

EXPLANATORY MEMORANDUM TO
THE IDENTITY CARDS ACT 2006 (INFORMATION AND CODE OF
PRACTICE ON PENALTIES) ORDER 2009

2009 No. 2570

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of Instrument

2.1 This Order amends Schedule 1 of the Identity Cards Act 2006 (“the Act”) so as to enable the Secretary of State to record particulars about referees in an individual’s entry in the Register. It also enables the Secretary of State to disclose certain information recorded in such an entry to specified public authorities without the individual’s consent; extends the purposes for which such information can be provided to a chief officer of police; and specifies persons on whom a requirement to provide information can be imposed under sections 9 and 38 of the Act and makes provision about the enforcement of any such requirement. Finally, it provides that the code of practice relating to the imposition of civil penalties will come into force on the day this Order comes in to force.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Identity Cards Act 2006 (“the Act”) received Royal Assent on 30th of March 2006. This instrument, together with a further nine, will be the first set of orders and regulations made under the Act.

4.2 Alongside this instrument, a further five instruments subject to the affirmative resolution procedure are being laid before Parliament in May 2009. They are as follows:

- Identity Cards Act 2006 (Application and Issue of ID Card and Notification of Changes) Regulations 2009, which prescribe various matters in relation to applications for entry on the National Identity Register, applications for an ID card and notification of changes and make provision in relation to place of residence.
- The Identity Cards Act 2006 (Prescribed Information) Regulations 2009, which prescribe information that must be recorded on an ID card or an identification card and other prescribed requirements and facts.

- The Identity Cards Act 2006 (Provision of Information without Consent) Regulations 2009, which prescribe the Government departments which may be provided with information in connection with specified functions, as well as who may be provided with information on behalf of those named on the face of the Act, as well as the conditions that must be met before information is provided.
- The Identity Cards Act 2006 (Fees) Regulations 2009 which prescribe the fees to be charged for applications relating to the National Identity Register and ID cards and exemptions to those fees.
- The Identity Cards Act 2006 (Designation) Order 2009, which designates “a criminal conviction certificate” that is applied for by airside workers meaning that certain airside workers will be required to apply for an ID card when they apply for such certificates.

4.3 In addition, four instruments subject to the negative resolution procedure will be laid before Parliament in June 2009. They are as follows:

- The Identity Cards Act 2006 (Entitlement to be Registered) Regulations 2009, which prescribe, in addition to those specified in section 2 of the Identity Cards Act, those people who are entitled to be registered on the National Identity Register.
- The National Identity Registration Number Regulations 2009, which specify the format with which the number must comply
- The Identity Cards Act 2006 (Civil Penalties) Regulations 2009, which prescribe the manner in which a penalty notice would be issued and the way in which any objection to a penalty may be made.
- The Identity Cards Act 2006 (Provision of Information with Consent) Regulations 2009, which prescribe the way that consent may be given and the particulars that must be provided before any organisation can be approved as suitable for the provision of information with consent, as well as the conditions that must be met before information can be provided.

4.4 These instruments will enable the first phase of the National Identity Service to be implemented, which will involve limited initial rollout to a numbers of volunteers from the general public and selected airside workers, starting with those at Manchester and London City airports.

4.5 The instruments relate only to provisions for those who are British citizens, British subjects with right of abode in the United Kingdom, EEA nationals or family members of EEA nationals from outside the EEA. There will be additional secondary legislation laid before Parliament in due course to extend the issue of biometric immigration documents (commonly known as identity cards for foreign nationals) under the UK Borders Act 2007. This will make similar provisions for airside workers who are subject to immigration control, also starting with those at Manchester and London City airports.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State, Ministry of Justice and Home Office, Shahid Malik, has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Identity Cards Act 2006 (Provision of Information without Consent) Regulations 2009 are compatible with the Convention rights.

7. Policy background

7.1 The Act establishes a statutory framework for issuing fingerprint biometric ID cards together with the creation of a secure and reliable National Identity Register to hold the identity information about individuals in the United Kingdom. This is as part of what is now termed the National Identity Service and will lead eventually to a point at which anyone who is aged 16 or over and is resident in the United Kingdom may apply for an identity card.

7.2 The National Identity Scheme Delivery Plan 2008, published in March 2008 (see: <http://www.ips.gov.uk/identity/downloads/national-identity-scheme-delivery-2008.pdf>) set out the plans for introducing identity cards. This included the introduction of identity cards for foreign nationals which started from November 2008 under separate powers contained in the UK Borders Act 2007 (see: http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga_20070030_en.pdf).

7.3 The Delivery plan also made clear that the first identity cards issued to British citizens and European Economic Area nationals would be issued by the Home Office Identity and Passport Service under the Identity Cards Act 2006, starting in autumn 2009. These will initially be issued to critical workers at airports as well as to a limited number of volunteers, with a focus on young people from 2010. Finally, from 2012, identity cards will be issued in high volumes alongside passports with applicants being enrolled on the National Identity Register and being given the option of a passport or identity card or both documents.

7.4 The Act sets out the statutory purposes for the establishment of a National Identity Register. In summary these are to provide a convenient and secure and reliable method for individuals to prove their identity to anyone who reasonably requires proof, and also to provide a secure and reliable method for people to be

identified wherever that is necessary in the public interest. Public interest is defined as:

- in the interests of national security;
- for the prevention or detection of crime;
- for the enforcement of immigration controls or controls on illegal working;
- to secure the more efficient and effective delivery of public services.

7.5 This Order sets out a provision to allow us to record information about referees provided in support of an application by an individual to be entered in the Register. This will enable further checks to be made with the referee, in the event that there is doubt about the veracity of information contained in applications for the purposes of the Act.

7.6 The National Identity Service is dependent on the Identity and Passport Service being able to verify information provided in connection with an application to be entered in the Register or for an ID card. This order will enable the Secretary of State to require any of those persons specified in Article 3 to provide her with information which could be used for verifying information which is or may be recorded in the Register about an individual.

7.7 This order also extends the list of persons who can be required to provide the Secretary of State with information which could be used for (a) verifying information provided in connection with a passport application or (b) determining whether to withdraw an individual's passport. In doing so, it revokes the Verification of Information in Passport Applications Etc. (Specified Persons) Order 2007, which previously specified certain persons, who are now specified in this order. The verification checks will increasingly move towards an automated system as the roll-out of the National Identity Service progresses, providing greater reliability while ensuring that the service offers the best value for money possible.

7.8 The list of persons set out in the Order is reflective of the current arrangements for assessing passport applications and verifying passport records. The integrity of the passport issuing process and the National Identity Scheme is dependent on the Identity and Passport Service being able to verify information held by those organisations listed in this Order. For example, information may be required from HMRC and DWP in so far as it is necessary to evidence the applicant's biographical footprint (i.e. evidence of use of that identity in society). Information, such as levels of benefit or tax payments, that has no bearing on the verification or validation processes in connection with enrolment on the Register or the issue etc. of passports will not (and cannot) be required under this provision.

7.9 The inclusion of the General Registrar for Scotland and the General Registrar for Northern Ireland in the Order under section 38 are reflective of the policy objective to rely on powers under the Identity Cards Act 2006 to require information in so far as it is necessary to validate information supplied during the course of a passport application etc.

7.10 This order provides that information held on the National Identity Register may be provided under section 20 of the Identity Cards Act 2006 to the Scottish Crime and Drug Enforcement Agency (SCDEA) for certain purposes which relate to preventing and detecting crime, and the prosecution of offences, or to mitigate against the consequences of crime. The SCDEA cannot be provided with information held on an individual's entry on the Register where that information relates to the audit record.

7.11 Information relating to an individual's name (or previous name), date of birth, addresses, ID card number, photograph, signature, or details of their counter-signatories or referees may also be supplied to the Security Industry Authority (SIA), which responsible for regulating the private security industry. The SIA will require information from the Register in so far as is necessary to verify the identity of those who fall within the designated activities which include licensing those who provide private security services. Licensing is primarily about excluding unsuitable people from the industry thereby increasing public safety, and therefore the prevention and detection of crime.

7.12 The provision of information by virtue of this order is dependent on the receiving public authority meeting the prescribed conditions set out in the Identity Cards Act 2006 (Provision of Information without consent) Regulations.

7.13 The Act requires the Secretary of State to issue a code of practice detailing the operation of the civil penalty regime. The Order sets out when the Identity Cards Act 2006 Code of Practice on Civil Penalties 2009 will come in to force on [xxx]. The Civil Penalty regime establishes a mechanism to deliver a proportionate means of ensuring those who have successfully applied to be on the National Identity Register update any changes affecting the accuracy of their records and surrender their identity card when required to do so. A failure to comply with these requirements may lead to the issue of a civil penalty. A penalty will only be issued after a warning letter has been sent to the individual, and will initially be levied at £125, rising to a maximum of £1000, although the actual amount imposed may be lowered in light of extenuating circumstances. Compliance with the requirement at any stage in the proceedings will normally result in the penalty cancelled.

8. Consultation Outcome

8.1 A draft of this Order formed part of the 12 week consultation on draft secondary legislation under the Identity Cards Act which was contained in the document "Identity Cards Act Secondary Legislation – a Consultation", published on 21st November 2008. (see: http://www.ips.gov.uk/identity/downloads/NIS_Legislation.pdf).

8.2 The General Registrar for Scotland requested that information should be required under section 9 of the Identity Cards Act. This Order has been amended to reflect that position.

8.3 We have defined the purposes for which information may be provided to the SIA. We have also included the SCDEA to enable them to carry out their functions.

8.4 As a result of the consultation process, conditions relating to the administration of the provision of information, including security requirements, will be set out in an agreement between the Identity and Passport Service and the receiving organisation or person.

8.5 A summary of the consultation has been published and placed on the Identity and Passport Service website (at <http://www.ips.gov.uk/identity/index.asp>).

9. Guidance

9.1 Guidance and publicity will at first be limited to those listed on the face of the Act or prescribed by way of regulations.

9.2 The application process will make clear to whom information might be provided from an individual's entry in the Register.

10. Impact

10.1 An Impact Assessment has been published to cover the regulatory and other impacts of the secondary legislation currently proposed under the Identity Cards Act including this Order (at <http://www.ips.gov.uk/identity/index.asp>).

The Impact Assessment includes 3 separate sections - Costs and Benefits, Equality, and Other Reviews (including competition, small firms, legal aid, sustainable development, rural proofing and privacy).

- The Costs and Benefits assessment concludes that the introduction of identity cards and the roll out of the National Identity Service will return a net benefit of £6 billion over a 30 year period.
- The Equality assessment focuses on the impact on people who will be affected by the natal introductory phases of the National Identity Service in relation to race, gender, gender identity, religion or belief, sexual orientation and age.
- The Other Reviews concluded that there was little additional impact. The privacy review acknowledged concerns expressed and set out safeguards that are in place or will be put in place to address those concerns.

11. Regulating small business

11.1 The regulations do not apply directly to businesses.

12. Monitoring and review

12.1 The first eighteen months of the scheme for airside workers will be treated as an evaluation period. At the end of this period, Government and industry will jointly evaluate the arrangements which have been put in place for identity cards to be issued to airside workers, consider the benefits which have been achieved in terms of both security and efficiency and develop a list of actions to improve the operation as it is extended nationally.

13. Contact

James Fogg at the Home Office, Identity and Passport Service, Tel: 020 3356 8020 or email: James.Fogg@IPS.gsi.gov.uk can answer any queries regarding the instrument.