

IDENTITY CARDS ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

ID cards

Section 6: Issue etc. of ID cards

47. This section sets out the procedure for issuing ID cards.
48. The ID cards scheme will involve the issuing of an ID card to every person registered as entitled to remain in the United Kingdom for longer than a specified period (intended to be 3 months). “ID cards” is defined under this section.
49. *Subsections (1) and (2)* explain that an ID card is a card which holds registrable facts as recorded on the National Identity Register and data enabling the card to be used for verifying information on the Register, for example, a personal identification number (“PIN”). An ID card may form part of a designated document (e.g. if a residence permit issued to a foreign national were designated). It can be a separate card issued together with a designated document (e.g. if the British passport is designated, a separate ID card would be issued alongside it, subject to the exception in Section 6 (7)). Section 42(6) provides that references to a designated document being issued together with an ID card include references to the two documents being comprised in the same card.
50. *Subsection (3)* provides for prescribed information to be recorded on an ID card and parts of it to be in an encrypted form. The exact specification and design of ID cards has yet to be determined, but when it is these will be set out in regulations. This subsection also provides that the ID card will have a limited validity. Different validity periods may be specified for different categories of person, for example, an elderly person’s ID card may remain valid for the rest of his life without the need for renewal, whereas a foreign national’s may be linked to the length of authorised stay. Subsection (3)(d) ensures that the card remains the property of the person, or authority, which issues it.
51. *Subsection (4)* requires that except in prescribed cases ID cards must be issued to individuals who are entitled to be, and whose personal information has been, entered on the Register. However, there are special cases where someone who is not required to be issued with an ID card may be issued with an ID card, providing registrable facts about him have been entered in to the Register (*subsection (5)*). For example, this may be used for individuals who are not entitled to be entered but who may in special circumstances be entered on the Register e.g. foreign nationals residing in the UK for less than 3 months or residing outside the UK but travelling regularly to work in the UK and who therefore may need proof of identity.
52. *Subsection (6)* provides that an ID card will be issued only once an application has been made and sufficient information has been provided for the individual to be entered on the Register or an existing entry is confirmed.
53. Under *subsection (7)* an application for a designated document must include an application for an ID card in the manner prescribed unless the application is being

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made before 1st January 2010, is for a British passport and the application contains a declaration that the individual does not wish to be issued with an ID Card. Individuals applying for British passport can therefore choose to ‘opt out’ of being issued with an ID Card but only up until 1st January 2010. The ‘opt out’ does not apply to the Register. All individuals who apply for a passport will be required to be entered onto the Register once the passport becomes a designated document.

54. *Subsection (8)* ensures that any other application for an ID card must be in the prescribed manner, and should be made to the Secretary of State or in certain circumstances to a designated documents authority and with the prescribed information.
55. In the case of a designated documents authority, regulations may be made providing that an application for an ID card may be made separately from any application for the designated document. This allows a designated documents authority to issue a “standalone” ID card that is not part of and is not issued with a designated document.
56. Regulations specifying the information that may be recorded in or on an ID card or the form in which the information is to be recorded need the agreement of both Houses of Parliament via the affirmative resolution procedure (*subsection (9)*).
57. None of the provisions in this or any other section places any constraints on the type of organisations which may be involved in the issuing process. For example, private sector organisations may have certain parts of the process contracted out to them, such as actual production of the card.

Section 7: ID cards for those compulsorily registered

58. This section provides for the issue to and renewal of cards for those individuals who are required, by virtue of future primary legislation, to be entered into the Register. This is in accordance with the definition in Section 42 of “subject to compulsory registration”, namely “required to be entered in the Register in accordance with an obligation imposed by an Act of Parliament passed after the passing of this Act”.
59. *Subsection (2)* makes it a requirement for such an individual whose card will expire in the prescribed period or who does not hold a valid card to apply for an ID card within the prescribed period.
60. *Subsection (3)* gives the Secretary of State the power to require an individual applying for an ID card under this section to do certain things so that the Secretary of State can verify the information provided and ensure the accuracy of the Register. *Subsection (4)* sets out what these requirements might be and includes personal attendance at an agreed place and time, or in the absence of an agreement at a specified place and time, the recording of biometric information, being photographed and providing such other information as may be required.
61. An individual who fails to apply for a card under this section or to provide the information requested to verify an application is liable to a civil penalty not exceeding £1,000 (*subsection (5)*).

Section 8: Functions of persons issuing designated documents

62. A designated documents authority is defined as an issuer of a designated document as described in section 4. This section sets out how common standards will be set for all designated documents authorities in carrying out their functions in relation to the Register and ID cards.
63. *Subsection (1)* requires that a designated document may only be issued if the designated documents authority is satisfied that:
 - the requirements imposed by or under the Act in relation to the application for the issue of that document to that individual have been complied with;

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- the Secretary of State has considered and dealt with so much of the application as relates to the making of an entry on the Register or the confirmation (with or without changes) of the contents of such an entry; and
 - it has ascertained whether the individual already holds a valid ID card.
64. *Subsection (2)* requires that, where a designated document is issued to an individual who does not hold a valid ID card, the designated documents authority must ensure that the document is issued with an ID card satisfying the requirements set out in regulations, unless the individual is being issued with a designated document on a application falling within section 6(7) (temporary opt out for British passport applicants).
65. Regulations made under subsection 2 are subject to the affirmative resolution procedure (*subsection (5)*)
66. *Subsection (3)* sets out in more detail the requirements that may be imposed on designated documents authorities, regarding:
- how applications made to them for entry on the Register are to be handled;
 - how applications to be issued with ID cards made to them are to be handled; whether they be stand-alone applications or applications made alongside applications for designated documents; and
 - how applications made to them confirming an individual's entry to the Register are to be handled.
67. *Subsection (4)* allows the Secretary of State to make regulations requiring those issuing designated documents together with ID Cards to notify the Secretary of State where a designated document is modified, suspended or revoked; or required to be surrendered.

Maintaining accuracy of Register etc.

Section 9: Power to require information for validating Register

68. This section deals with the provisions permitting data to be shared with the Secretary of State and designated documents authorities for the purposes of verifying information to be recorded or which is currently recorded on the National Identity Register. This is specifically about ensuring the accuracy of the Register and it does not confer the power to share data for wider purposes. Neither does it allow the Secretary of State or a designated documents authority to request information that is not relevant for the purposes of validating the Register.
69. *Subsections (1)* and *(3)* place a duty on a person to provide to the Secretary of State information required by him for the purposes of verifying an individual's entry on the Register. *Subsection (2)* extends this obligation to disclose specified information to a designated document authority when so required by that authority. *Subsection (3)* also enables the Secretary of State or a designated document authority to require the information within a specified timescale.
70. *Subsection (4)* sets out that a requirement may be imposed on any person specified for the purposes in an order, for example local government or bodies in the private sector. *Subsection (5)* clarifies that this could also include for example, central government organisations and the devolved administrations in Northern Ireland and Wales. Orders under this section are subject to the affirmative resolution procedure (*subsection (8)*).
71. *Subsection (6)* provides that orders under this section can provide that the duty of a person to provide information may be enforced via civil proceedings. In the case of public authorities, normal public law remedies such as judicial review will apply.
72. *Subsection (7)* enables the Secretary of State to pay those from whom he is requiring information to be provided.

Section 10: Notification of changes affecting accuracy of Register

73. This section sets out how changes in circumstances should be notified in order to maintain the accuracy of the Register.
74. *Subsection (1)* places a person issued with an ID Card under a duty to notify the Secretary of State of any change in his circumstances that may be prescribed, for example, change of address or change of name, and to notify the Secretary of State of every error in the information held about him of which he is aware. This will enable the Register to maintain accurate information. This duty does not apply to those persons whose information is held on the Register, but who have not been issued with an ID card, for example in accordance with section 6(7). The notification procedures are to be set out in regulations (*subsection (2)*).
75. A person may be required to provide further information to verify the information that may be entered as a consequence of the notification or to ensure that the entry is up to date (*subsection (3)*). This requirement to provide further information may include personal attendance, being photographed, allowing biometric information to be recorded or otherwise providing information. Again “fingerprint” and “biometric information” are defined in section 42(1). The information that a person may be required to provide by regulations under this section is limited to that which is needed for the Secretary of State for the statutory purposes.
76. *Subsection (6)* provides that the Secretary of State must make regulations on the first occasion, by means of affirmative resolution requiring approval by both Houses of Parliament.
77. *Subsection (7)* provides that the maximum penalty for failure to comply with a requirement under this section is a civil penalty of £1,000.

Section 11: Invalidity and surrender of ID cards

78. This section covers invalidity and surrender of ID cards.
79. *Subsection (1)* provides that regulations can impose a requirement that an individual who knows or has reason to suspect the fact that his ID card has been lost, stolen, damaged, destroyed or tampered with, must report this to the Secretary of State or other person as prescribed. If a card was issued based on inaccurate information, requires modification or has been lost, stolen, damaged, destroyed or tampered with, or is of a particular sub-set of cards (for example where security has been compromised), or if the holder of the card’s entry has been modified, then the card may be cancelled (*subsection (2)*). “Damaged” includes becoming unreadable or unusable and “tampered with” includes references to information in or on the card having been modified or copied for an unlawful purpose (*subsection (7)*).
80. *Subsection (3)* provides that if a person is in possession of an ID card which does not belong to him, without the authority of the individual to whom the card was issued or permission from the Secretary of State, he must surrender it as soon as practicable.
81. The Secretary of State may require a person to surrender an ID card that is not his, is invalid, is of a sub-set of cards the Secretary of State has determined should be re-issued, or where an individual is in the possession of an ID card in contravention of a requirement under an enactment to surrender it or another document. It may be necessary for example, when renewing an ID card to surrender the old card at the time of re-application. Sub-sets of cards may also need to be surrendered, for example, where the security has been compromised. The card must be surrendered within such period as the Secretary of State may specify (*subsection (4)*).
82. Failure to surrender in these circumstances would make an individual liable to a civil penalty not exceeding £1,000 (*subsection 6*).