

IDENTITY CARDS ACT 2006

EXPLANATORY NOTES

INTRODUCTION

1 These explanatory notes relate to the Identity Cards Act 2006, which received Royal Assent on 30th March 2006. They have been prepared by the Home Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2 The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. Where a section, sub-section or paragraph does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3 In July 2002, the Government launched a consultation on Entitlement Cards and Identity Fraud (Cm 5557). The consultation period lasted until 31st January 2003. A summary of findings from the consultation exercise was published on 11th November 2003, *Identity Cards: a Summary of Findings from the Consultation on Entitlement Cards and Identity Fraud* (Cm 6019). A detailed response by the Government to the Consultation Points was placed on the Home Office website.

4 At the same time as publication of the findings, the Government announced its decision to build a base for a compulsory national ID cards scheme. *Identity Cards: the next steps* (Cm 6020) set out in more detail how the Government would proceed. A draft Identity Cards Bill was published on 26th April 2004 (Cm 6178). This gave effect to the Government's proposals for the introduction of ID cards throughout the UK, as set out in *Identity Cards: the next steps*. Consultation on the draft legislation ended on 20th July 2004.

5 In parallel, the Home Affairs Select Committee carried out an inquiry on all aspects of ID cards, including the pre-legislative scrutiny of the draft Bill. The Committee reported on 30th July 2004 (HC130). The Government published its reply to the Report (Cm 6359) and a Summary of Findings from the Consultation on Legislation on Identity Cards (Cm 6358) on 27th October 2004.

6 In November 2004 the first Identity Cards Bill was introduced into the House of Commons. The Bill had reached its second reading in the House of Lords when Parliament was dissolved, on 11th April 2005, for the General Election and the Bill fell. The second Bill, which resulted in the Act, was very similar to the initial Bill.

7 The Act provides the legal framework required to establish a National Identity Register, and to issue ID cards to those on the Register. Its main features are:

- setting out the statutory purposes of the National Identity Register;
- setting up the National Identity Register;
- establishing powers to issue ID cards;

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which received Royal Assent on 30 March 2006*

- establishing powers to designate existing documents
 - (i) as documents together with which ID card will be issued (for example British passports) or
 - (ii) as ID cards themselves;
- ensuring biographical checks can be made against other databases to confirm an applicant's identity and guard against fraud;
- setting out what information may be held and establishing safeguards to protect individuals' data;
- enabling public and private sector organisations to verify a person's identity with the person's consent before providing services;
- defining the circumstances in which certain public authorities specified in the Act (such as the police), or to be prescribed in regulations (such as government departments), could be provided, without an individual's consent, with information held on that individual's entry on the Register;
- providing for a National Identity Scheme Commissioner to have oversight of the scheme and to report to the Secretary of State and for these reports to be laid before Parliament;
- creating new criminal offences relating to misuse of ID cards and other identity fraud issues;
- including powers to link future access to specified public services to production of an ID card and or a check on the Register.

8 In addition, the Act includes provisions relating to passports:

- to amend the Consular Fees Act 1980 (c.23) in order to create a general power which will allow cross subsidisation of fees for different types of passports and passport services. This will provide a statutory basis, for example, to the issue of free passports which has already been introduced for those born on or before 2 September 1929 to be subsidised by charges made for other passports;
- to ensure biographical checks can be made by the Secretary of State (to be exercised by the Identity and Passport Service) for the purpose of verifying information supplied by applicants for British passports.

TERRITORIAL EXTENT

9 The Identity Cards Act applies to the whole of the United Kingdom. The ID cards scheme will operate on a UK-wide basis to deal with matters which are reserved to the UK Parliament, notably, immigration and nationality.

10 The Act allows devolved administrations in Wales and Northern Ireland to make regulations making the production of an ID card a condition of providing a public service for which those administrations are responsible.

11 Any move for production of an ID card to be a condition of a public service which is within the legislative competence of the Scottish Parliament would require authorisation by an Act of the Scottish Parliament.

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12 The Act creates new offences. As these offences relate to documents or databases that operate on a UK basis, they will be applicable throughout the UK.

13 The provisions relating to passports also operate on a UK-wide basis.

OVERVIEW OF THE STRUCTURE

14 The Act contains 44 Sections and two Schedules and deals with twelve main topics –

- Registration
- ID cards
- Maintaining accuracy of Register etc.
- Provision of information from Register for verification purposes etc.
- Required identity checks
- Other purposes for which registered information can be provided
- Supervision of operation of Act
- Offences
- Civil penalties
- Fees and charges
- Provisions relating to passports
- Supplemental

COMMENTARY ON SECTIONS

Registration

Section 1: The National Identity Register

15 This section required the Secretary of State to establish the National Identity Register for the ID cards scheme and sets out the purposes of the Register.

16 Subsection (2) provides that the Register is only for specified purposes, the “statutory purposes”. These specified purposes are set out in *subsection (3)* as the:

(i) provision of a convenient method for individuals to prove their identity to persons who reasonably require proof;

(ii) provision of a secure and reliable means of identifying individuals where that is in the public interest.

17 *Subsection (4)* defines ‘necessary in the public interest’ as being in the interests, or for the purposes of:

- National security;
- Prevention and detection of crime;
- Enforcement of immigration controls;

- Enforcement of prohibitions on unauthorised working or employment; and
- Efficient and effective provision of public services.

18 National security as well as the prevention and detection of crime include action to prevent terrorism. Crime also includes “identity fraud and theft”.

19 *Subsections (5) to (8)* give further explanation about the personal information which may be recorded on the Register and which is central to the scheme. This information is known as the “registrable facts” and includes name, date and place of birth, nationality, gender, immigration status, address, external characteristics of a person that are capable of being used for identification purposes (e.g. biometric information), and information included at a person’s request. These “registrable facts” may only be amended by further primary legislation and thereby limit the scope of the information that may be held under the scheme.

20 *Subsection (6)* excludes any identification number being recorded that would tend to reveal sensitive personal data as defined in the Data Protection Act 1998. Section 2 of that Act provides that sensitive personal data includes information about matters such as racial or ethnic origin, political opinion, sexual life and the commission of offences. So, for example, a Police National Computer (PNC) reference number would tend to reveal whether an individual has a criminal record and would thus be excluded by subsection (6).

21 Biometric information is defined in section 42(1) in relation to an individual as data about his external characteristics. Examples include iris patterns and fingerprints. This biometric information may be recorded in the Register by virtue of the definition of registrable facts, section 3 and Schedule 1.

Section 2: Individuals entered in Register

22 This section sets out who may be entered on to the Register and the Secretary of State’s duty to make arrangements to enable these entries to be made.

23 *Subsection (2)* sets out the individuals who are entitled to be entered on the Register. These include individuals who have attained the age of 16 and are residing in the UK. They also include individuals of a description prescribed in regulations made by the Secretary of State who have resided in the UK, or who are proposing to enter the UK. This is to allow flexibility because although the ID card will be for all UK residents, it may be in the future that the Government would want, through regulations, to allow, for example, British citizens resident overseas to register before returning to live in the UK.

24 *Subsection (3)* gives the Secretary of State power, by regulations, to exclude individuals from the entitlement to be entered on the Register if they do not meet prescribed requirements in relation to time of residence in the UK (intended to be 3 months) or if they are residing despite having no entitlement to remain (for example, individuals who are seeking asylum in the UK).

25 In general, an entry on the Register must be made if an application is made and the person is entitled to be entered (*subsection (1)*).

26 *Subsection (4)* provides that in some circumstances, a person who has not applied or is not entitled may be entered into the Register for reasons consistent with the statutory purposes. For example, this power would allow the entry on to the Register of a failed asylum seeker who had not applied for an ID card but whose information including biometric data

was available. This means that if he applies to stay in the UK again using a different identity, his previous status as a failed asylum seeker will have been recorded. This subsection does not constitute a power to obtain the biometric data of a person in the first place.

27 *Subsection (5)* provides for every person registered on the National Register to be assigned a unique number, the National Identity Registration Number to be attached to the information recorded about an individual. The format of the National Identity Registration Number is to be specified in regulations. Other personal reference numbers, such as driver number or national insurance number, may also be recorded on the Register as provided for in Schedule 1, paragraph 4.

28 *Subsections (6) and (7)* provide that the Secretary of State may modify the age of entry on the Register by order subject to the affirmative resolution procedure, that is to say, requiring approval in both the House of Commons and the House of Lords.

Section 3: Information Recorded in Register

29 Section 3 sets out the information that may be recorded in the Register.

30 *Subsection (1)* provides that information may only be entered in the Register or remain on the Register if it is consistent with the statutory purposes for it to be recorded

31 *Subsection (2)* is an exhaustive list of four categories of information which may be held on the Register. The first is the information listed in Schedule 1 (as to which see paragraph [35] below). The second is technical information required for the administration of the Register. The third is technical information required for the issue and cancellation of ID cards. The fourth is additional information about an individual which has been recorded on the Register at his request in accordance with *subsection (3)*.

32 *Subsection (3)* enables other information to be recorded if:

- an individual has asked for it to be included;
- regulations include it as information that may be subject to such a request;

and

- the Secretary of State agrees.

For example, an individual may ask for emergency contact details to be included on the Register.

33 *Subsection (4)* provides that an individual's entry on the Register must include information falling within paragraph 9 of Schedule 1, about occasions on which information has been provided from his entry without his consent.

34 *Subsection (5)* enables the Secretary of State to agree with a person being registered what facts should be registered where there is some doubt as to what the true facts are, for example, place or date of birth. It could also be used where a new identity needs to be established, for example, for those in a witness protection programme. It would prevent the false identity documents offences in section 25 from applying.

35 Schedule 1 may be amended by secondary legislation following a resolution in both Houses of Parliament (*subsections (6)-(8)*) to add to the list of information that may be recorded on the Register. However, because of subsection (1), any additional information

must be consistent with the statutory purposes of the Register. So, for example, this power to amend Schedule 1 could not be used to include criminal records in that Schedule without further primary legislation, as recording previous criminal convictions is not covered by the definition of registrable facts and so is not consistent with the statutory purposes of the Register in section 1(3).

Section 4: Designation of documents for purposes of registration etc.

36 Section 4 provides for the Secretary of State to have the power by order to designate documents for the purposes of the Act, for example, passports. Any orders will be subject to the affirmative resolution procedure. These documents are referred to in the Act as “designated documents”. Persons responsible for issuing designated documents are referred to in the Act as “designated documents authorities”. If a document is designated, anyone applying for one will simultaneously need to apply to be entered in the Register, unless he is already so registered (see section 5(2)). He would also need to apply for an ID Card unless he already has one. There is, however, an exception to the requirement to apply for an ID Card where the designated document being applied for is a British passport and the application is made before 1st January 2010 (see subsection 6(7)).

37 *Subsection (2)* provides that the Secretary of State may only designate documents which are issued by the persons set out in subsection (3), namely a Minister of the Crown, a government department, a Northern Ireland department, the National Assembly for Wales, or any other person who carries out statutory functions on behalf of the Crown.

Section 5: Applications relating to entries in Register

38 Section 5 sets out how an application for entry to the Register should be made.

39 *Subsection (1)* provides that an application can be made by being included in an application for a designated document or by being submitted directly to the Secretary of State.

40 Under *subsection (2)*, if an application for a designated document is submitted, then the application must also include one of the following:

- an application to be entered in the Register;
- confirmation that the individual is already registered and confirming his entry;
- confirmation that the individual is already registered and notifying changes to his entry.

References to confirming an entry relate only to the information in paragraphs 1 to 5 of Schedule 1 or information voluntarily added (section 42(4)).

41 For example if, as is intended, passports were designated documents, an individual in applying for a passport must at the same time include an application to be entered in the Register if he is not already entered in the Register or else confirm his entry. In practice, information on the designated document application form is likely to include all the information needed to create an entry on the Register or to verify an existing entry.

42 *Subsection (3)* provides that an application for registration or confirmation of entry should be accompanied by such information as may be prescribed by the Secretary of State.

The information required may vary for different categories of person. For example, third country nationals may be required to provide information regarding their immigration status.

43 Under *subsection (4)* the Secretary of State may make further requirements of applicants in order to verify information to be entered on the Register and keep that information up to date, for example, in cases of doubt or suspected fraud.

44 *Subsection (5)* expands on what an individual applying to be entered in the Register or confirming his entry in the Register may be required to do under subsection (4). This includes attending in person at an agreed place and time (or in the absence of agreement, at a specified place and time), agreeing to be photographed, allowing biometric information to be recorded and providing any other information that may be required by the Secretary of State. “Biometric information” and “fingerprint” are defined in section 42(1).

45 *Subsection (6)* ensures that information may not be required by regulations under this section unless it is for the statutory purposes of the scheme as set out in section 1(3) and consistent with the recording of the registrable facts. This is to ensure that there is no expansion in the scope of information that must be provided by individuals without new primary legislation.

46 *Subsection (7)* provides that on the first occasion that the Secretary of State makes regulations under Section 5, these regulations must be laid in draft before Parliament and approved by the affirmative resolution procedure. In the case of any subsequent regulations, the negative resolution procedure will apply.

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 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;
- 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*).

Provision of information from Register for verification purposes etc.

Section 12: Provision of information for verification or otherwise with consent

83 This section enables the provision of an identity verification service which operates with the consent of the individual. The service is subject to an accreditation requirement for user organisations.

84 *Subsection (1)* gives the Secretary of State the power to provide a person with certain information recorded in an entry about an individual provided that the individual concerned consents. Provision of information includes confirming that the information is or is not recorded in his entry (section 42(7)).

85 *Subsection (2)* provides that only a limited part of the individual's entry on the Register may be provided to a person under this section. This includes information within paragraphs 1, 3 and 4 of Schedule 1, the photograph, signature, information concerning whether the ID card is valid, voluntary information, security questions, the grant/refusal of

confirmation that submitted information falling in *subsection (3)* matches that which is held on the Register and the grant/refusal of confirmation that the individual's entry does not contain information of a particular description within that subsection. The latter might be necessary, for example, to verify the identity of an individual whose biometric could not be recorded at the time of enrolment (e.g. because of a medical condition). This limitation on the information that may be checked means that information falling in other parts of Schedule 1, for example the records of provision of information and validation information, may not be provided to organisations verifying identity under this section, regardless of the consent of the individual concerned.

86 *Subsection (2(g))* limits the provision of certain information to a grant or refusal of confirmation that information submitted matches information held on the Register. *Subsection (3)* lists the information which is subject to that limitation. It includes biometric information (including fingerprint information), passwords, codes, security numbers and security answers. So, subsection (2) does not permit provision of fingerprint data from the Register, but it does permit confirmation that a person's fingerprint matches that which is recorded on his entry on the Register.

87 *Subsection (4)* enables the Secretary of State to amend by affirmative order *subsections (2) and (3)*, and allows regulations to be made further restricting the information that may be provided under section (2). This could be used, for example, to ensure that particular categories of people do not have certain information about themselves provided to other organisations, for example where it might be sensitive as in the case of the previous names of transsexual people. This power may also be used more broadly to restrict further the information that is provided to specific types of organisations where all the information falling under section 12(2) is not necessary for their verification purposes. *Subsection (5)* limits the Secretary of State's powers to modify *subsections (2) and (3)* such that he may not omit *subsection (2)* or add information falling within paragraph 9 of Schedule 1 to either *subsection (2) or (3)*.

88 *Subsection (10)* ensures that the restrictions on the provision of data under section 12 do not interfere with rights to be provided with information under other Acts, for example subject access rights under the Data Protection Act 1998.

89 *Subsection (6)* provides that the Secretary of State may make regulations subject to the negative resolution procedure prescribing how an authority or consent is to be given, the persons who can make an application, in what circumstances an application may be made, and how an application can be made. *Subsection (8)* enables information to be provided only where regulations under *subsection (7)(a) and (b)* have been complied with. The Secretary of State must therefore make regulations under *subsection (7)* to "accredit" organisations before any information can be provided to them from the Register.

90 This section therefore requires an accreditation scheme to be established so that only those organisations that have been approved will be able to make checks on the ID cards of individuals who have consented to verification checks against the Register. The accreditation regulations will include a requirement that to be provided with information from the Register, an applicant must have registered certain details with the Secretary of State, and furthermore that the person and the applicant for information must have been approved by the Secretary of State. The regulations may also require that the equipment being used is accredited with the Secretary of State (*subsection (7)*).

91 Section 40(7) sets out in more detail what regulations for the approval of a person or of apparatus might include.

Required identity checks

Section 13: Power to make public services conditional on identity checks

92 *Identity Cards – the next steps (Cm 6020)* sets out two objectives for the use of ID cards in relation to public services. These were to simplify checks on eligibility for services and to reduce fraudulent use of services. This section provides a power to make, on a case by case basis, a link between the ID cards scheme and the provision of public services. This power will only be used where power does not exist elsewhere, for example in social security legislation. Section 42(2) defines what is meant by the provision of a public service.

93 *Subsection (1)* provides a power to make regulations which allow or require a person who provides a public service to make it a condition of providing the service that an individual produces an ID card and/or other evidence of his registrable facts. This will give service providers flexibility in deciding what proof of identity is the most appropriate in the particular circumstances and what level of identity check is necessary. The ID card on its own may suffice. Alternatively, someone's identity could be checked against the Register, using for example a biometric, when the card is not present.

94 *Subsection (2)* ensures that regulations made under subsection (1) cannot make it a requirement to produce an ID card or information which can be verified against the National Identity Register in order to receive payments provided under legislation or any service provided free of charge before it is compulsory for that individual to register. This means that an order under section 13 cannot make it a requirement for a person to produce a card, for example to receive social security benefits or free NHS treatment, until it is compulsory for that person to be registered. As noted above, compulsory registration means an obligation to register imposed under future primary legislation.

95 *Subsection (3)* specifically excludes the possibility of an order under section 13 making the carrying of cards compulsory. This includes both the carrying of a card and its production on demand other than for the purposes of an application for a public service.

96 Section 43(2) provides that the powers under this section do not extend to public services provided in Scotland that are within the legislative competence of the Scottish Parliament. If the Scottish Parliament wishes to make production of a card a condition of the provision of those services, it would first have to pass its own Act.

Section 14: Procedures for regulations under s. 13

97 This section sets out the procedure for making regulations under section 13, including in relation to devolved administrations.

98 *Subsection (1)* sets out who may make regulations under section 13. Where the provision of public services is the responsibility of the National Assembly for Wales, only the Assembly may make regulations under section 13. In Northern Ireland, the power to make regulations under section 13 in relation to the provision of Northern Irish public services is exercisable by such Northern Ireland department as may be designated for that purpose by order made by the Office of the First Minister and deputy First Minister. Where this power is not exercisable by the National Assembly for Wales or a Northern Ireland Department, the Secretary of State may make regulations.

99 *Subsection (2)* states that the ‘provision of Welsh public services’ means the provision of public services in Wales to the extent that such provision is something which the National Assembly for Wales has functions. And the provision of Northern Ireland public services means the provision of public services in Northern Ireland to the extent that it is a transferred matter.

100 Regulations made under section 13 must be approved by a resolution in both Houses of Parliament in the case of regulations made by the Secretary of State; and in the case of regulations in Northern Ireland, they must be laid before and approved by the Northern Ireland Assembly (*subsection (3)*).

101 Under *subsection (4)*, before any regulations are made there must be steps taken for ensuring that members of the public likely to be affected are informed and consulted on the proposal. *Subsection (5)* provides that this must include the reasons for the proposal and why existing provisions under legislation governing the particular service are not sufficient to create the necessary link; i.e. why the section 13 power is being relied on.

102 *Subsection (6)* requires there to be consultation with interested parties, for example the providers of a public service, before any regulations are made under section 13 if there is an equivalent requirement in other legislation governing that service to consult these interested parties.

Section 15: Power to provide for checks on the Register

103 This section provides a power to the Secretary of State to enable checks to be made of information recorded in the Register by people providing public services. It also gives the Secretary of State the power to regulate identity checks, including an accreditation scheme for user organisations and the equipment they are using.

104 *Subsection (1)* enables the Secretary of State to make regulations allowing the provision of information to a person providing a public service for which regulations under section 13 have been made or in respect of which any other legislation makes it a condition to produce an ID card or any other evidence of registrable facts recorded on the Register. This must be for the purposes of ascertaining or verifying information about an individual applying for the public service.

105 *Subsection (2)* limits the Regulation making power such that information falling under paragraph 9 of Schedule 1 (audit log information) may not be provided under this section.

106 *Subsection (3)* provides that regulations may specify the manner in which applications for checks on the Register are to be made, the persons by whom and the circumstances in which the application may be made, the information that may be provided and how it may be provided.

107 *Subsections (4) and (5)* read together have the effect that the provision of information under this section may only take place where the Secretary of State has made regulations requiring accreditation, and the applicant for information has satisfied the requirements of those regulations. Section 40(7) sets out in more detail what regulations for the approval of a person or of apparatus may include.

108 The regulations are subject to the affirmative resolution procedure (*Subsection (6)*). Before any draft regulations are laid before Parliament, the Secretary of State must take steps

to ensure that members of the public in the United Kingdom are informed and consulted on any proposals (*Subsection (7)*).

109 *Subsection (8)* ensures that “enactment” for the purposes of this section includes an Act of the Scottish Parliament. This means that if a Scottish Act were to make it a condition of providing a service that an ID Card or evidence of registrable facts be produced, the Scottish service provider could apply for a check against the Register.

Section 16: Prohibition on requirements to produce identity cards

110 This section places prohibitions on requiring people to produce ID cards or information from their entries on the Register. It is designed to prevent ‘backdoor’ compulsion by ensuring that organisations only place requirements on people in relation to ID Cards, to the extent that that is permitted by this or other legislation.

111 *Subsection (1)* makes it unlawful to make it a condition of doing anything in relation to a person, e.g. providing him with a service, that that person:

- makes an application under section 12(1) for information from his entry on the Register;
- makes a subject access request under the Data Protection Act for information from his entry on the Register; or
- is otherwise required to provide information about his entry on the Register.

There are no exceptions to these prohibitions.

112 *Subsection (2)* makes it unlawful (subject to the exceptions in *subsection (3)*) to make it a condition of doing anything in relation to a person, that that person:

- consents to a check on his entry on the Register being carried out under section 12(1); or
- produces his ID card.

113 Three exceptions to the *subsection (2)* prohibitions are set out in *subsection (3)*. The first exception is where the relevant condition has been imposed in accordance with regulations made under section 13 (power to make public services conditional on identity checks) or in accordance with provisions of another enactment. The second exception is where the organisation allows for reasonable alternative methods of proving identity, i.e. the requirement is not truly conditional. The third is where the individual concerned is subject to compulsory registration by virtue of future primary legislation.

114 *Subsection (4)* makes clear that the prohibitions in this section may be enforced by the individual in the civil courts.

115 *Subsection (5)* ensures that Acts of the Scottish Parliament are included in the definition of an enactment within this section. Therefore, if the Scottish Parliament decided to pass legislation making the provision of a public service conditional on the production of an ID card, by virtue of *subsection (3)(a)* that requirement would be exempted from the scope of the prohibitions in *subsection (2)*.

Other purposes for which registered information can be provided

Section 17: Public authorities etc.

116 This section gives a power to provide information held on the Register to certain persons for specified purposes without the consent of the registered person. *Subsection (1)* allows for this provision so long as it is authorised by this section and complies with section 21 (which sets out the rules for using information without an individual's consent).

117 *Subsection (2)* provides that information may be provided without the consent of the individual, to specified national security and intelligence agencies for purposes connected with any of their functions. For example, the Security Service would be able to be provided with information for purposes connected with the protection of national security, the support of law enforcement agencies in the prevention and detection of serious crime and to safeguard the economic well-being of the United Kingdom, which are their statutory functions as set out in the Security Services Act 1989.

118 *Subsection (3)* provides a power to provide information apart from that specified within paragraph 9 of Schedule 1 (the audit log) to a chief officer of police, in the interests of national security, for the prevention or detection of crime or for other purposes as may be specified by order. Paragraph 9 of Schedule 1 (the audit log) records the details of each occasion on which there has been provision of information from a person's Register entry, as opposed to "static" information held on the Register, such as place and date of birth.

119 A similar power is provided in *subsection (4)* for the provision of information without consent (except audit log information) to the Commissioners of Her Majesty's Revenue & Customs, in the interests of national security, for the purposes of prevention and detection of crime, for functions relating to national insurance contributions and for the other purposes connected with the Commissioners set out in subsection (4).

120 Where information does not fall within paragraph 9 of Schedule 1 (i.e. it is not audit log information), provision of that information is permitted if it is made to a prescribed government department or a Northern Ireland department in order to carry out prescribed functions of that department or of the Minister in charge of that department (*subsection (5)*). Regulations could therefore be made permitting the provision of information without consent to other parts of government or Northern Ireland departments, e.g. to the Department for Work and Pensions for investigation of social security fraud, or to the Department for Social Development in Northern Ireland in connection with social security benefits or national insurance numbers. Regulations allowing information to be provided under this power will be subject to the affirmative resolution procedure (*subsection (8)*).

121 *Subsection (6)* sets out the purposes for which information may be provided without consent to a designated documents authority that issues documents designated under section 4.

122 *Subsection (7)* limits the Secretary of State's powers to authorise provision of information by subordinate legislation under this section to circumstances where provision is necessary in the public interest, as defined in section 1(4).

123 *Subsection (9)* defines terms used in section 17, in particular exactly who is covered by the term "chief officer of police".

124 “Crime” is defined in section 42(1) with reference to the Regulation of Investigatory Powers Act 2000 which defines “crime” as “conduct which constitutes one or more criminal offences or is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom would constitute one or more criminal offences”.

125 “Detection” is defined in section 42(1) and (9) with reference to the Regulation of Investigatory Powers Act 2000 which defines “detecting crime” as including “(a) establishing by whom, for what purpose, by what means and generally in what circumstances any crime was committed; and (b) the apprehension of the person by whom any crime was committed”.

126 *Subsection (10)* ensures that this section does not restrict any powers existing elsewhere to disclose information.

Section 18: Prevention and detection of crime

127 This section sets out other circumstances in which information from the Register may be provided without consent of the registered person. *Subsection (1)* provides a power for this provision so long as it is authorised in this section and section 21 is complied with.

128 *Subsection (2)* authorises the provision of information (other than audit log information) without consent for any of the purposes specified in sections 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (which include provision for disclosing information for the purposes of criminal investigations or proceedings overseas), but only if section 21 is complied with.

129 *Subsection (3)* allows the Secretary of State to prohibit the provision of information without consent for use in overseas proceedings (under the Anti-terrorism, Crime and Security Act 2001) as specified in section 18 of that Act (which allows the Secretary of State to give a direction that would prohibit the provision of information that could be used for the purposes of any overseas proceedings that would otherwise occur under section 17 of that Act) e.g. the Secretary of State might do this if he considered that it would be more appropriate for these proceedings to be conducted in a United Kingdom court.

130 Provision of information falling within paragraph 9 of Schedule 1 (audit log information), is authorised if it is to the persons listed in section 17(3) to (5) of this Act and is for purposes connected with preventing or detecting serious crime or if it is authorised under section 18(2) for use in overseas criminal investigations or proceedings, and is concerned with the prevention and detection of serious crime. This applies a higher threshold where the information being disclosed relates to the audit log rather than simply to static information about name, address etc.

131 “Serious crime” is defined in section 42 with reference to the Regulation of Investigatory Powers Act 2000 which defines serious crime as a crime that “(a) involves the use of violence, results in substantial financial gain or is conducted by a large number of persons in pursuit of a common purpose, or (b) the offence or one of the offences is an offence for which a person who has attained the age of twenty-one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more”.

Section 19: Correcting inaccurate or incomplete information

132 This section provides a power to provide information from the Register to a person or organisation who has supplied information (including but not restricted to information

provided under section 9) to help verify an entry in the Register where information provided appears to be inaccurate or incomplete. For example, where it appears that the organisation that supplied the information has an out of date or inaccurate address held on its records.

133 *Subsection (1)* sets out the circumstances in which information may be provided under this section. Under *subsection (2)*, the Secretary of State may give to someone who has provided incomplete or inaccurate information, information about how it is inaccurate or incomplete and what is in fact recorded. Again, section 21 must be complied with (*subsection (3)*).

134 *Subsection (4)* defines what is meant by providing information about an individual for verification purposes.

Section 20: Power to authorise provision of information in other circumstances

135 This section provides (*Subsection (1)*) that where there is no authorisation under sections 17 to 19 the Secretary of State may nevertheless provide information without consent where an order has been made specifying or describing the information, to a public authority so specified or described, for purposes so specified or described as long as any requirements under section 21 are complied with. The Secretary of State's power to authorise the provision of such information is restricted to circumstances where the provision is necessary in the public interest (*subsection (2)*). This order (*subsection (3)*) is subject to an affirmative resolution procedure. The information which can be provided is limited to information not falling within paragraph 9 of Schedule 1 (the audit log information).

Section 21: Rules for providing information without individual's consent

136 *Subsection (1)* provides that provision of information in paragraph 2 of schedule 1 (photograph, signature, fingerprints or other biometric information) under sections 17 to 20 may only be authorised where the Secretary of State is satisfied that it was not reasonably practicable for the person to have obtained the information by another means. For example, if fingerprint information is recorded on the Register, the police would first have to search their own fingerprint records before requesting information to be provided from the Register.

137 *Subsections (2) to (4)* allow the Secretary of State to make regulations imposing requirements for providing information under sections 17 to 20, such as specifying the persons who may make a request for information and how it is to be made and authorised before any information is provided under sections 17 to 20.

138 *Subsection (5)* allows the Secretary of State to make regulations setting out the rank, office or position of people who would be authorised to receive information on behalf of those persons listed in sections 17 to 20. For example, a police officer of a specified rank may be authorised to be provided with information on behalf of a chief officer of police.

139 *Subsection (6)* in effect obliges the Secretary of State to make that portion of the regulations which sets up an accreditation system, because provision of information under sections 17 to 20 will not be lawful unless the recipient has been accredited or is referred to on the face of the Act, e.g. a chief officer of police.

140 Regulations under section 21 will be subject to the affirmative resolution procedure (*subsection (7)*).

Supervision of operation of Act

Section 22: Appointment of National Identity Scheme Commissioner

141 This section establishes a National Identity Scheme Commissioner to oversee the operation of the identity cards scheme and the National Identity Register including the uses to which ID cards are being put and the provision of information held on the Register.

142 The Secretary of State is under a duty to appoint a National Identity Scheme Commissioner under *subsection (1)*. *Subsections (2) and (3)* set out the functions of the Commissioner. *Subsection (3)* clarifies that the Commissioner must review in particular the extent to which arrangements for the National Identity Register ensure the confidentiality and integrity of information recorded on the Register as well as the arrangements made for dealing with complaints. *Subsection (4)* sets out the matters which will not be part of the Commissioner's functions such as appeals against civil penalties, which will be dealt with by the civil courts, criminal offences which will be dealt with by the criminal courts, and the verification powers for passports under section 38. The provision of information to the intelligence and security agencies will also not fall within the remit of the Commissioner but will fall under the jurisdiction of the Intelligence Services Commissioner as provided for in section 24.

143 It is the duty of every official in the Secretary of State's department to provide the information the Commissioner requires to carry out his functions (*subsection (5)*).

144 *Subsection (6)* sets out that the Commissioner should hold office in accordance with the terms of his appointment and provisions should be made for him to be paid such allowances as the Treasury may determine out of money provided by Parliament.

145 Under *Subsection (7)* the Secretary of State is under a duty, after consultation with the Commissioner, and subject to the approval of the Treasury as to numbers, to provide the Commissioner with such staff as the Secretary of State considers necessary for the carrying out of the Commissioner's functions. The Commissioner will be a public authority for the purposes of the Freedom of Information Act 2000 (*subsection (8)*).

Section 23: Reports by Commissioner

146 Under *subsection (1)* the Commissioner is under a duty to report after the end of each calendar year to the Secretary of State. There is also provision at *subsection (2)* for the Commissioner to report at any other time regarding any matter related to the carrying out of his functions.

147 Under *subsection (3)* the Secretary of State is under a duty to lay before Parliament every report received from the Commissioner. Where the publication of a particular matter in a report would be prejudicial to national security or the prevention and detection of crime, the Secretary of State may, after consultation with the Commissioner, exclude it from the report laid before Parliament (*subsection (4)*). In those circumstances, in accordance with *subsection (5)*, the Secretary of State would need to lay a statement before Parliament that a matter had been excluded.

Section 24: Jurisdiction of Intelligence Services Commissioner and Tribunal

148 This section amends the Regulation of Investigatory Powers Act 2000 which sets out the functions of the Intelligence Services Commissioner and the Investigatory Powers

Tribunal. The effect of the amendment is to add to their functions oversight of the provision of information held on the Register to the intelligence and security agencies.

Offences

Section 25: Possession of false identity documents

149 This section creates new criminal offences relating to the possession of false identity documents. *Subsections (1) and (2)* set out the circumstances in which a person is guilty of an offence if he is in possession of a document which he knows or believes to be false or a genuine document that has been improperly obtained or relates to someone else. To be guilty of the offence the person must have the intention that the document be used for identity fraud.

150 *Subsections (3) and (4)* create a similar offence in relation to the possession of equipment which is designed or adapted for making false identity documents. *Subsection (6)* sets out the maximum penalties for such offences as being 10 years imprisonment or a fine or both.

151 *Subsection (5)* makes it an offence for a person to have in his possession, without reasonable excuse, a false identity document or a genuine document that has been improperly obtained or relates to someone else, or equipment used for making false identity documents. Unless there is a reasonable excuse, these offences apply irrespective of any intent to use the documents or equipment. *Subsection (7)* prescribes a maximum penalty of 2 years imprisonment, a fine or both.

152 *Subsection (8)* defines ‘false’ as being false within the meaning of Part 1 of the Forgery and Counterfeiting Act 1981. It then defines an ‘improperly obtained’ document as being one in relation to which false information was provided in the course of the application procedure.

153 *Subsection (9)* states that the definition of “false” in subsection (8)(a) does not apply in the application of this section to Scotland because Part 1 of the Forgery and Counterfeiting Act 1981 does not apply in Scotland.

154 *Subsection (10)* applies the definition of “identity document” in section 26 for the purpose of these offences.

Section 26: Identity documents for the purposes of s. 25

155 *Subsection (1)* defines what is meant by an “identity document” for the purposes of this Act, and includes an ID card as well as other existing identity documents issued within or outside the UK. This list may be amended by order subject to an affirmative resolution procedure (*subsections (4) and (5)*).

156 *Subsection (2)* defines what is meant by an “immigration document” for the purposes of this Act.

157 *Subsection (3)* defines what is meant by a “UK driving licence for the purposes of this Act”.

Section 27: Unauthorised disclosure of information

158 This section creates a new criminal offence of disclosure without lawful authority of information held on the National Identity Register.

159 *Subsections (1) and (2)* set out the circumstances under which a person is guilty of such an offence and defines the persons covered by this offence as including those involved in the establishment or maintenance of the Register, the issue and manufacture etc of ID cards, or the carrying out of the Commissioner's functions.

160 *Subsection (3)* defines what is meant by "lawful authority" for the purposes of this section. For example, there is lawful authority to disclose if the disclosure is authorised by this legislation or required by a court order.

161 *Subsection (4)* states that a person has a defence if he can show that he believed, on reasonable grounds, that he had lawful authority to disclose the information.

162 *Subsection (5)* sets out the maximum penalty for the offence as 2 years imprisonment or a fine or both.

Section 28: Providing false information

163 This section creates a new offence of providing false information for purposes connected with securing an entry or modification of an entry on the Register or obtaining for himself or another person an ID card.

164 For the purposes of this section, false is defined in section 42. False information includes information containing inaccuracies or omissions that tend to mislead. *Subsections (1) and (2)* set out the circumstances under which a person is guilty of the offence. These are that he knows or believes the information is false or is reckless as to whether or not it is false. *Subsection (3)* sets out the maximum penalty for the offence as 2 years imprisonment, a fine or both.

Section 29: Tampering with the Register etc.

165 This section creates an offence of tampering with the Register. *Subsection (1)* defines the offence as engaging in any conduct that causes an unauthorised modification of information in the Register. *Subsection (2)* defines the requisite intent for the offence as intending to cause a modification of information, or being reckless as to whether or not the conduct will cause such a modification. *Subsection (5)* defines an "unauthorised modification" as taking place if someone is not himself entitled to determine if the modification may be made and he does not have consent to the modification from a person who is so entitled. *Subsection (6)* provides a defence where the maker of the unauthorised modification reasonably, albeit mistakenly, believed he was authorised to make it. *Subsection (9)* provides that conduct includes acts and omissions, and modification includes a temporary modification.

166 *Subsection (3)* makes it clear that modification of information includes cases where someone's conduct contributes to the modification of information, or where it makes it more difficult or impossible for such information to be retrieved in a legible form, or where the conduct contributes to making the retrieval more difficult or impossible. However, this is not intended to apply to simple withdrawal of labour, for example in the case of lawful industrial action by staff responsible for operating the Register.

167 *Subsection (4)* makes it clear that it does not matter whether any or all of the relevant conduct took place in the United Kingdom, or whether or not the person concerned was a British citizen.

168 *Subsection (7)* gives the maximum penalty for the offence as imprisonment for a term not exceeding ten years, or a fine, or both.

Section 30: Consequential amendments relating to offences

169 *Subsection (1)* extends the usual jurisdiction of the courts in England and Wales for the offences in section 25. *Subsection (5)* extends the usual jurisdiction of the courts in Northern Ireland for the offences in section 25.

170 *Subsection (2)* adds the false documents offence (section 25) to section 31(3) of the Immigration and Asylum Act 1999 giving a specific defence for refugees with false documents. This is of particular relevance as those who destroy any false documents will commit an offence under section 2 of the Asylum and Immigration (Treatment of Claimants) Act 2004.

171 *Subsection (3)* adds the false documents offence (section 25) to section 14(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. This gives immigration officers power to arrest without warrant for the offence and ancillary powers to search for and seize documents.

172 *Subsection (4)* makes the offences under sections 25 (5), 27 and 28 arrestable in Northern Ireland.

Civil penalties

Section 31: Imposition of civil penalties

173 This section sets out the way in which civil penalties under the ID cards scheme will operate. A code of practice will be published as required under section 34 and this will set out that the civil penalty regime is not intended to be punitive or revenue raising. Rather it is intended to ensure compliance with the terms of the Act. The code of practice will make it clear that where there is good reason for a failure to comply or in cases where the requirements of the Act are belatedly complied with, then it will normally be appropriate to waive the penalty.

174 Where the Secretary of State is satisfied that the person is liable to a civil penalty as set out in the legislation, the Secretary of State may issue in the prescribed manner a notice to the defaulter, setting out why the penalty is being imposed, the amount of the penalty, the date by which the penalty must be paid, how payment should be made, setting out the steps the defaulter may take if he objects and finally explaining the powers to enforce the penalty (*subsection (3)*). The amounts of the penalties specified in the Act are maximum penalties. The actual amount imposed will be determined on a case by case basis and in accordance with the code of practice.

175 The date by which the payment is required to be made cannot be less than 14 days after the notice is issued (*subsection (4)*).

176 A penalty imposed by this section must be paid in the manner described by the notice and if it is not paid, the amount is recoverable by the Secretary of State via the civil courts. When recovering the penalty no question may be raised as to whether the defaulter was liable to the penalty, whether the imposition of the penalty was unreasonable or as to the amount of the penalty. Those matters should be raised on an objection to the Secretary of State under section 32 and/or an appeal to the civil courts under section 33.

Section 32: Objection to penalty

177 Section 32 sets out the steps to be taken if the recipient of the notice objects to the imposition of the civil penalty.

178 A recipient of a notice of a penalty may give notice to the Secretary of State that he objects to the penalty. This must include what he objects to and why. This “notice of objection” must be made in the prescribed manner and before a date to be prescribed (*subsections (1) and (2)*). The grounds on which an objection can be made are that the person was not liable to the penalty, that the circumstances of the contravention make the imposition of a penalty unreasonable, or that the amount of the penalty is too high.

179 The Secretary of State must consider the notice of objection and will determine whether to: cancel the penalty; reduce it; increase it or confirm it (*subsection (3)*). The Secretary of State must not enforce a penalty in respect of which he has received a notice of objection, until he has considered the objection and notified the objector of the outcome (*subsection (4)*).

180 This notification of outcome must be given in the prescribed manner, by a prescribed date or if the objector agrees by the end of a longer period (*subsection (5)*).

181 If, after consideration, the Secretary of State increases the penalty, a new notice must be issued under section 31. If the penalty is reduced, the objector must be notified accordingly.

Section 33: Appeals against penalties

182 This section sets out the process of appealing against penalties. Under *subsection (6)* a person does not have to object to a penalty under section 31 before making an appeal to the court under this section.

183 The grounds of the appeal are set out in *subsection (1)*. They are the same as the grounds for making an objection under section 32. *Subsection (2)* ensures that there will be a time limit to any appeal.

184 The appeal will be a re-hearing of the decision of the Secretary of State to impose a penalty (*subsection (4)*). Under *subsection (5)* the court may consider all matters it considers relevant.

185 The Court may decide to cancel the penalty, reduce the penalty or uphold the penalty under *subsection (3)*.

186 *Subsection (7)* specifies which courts may hear an appeal.

Section 34: Code of practice on penalties

187 This section sets out the provisions relating to the code of practice on penalties.

188 The Secretary of State is under a duty to issue a code of practice setting out the matters that will be considered when determining whether to impose a civil penalty and if so the amount to be imposed (*subsection (1)*). He must have regard to the code when imposing a penalty or considering a notice of objection (*subsection (2)*). A court must also have regard to the code when determining any appeal (*subsection (3)*).

189 Before issuing the code, a draft must be laid before Parliament and members of the public must be consulted about it. It then comes into force as specified by order (*Subsections*

(4), (5) and (6)). On the first occasion on which an order is made bringing the code into force it will be subject to the affirmative resolution procedure. Any subsequent orders (for revisions to the code) will be subject to the negative resolution procedure (*subsections (9) and (10)*). An initial indicative draft of what the code might cover and referring to the Identity Cards Bill as introduced to the House of Lords in October 2005, was published in December 2005 and a copy placed on the identity cards website at www.ips.gov.uk.

Fees and charges

Section 35: Fees in respect of functions carried out under Act

190 This section makes provision for the payment of fees.

191 *Subsection (1)* enables fees to be set for:

- applications for entries to be made in the Register, for their modification or the issue of ID cards;
- making or modifying entries;
- issue of ID cards;
- applications for provision of information contained on the Register;
- provision of such information;
- applications for confirmation of any information recorded;
- the issue or refusal of such a confirmation;
- applications for the approval of a person or apparatus (the accreditation);
- the grant of such approvals.

192 *Subsection (2)* allows regulations to be made allowing the payment of fees by instalments, for example schemes such as saving stamps.

193 *Subsection (3)* allows the Secretary of State in prescribing fees under subsection (1), to take into account the wider costs associated with the ID cards scheme. For instance, a charge may need to cover not just the issue of an ID card but also the costs of updating the Register when details such as address change, which may not necessarily incur an additional fee. This subsection also gives a power to charge different fees in different circumstances, to allow for example for a reduced fee for some cards or to cross-subsidise between different cards. Subsection (3)(d) also includes a power to take into account the cost of issuing ID cards in connection with the issue of designated documents. Subsection (3)(e) allows for expenses incurred in the provisions of consular services to be taken into account in setting fees, for example where a card was valid for travel this might be appropriate.

194 *Subsection (4)* provides that Treasury consent is required before regulations are made under subsection (1).

195 *Subsection (5)* allows for the fees for designated documents to cover the costs of dealing with matters under this Act (i.e. the Register and ID cards) when those matters are dealt with in relation to applications for, and the issuing of, designated documents. For example, charges for passports could be made using existing powers, and include the costs associated with the ID cards scheme.

196 *Subsection (6)* gives the Secretary of State the power to raise fees over a period which he thinks appropriate, which could be any time after the commencement of the power to charge including in advance of the introduction of ID cards.

197 *Subsection (7)* provides that on the first occasion that regulations are made on fees under subsection (1), the regulations will be subject to the affirmative resolution procedure. Subsequent regulations varying or adding to the fees would also be subject to the affirmative resolution procedure, except when the fee increase is only to take account of inflation. Those inflationary fee increases would be subject to the negative resolution procedure.

Section 36: Amendment of Consular Fees Act

198 Section 36 amends Section 1(4) of the Consular Fees Act 1980, to allow flexibility in the setting of fees for the carrying out of consular functions which includes the setting of passport fees. The amendment provides a power to set different levels of fees for different cases and to make exceptions for different types of case including an exemption from any fee. This would enable the cross-subsidy of passport fees between fees charged to different applicants. For example, this provision will provide a statutory basis for the issue of free passports which has already been introduced for those born on or before 2 September 1929 to be subsidised by charges made for other passports.

199 Section 44(5) provides for this section to come into force two months after this Act is passed. The fee setting powers in this amended section could be applied at any period after that time including in advance of the introduction of ID cards.

Section 37: Report to Parliament about likely costs of ID Cards scheme

200 This section provides that the Secretary of State must lay before Parliament six months after the Act receiving Royal Assent (i.e. by 30th September 2006) an estimate of the likely costs of the scheme for the next ten years (*subsection (1)*). A further report must be laid at least every six months, each report estimating the costs for the following ten years (*subsection (2)*). This includes expenditure on (a) the establishment and maintenance of the Register; (b) the issue, modification, renewal, replacement, re-issue and surrender of ID cards and (c) the provision to persons by the Secretary of State of information recorded in individuals' entries in the Register (*subsection (3)*). It does not include estimated costs to other Government departments of making use of the scheme. The Secretary of State may exclude from the report anything which if published would prejudice securing the best value from the use of public money.

Provisions relating to passports

Section 38: Verifying information provided with passport applications etc.

201 This section contains the provisions necessary to permit data to be shared for the purpose of verifying information provided in relation to an application for a passport or the withdrawal of a passport. It mirrors the provision in respect of ID cards made in section 9.

202 *Subsections (1) and (2)* place a duty on a person to provide information to the Secretary of State for the purposes of verifying information related to an application for a passport and/or a decision to withdraw an individual's passport.

203 *Subsection (2)* also enables the information to be required within a specified timescale.

*These notes refer to the Identity Cards Act 2006 (c. 15)
which received Royal Assent on 30 March 2006*

204 *Subsection (3)* sets out that the requirement may be imposed on a Minister, government department, Northern Ireland department, National Assembly for Wales or any person specified for the purposes in an order made by the Secretary of State.

205 *Subsection (4)* clarifies that the persons who may be specified in an order include anyone carrying out statutory functions that are carried out on behalf of the Crown.

206 *Subsection (5)* provides that orders under this section may specify that the duty on the individual to provide the information may be enforced via civil court proceedings. In the case of public authorities, normal public law remedies such as judicial review will apply.

207 *Subsection (6)* enables the Secretary of State to pay those from whom he is requiring information.

208 The order making provision to require information from any person not specified in *subsection (3)* is subject to the affirmative resolution procedure (*subsection (7)*). This section comes into force 2 months after Royal Assent (section 44(5)).

Section 39: Amendments of legislation relating to passports

209 Section 39 makes a series of amendments to existing legislation where currently passports are mentioned to enable ID cards to be used in circumstances where a passport may currently be required.

210 This section also amends legislation where a person is required to surrender his passport and has an ID card that is valid for travel. The amendment to the Football Spectators Act 1989 by *subsections (1) and (2)* ensures that a requirement to surrender a passport includes a requirement to surrender an ID card able to be used as a travel document.

211 *Subsections (3) and (4)* make a similar amendment to the Criminal Justice and Police Act 2001 where courts can issue travel restriction orders in cases of serious drug offenders leaving prison.

212 *Subsection (5)* allows amendments to be made to existing legislation, so that where currently that legislation includes a reference to a passport, a reference to an ID card may be added. This is subject to the negative resolution procedure as far as subordinate legislation is concerned and the affirmative resolution procedure if primary legislation is being amended.

213 This power is necessary to enable the ID card, as a highly reliable form of proof of identity, to be used in the widest range of circumstances and to facilitate its use as a travel document.

Supplemental

Section 40: Orders and regulations

214 This section provides how orders and regulations are to be made. This will be through an affirmative resolution procedure in most instances provided for in the Act.

215 *Subsection (4)* enables provisions to differ for different cases, with exemptions and exceptions. For example, regulations may allow different application procedures for groups such as the very elderly or those with mental health problems.

216 *Subsection (5)* provides that if in the future the age at which an entitlement to registration arises (section 2(2)) is modified so that individuals under the age of 16 may

register, then any obligations under this Act (for example to notify changes under Section 10) will fall on the child's parents or other responsible adult.

217 *Subsection (6)* is necessary so that if amendments are made to Schedule 1, consequential changes may be made to sections 12(2) and 12(3) and to those parts of the Act which make reference to the Schedule.

218 *Subsection (7)* sets out in more detail what the power for the approval of a person or of apparatus (the accreditation system) may entail. This includes the granting of an approval subject to specific conditions (e.g. that the organisation maintains an agreed level of security) which may be modified as well as the suspension or withdrawal of an approval (e.g. where the organisation has misused the verification service).

Section 42: General interpretation

219 This section provides for interpretation of certain terms used in the Act. This includes the definition of biometric data in relation to an individual as meaning data about his external characteristics including in particular the features of an iris or other part of the eye. It also makes clear that "subject to compulsory registration" means an obligation to register and be issued with an ID card imposed by way of future primary legislation.

220 *Subsection (2)* defines what is meant by the provision of a public service. This is broadly defined and is not restricted to what might be commonly understood as "public services" such as the NHS and could include the granting of a firearms certificate or the requirement to notify changes of address imposed on certain sex offenders.

Section 43: Scotland

221 *Subsection (1)* provides that the use in relation to Scotland of the Register or an ID card is authorised only in matters which are reserved or which are in accordance with an Act of the Scottish Parliament.

222 *Subsection (2)* ensures that regulations may not be made under section 13 which allow or require the imposition of a condition on the provision of a public service in Scotland except where it is in relation to a reserved function. Separate legislation by the Scottish Parliament would be required if, for example, it were proposed in the future to require an ID card to be produced as a condition of accessing a devolved public service in Scotland.

223 *Subsection (3)* provides that nothing in this section restricts any of the provisions of this Act authorising information from the Register to be provided. For example, provision of information to the police in Scotland under section 17 or for verification with consent under section 12. This section also does not restrict the powers under this Act to make other provision authorising such information to be provided to a person in Scotland (for example, regulations may be made under section 20(1) to permit information to be provided to the Registrar General of Births, Deaths and Marriages for Scotland).

Section 44: Short title, repeals, commencement and extent

224 This section allows the preceding provisions of the Act to be brought into force by order made by the Secretary of State. Different parts of the Act may come into force on different dates.

*These notes refer to the Identity Cards Act 2006 (c. 15)
which received Royal Assent on 30 March 2006*

225 *Subsection (5)* provides that sections 36 and 38 (amendments relating to passport fees and data-sharing powers for passport applications) shall come into force two months after the Act is passed.

226 *Subsection (4)* clarifies that this includes a power to enable roll-out of the scheme to be undertaken by geographical areas; and that a trial may be undertaken in relation to particular areas or persons. This subsection includes a power to make transitional provision between the trial stage and full commencement of the scheme.

227 *Subsection (6)* provides an extension power so that sections may be applied to the Channel Islands or to the Isle of Man via Order in Council.

228 The Act extends to Northern Ireland (*subsection (8)*).

Schedule 1: Information that may be recorded in Register

229 Schedule 1 sets out information that may be recorded in the Register. This includes:

- personal information – names, date and place of birth, gender, addresses;
- identifying information – photograph, signature, fingerprints, other biometric information;
- residential status – nationality, entitlement to remain, terms and conditions of that entitlement;
- personal reference numbers – for example the National Identity Registration Number and other government issued numbers, and validity periods of related documents;
- record history – information previously recorded, audit trail of changes and date of death;
- registration and ID card history – dates of: application, changes to information, confirmation; information regarding: other ID cards already issued, details of counter-signatures, notification under section 11(1) and requirements to surrender an ID card;
- validation information – information provided for any application to be entered in the Register, modification, confirmation or issue of an ID card (such as the information contained in the application form); other steps taken in connection with an application or otherwise for identifying the applicant and verifying the information; particulars of any other steps for ensuring there is an accurate entry in the Register; and particulars of notification of changes;
- security information – personal identification numbers, password or other codes, and questions and answers that could be used to identify a person seeking provisions of information or the modification of an entry; and
- records of provision of information – the “audit log” of how and when any information from an entry was provided to any person or body.

Schedule 2: Repeals

230 Repeals can be found in Schedule 2 of the Act.

*These notes refer to the Identity Cards Act 2006 (c. 15)
which received Royal Assent on 30 March 2006*

HANSARD REFERENCES

Stage	Date	Hansard reference
House of Commons		
Introduction	25 May 2005	Vol. 434, cols 707
Second Reading	28 June 2005	Vol. 435, cols 1151 - 1269
Committee	5 July 2005 6 July 2005 7 July 2005 12 July 2005 14 July 2005 19 July 2005 21 July 2005	Hansard Standing Committee D, cols 1-442
Report and Third Reading	18 October 2005	Vol. 437, cols 708-716
Commons consideration of Lords Amendments	13 February 2006 13 March 2006 16 March 2006 21 March 2006 29 March 2006	Vol. 442, cols 1144-1253 Vol. 443, cols 1248-1266 Vol. 443, cols 1641-1663 Vol. 444, cols 181-201 Vol. 444, cols 875-895 and cols 999-1015
House of Lords		
Introduction	19 October 2005	Vol. 674, col 751
Second Reading	31 October 2005	Vol. 675, cols 12 - 116
Committee	15 November 2005 16 November 2005	Vol. 675, cols 958 – 1028, 1042 – 1062 Vol. 675, cols 1073 –

*These notes refer to the Identity Cards Act 2006 (c. 15)
which received Royal Assent on 30 March 2006*

	23 November 2005	1139, 1157 – 1178 Vol. 675, cols 1625 – 1696, 1698 – 1720
	12 December 2005	Vol. 676, cols 971 – 1039, 1048 – 1108
	14 December 2005	Vol. 676, cols 1257 – 1326, 1333 – 1356
	19 December 2005	Vol. 676, cols 1511 - 1567
Report	16 January 2006	Vol. 677, cols 427 – 494, 511 – 538
	23 January 2006	Vol. 677, cols 955 – 1024, 1040 – 1056
	30 January 2006	Vol. 678, cols 11 - 102
Third Reading	6 February 2006	Vol. 678, cols 425 – 469
Lords Consideration of Commons Amendments	6 March 2006	Vol. 679, cols 533-585
	15 March 2005	Vol. 679, cols 1223-1252
	20 March 2006	Vol. 680, cols 21-45
	28 March 2006	Vol. 680, cols 643-653
	29 March 2006	Vol. 680, cols 796-808
Royal Assent (House of Lords)	30 th March 2006	Vol. 680, col 861
Royal Assent (House of Commons)	30 th March 2006	Vol. 444, col 1061

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