not cause "serious irreversible harm."	Clause 12		ILPA part 2 brief
Safe countries: Purpose is to introduce a new clause to provide that the Secretary of State may not deem a country to be safe regardless of whether it is safe or not.	After clause 12		ILPA part 2 brief
The interests of the child: Purpose is to require courts and tribunals considering the public interest first to establish the best interests of any child affected by the decision subject to appeal, before considering other factors.	Clause 14	Baroness Lister of Burtersett & Lord Roberts of Llandudno	ILPA part 2 brief
Legal aid: Purpose is to provide that legal aid must be restored for matters within the Bill before the provisions, including on appeals, come into force.	Clause 68		ILPA part 2 brief
Part 3: Access to services			
Exemptions to Part 3: Purpose is to ensure that no restrictions on access to tenancies, bank accounts, driving licences or other services, or charges for services, shall be made for those holding designated visas. The visas being: a) Tier 4 (General) visas sponsored by a recognised higher education institution; or b) Tier 2 visa and registered in full time undergraduate or postgraduate study at a recognised higher education institution.	Before clause 15	Lord Hannay of Chiswick , Lord Tugendhat , Baroness Williams of Crosby & Baroness Warwick of Undercliffe	JCWI/MAX
Pregnant women: Purpose is to ensure that the restrictions on eligibility for services or charges to be imposed under Part III (e.g. residential tenancies, health, work, bank accounts and driving licences) shall not be imposed on a person who is pregnant.	Clause 15	The Earl of Listowel & Baroness Cumberlege	ILPA part 3 brief JCWI/MAX
Opposing the landlord proposals: The proposals ⁶ re: landlords should be completely abandoned. CORE, JCWI and MAX argue that clauses 15-32 should be opposed.	Clauses 15 - 32	Baroness Smith of Basildon & Lord Rosser	ILPA part 3 brief JCWI/MAX

⁶ CORE's view is that these proposals will increase racial profiling, racial discrimination and homelessness for BME communities. We share ILPA's concerns that: "a landlord or landlady would have an incentive not to accept a person who otherwise appears to be a model tenant if there is any risk of having to pay the fine. Any stereotype or prejudice might weigh with a person with multiple offers on the property, not because they feared having a particular individual as a tenant, but because they feared a fine, making the assumption that that person was more likely to be a person under immigration control whose documents would be complicated to check."

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<i>Piloting and monitoring the landlord checks:</i> Purpose is to ensure that if immigration checks are to be imposed, the proposed scheme should first be piloted.	Clause 15	Baroness Smith of Basildon & Lord Rosser	MRN JCWI/MAX
<i>Equality assessments and the landlord checks:</i> If checks are imposed there must be: a) full equality impact assessments; b) assessments of any consequent extra demand on local authorities and other statutory services arising from the checks; and c) a review of how far the Government has met its obligations under the public sector equality duty.	Clause 15 or clause 28		MRN JCWI/MAX
<i>Enforcement and landlords:</i> The purpose is to require the Secretary of State to issue a substantive claim which gives the landlords an opportunity to raise a defence before the matter is determined and judgment is given.	Clause 26		ILPA part 3 brief
<i>Discrimination and a code of practice (CoP):</i> Given the potential for this Bill to result in racial discrimination, it is essential that any CoPs have teeth, are fit for purpose and in place before any pilot. The CoP must be laid in draft before parliament when first published/ changed.	Clause 28		ILPA part 3 brief JCWI/MAX
<i>Discrimination, the CoP, consultation and piloting:</i> The code of practice must first be the subject of consultation with the EHRC and the Equality Commission for Northern Ireland as well as tenant and landlord representatives.	Clause 28		ILPA part 3 brief JCWI/MAX
Part 3: Health care amendments			
<i>Opposing clauses 33 and 34:</i> Purpose is to oppose the inclusion of the health care charges as part of the Bill.	Clauses 33 & 34		JCWI/MAX
<i>Immigration health charges exemption:</i> Purpose is to exempt children under 18 from the healthcare charges.	Clause 33	Lord Patel	JCWI/MAX
<i>Domestic abuse and female genital mutilation:</i> No charge may be made for health services that are a result of domestic abuse or FGM.	After clause 33	Baroness Meacher	
<i>To treat pregnant women as ordinarily resident for purposes of NHS access:</i> Purpose is to have the effect of treating any pregnant woman as being 'ordinarily resident' for the purposes of NHS access (except where there is evidence that she has entered the UK for the purpose of accessing such care).	Clause 34	Baroness Cumberlege	NAT/EWG JCWI/MAX
<i>Exempting immigration detainees from overseas visitors' NHS charges:</i> Issue of how the government intends to protect access to healthcare for groups with special needs, and as to which groups it intends to protect. Subparagraph (1C) includes provision for discretion to be retained by all healthcare service	Clause 34	Lord Ramsbotham	NAT/EWG

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providers to determine whether a person is among any recognised special needs group.			
Exempting the provision of primary medical services from overseas visitors' NHS charges: Purpose is to retain universal access to primary care for everyone living in the UK in order to support public health and ensure efficient use of NHS resources.	NHS Act 2006, Section 175		NAT/EWG JCWI/MAX
Exempting the provision of A&E services from overseas visitors' NHS charges: Purpose is to retain free access for all patients to all healthcare provided by NHS accident and emergency services to ensure the continued effectiveness and efficiency of such services.	NHS Act 2006, section 175		NAT/EWG JCWI/MAX
Ensuring that charges are not made when it is not cost effective to do so or where it would put public health at risk: Purpose is to make the charging regime more cost effective and less likely to undermine the health of the general public by providing the Secretary of State with power to set a threshold below which no charge for the cost of providing primary medical services will be made. It also allows commissioners to direct providers not to charge for such services where this may put the public health at risk, or it would be uneconomic to do so.	NHS Act 2006, section 175		NAT/EWG JCWI/MAX
Exempting the cost of diagnostic testing in the provision of primary medical services from overseas visitors' NHS charges: GP consultations will remain free, but will diagnostic testing be free? Such charging is likely to discourage access to primary healthcare, leading to late and more costly treatment that puts the health of both the individual and the wider public at risk.	NHS Act 2006, section 175		NAT/EWG
Exempting mental health services from overseas visitors' NHS charges: Purpose is to retain universal access to mental health care services for everyone living in the UK in order to reduce the risks to vulnerable individuals and ensure efficient use of NHS resources. ⁷	NHS Act 2006, section 175		NAT/EWG
Precluding taking account of unpaid overseas visitors' NHS charges & decision about a visitor's entitlement to remain in the UK: Purpose is to prevent specified immigration decisions affecting the entitlement of people in the UK to remain here, being made on the grounds of failure to pay a charge for A&E services or other services specified by the Secretary of State.	NHS Act 2006, section 175		NAT/EWG

⁷ Early diagnosis and treatment are vitally important. When a mental disorder reaches a more advanced stage and hospitalisation is required, this impacts adversely on the individual and the cost of treatment. Evidence suggests that BME people experience greater barriers to accessing appropriate mental health services, and the inability to afford care, or the deterrent effect of worrying about payment, will exacerbate these inequalities.