

# LIBERTY

PROTECTING CIVIL LIBERTIES  
PROMOTING HUMAN RIGHTS

## Key Points in the Identity Cards Bill

December 2004

### Introduction

- Liberty is opposed to the proposal to introduce a national identity scheme. We believe such a scheme will fail to tackle terrorism, identity fraud or any of the high-profile problems it is purportedly designed to address. We have serious doubts about the security of a national central database and believe the risks to the rights of privacy and freedom from discrimination outweigh any benefits of centrally recording and sharing personal information.
- This briefing sheet does not detail Liberty's objections, but simply highlights key points in the Bill. Detailed response will be available soon at <http://www.liberty-human-rights.org.uk/privacy/id-cards.shtml>

### General

- Throughout the Bill the Secretary of State reserves powers to change or add to the provisions with limited and often no Parliamentary scrutiny.
- The Home Office admits that this Bill "does not set out the detail of how the scheme will work in practice" as "it is too early in the development of the scheme for decisions to have been made on this". The Bill is vague in many areas and is described as an 'enabling measure' that will allow the Government leeway to decide how to implement the scheme in practice.
- The Bill is accompanied by a Home Office 'Regulatory Impact Assessment' that details how much the scheme is likely to cost. These figures are subject to change and differ very substantially from the Home Office's 2003 figures: in some cases, the figures are 2,000% more than predicted in 2003.

- Though this Bill does not make an identity card compulsory it is entirely possible that immediately after the Bill becomes law the Secretary of State will pass regulations requiring everyone who has not registered to do so (Clause 6). Everyone will eventually be obliged to register and the latest date for this is 2013.

## Key Terms

- The 'National Identity Register' or 'register' will be a national, central, database.
- A 'National Identity Registration Number' is a unique number assigned to each individual. The number will link to the individual's entry in the register.
- The Secretary of State (SoS) is in this instance, David Blunkett, the Home Secretary.
- 'Regulations' are statutory instruments, or secondary legislation, which require affirmative resolution.
- An 'affirmative resolution' requires agreement, by vote, in both Houses of Parliament, but it does not give Parliament the power to amend regulations – they will either stand or fall.
- A 'biometric identifier' is a way of verifying someone's identity based on their physiological or behavioural characteristics. They include fingerprints, digital fingerprints, retina scans, iris scans, hand geometry, voice recognition and facial recognition technology.

## The National Identity Register

- National Identity Register (Clause 1)  
An entry must be made in the register for everyone of a 'prescribed description' and everyone aged 16 or over in the UK for over 3 months (Clause 2 (2)). The SoS may change the age requirement by order at any time, requiring people under 16 to register (Clause 2(7)).

The Register will contain certain 'registrable facts' about each individual, including his or her name, any previous names, address, previous residences in the UK and elsewhere, residential status and nationality. It will also include 'information about numbers allocated to him for identification purposes and about the documents to which they relate', including National Insurance numbers and NHS numbers, and any

other publicly issued document that carries an identifier (e.g. passport, driving licence, and anything that can be used in place of a passport, such as an international student card).

Crucially, the SoS can get an order passed by positive resolution to demand more information, as yet unspecified.

In certain cases there is a 'conclusive presumption' that the information on the Register is accurate and complete information (clause 3(3)). This provision is new – it did not appear in the draft Bill.

- Biometric Information - Those entered on the register are required to have photograph and/or fingerprints and/or other biometric information taken.

## **Registration**

- Compulsory Registration (Clause 6)  
Despite not appearing to be compulsory the SoS can require some types of people to register, by 'prescribing' a group. This is likely to apply to foreign nationals at first but will eventually apply to the entire population.

An individual who is obliged to register under Clause 6 and fails to do so will be subject to a fine of up to £2,500 (Clause 6(4)). This fine will be repeated each time he fails to register if the SoS repeats his request. If the individual applies to register on time as required but then fails to provide additional information when requested by the SoS, he will again face a fine of up to £2,500 (Clauses 6(4) and 5(4)).

Those who are entered on the register via Clause 6 are subject to greater sanction on a permanent basis than those who have 'voluntarily' registered:

1. They face a fine of up to £1,000 for forgetting to renew their card (Clause 9);
2. They face a fine of up to £1,000 for failing to attend at a specified time and place to have their photographs, fingerprints or other biometric information taken when requested to do so (Clause 9);

3. They face a fine of up to £1,000 each time they fail to provide 'such information as may be requested by the SoS (Clause 9);
  4. They may be refused access to free public services unless they produce an ID card (Clause 15);
  5. Benefit payments may be withheld unless they produce their ID card (Clause 15);
  6. They may be required to produce their ID card at other times because they are excluded from the protection of Clause 18, 'prohibition on requirements to produce ID cards'.
- Compelling a Group to Register (Clause 6) – Before a group of persons is compelled to register their categorisation requires affirmative resolution (Clause 7).

### **Maintenance of the Register**

- Accuracy of Information – There is a provision for individuals to check the accuracy of their information on the register, but there is no requirement of auditing which would ensure that levels of information are as accurate as possible (Clause 11).
- Fines for not Updating - Individuals are required to notify the SoS of any change in their details held on the register (Clause 12). Failure to do will result in a fine of up to £1,000. This is particularly relevant for those who move house frequently. Individuals can also be required to attend for fingerprinting, photographing and so on.
- Charges - The SoS (with permission of the Treasury) can, by regulation, specify fees to be charged for: registration; modification; issue of cards; disclosure applications; and so on (Clause 37). This means that there will be significant ongoing costs for all of us. These ongoing charges are listed by the Home Office as one of the main ways of funding the ID scheme.

Those who need to update their details regularly, e.g. tenants changing address, will need to pay each time for their information to be updated (Clauses 12 and 37).

If an ID card is issued to an individual and it contains inaccurate information, there is an obligation to notify the SoS of this error and pay a fee for the Register to be

updated (Clauses 12 and 37). The Bill does not allow for this fee to be waived if the error is not the individual's fault – so you may need to pay for a civil servant's error.

- Updating Your Record - If information about an individual appears to be false it can be corrected without informing that person (Clause 21).
- Information Sharing and Consent – There is a long list of bodies which will have access to the information on the register (Clause 19). By order the SoS can apply to extend that list (Clause 23).

## **Oversight of the ID scheme**

- National Identity Scheme Commissioner – The SoS must appoint a Commissioner to oversee certain aspects of the scheme (Clause 24). In the draft bill this Commissioner's role was to review a single power only, the power to disclose information without consent. The Commissioner now has a slightly broader role but he is far from an independent, robust reviewer of the scheme's operation.

The Commissioner's function is to keep under review 'the arrangements for the time being maintained' by the SoS and designated documents authorities, such as the UK Passport Service, for the exercise of their functions under the Act (if passed). This means that the Commissioner will only be able to review general structural issues and not individual complaints or cases, or how the scheme works in practice.

The Commissioner must also review the uses to which ID cards are being put.

The Commissioner is excluded from considering the imposition of fines, criminal offences related to ID cards, information provided to the Security Services, the Secret Intelligence Service or GCHQ. He also has no power to review the adequacy of his own role and powers.

The Commissioner's role is still a very limited one. He is also powerless in relation to the areas he reviews: he also has no power to change anything he finds to be unsatisfactory. He must make annual reports to the SoS (Clause 25). In the draft Bill his reports were made to the Prime Minister but this has been downgraded in the

Bill. The SoS must lay a copy of the annual report before Parliament but he may edit or delete information for a wide range of reasons. He may remove information if it appears to him that publication would be prejudicial to national security, prevention or detection of crime, or the continued discharge of the functions of any public authority. As the Home Office and UK Passport Service are public authorities this means that any critical material in the Commissioner's report may be excluded as it would undermine them – thus undermining the very purpose of the Commissioner. The SoS may also exclude any information that appears to him to be contrary to the public interest.

Liberty's view is that the Commissioner's role should be broader and his powers stronger. In particular, he should report to Parliament directly as the Information Commissioner does. It is impossible to independently review the SoS if reports to Parliament are filtered by the SoS himself.

- Intelligence Services Commissioner and Tribunal – The Intelligence Services Commissioner will review the storage, access to and use of information on the Register by the intelligence services (Clause 26).

## The Identity Card

- An Identity Card will be issued to anyone who is 'entitled' to register, or compelled to do so under Clause 6 (Clause 8(3)).
- An Identity Card may be issued to anyone about whom information that could be recorded on the register had been taken. (Clause 8(4)).

The implication is that anyone who on entering the country, providing information to UK customs, could be issued with an identity card.

- Ownership of the Card – The card remains the property of the person issuing it, not the cardholder. This is a new provision – it was not in the draft bill.
- Duration of Card - Identity cards will have a limited duration, as yet unspecified (Clause 8).
- Invalidity and surrender of ID cards – The SoS can cancel an ID card 'if it appears to him' that the card was issued based on incomplete or inaccurate information, the card has been lost, stolen, damaged, destroyed or tampered with, the information in the Register on the card-holder has been modified, 'another change of circumstances requires a modification of information recorded in or on the card' or the card is of a description of cards that the SoS has decided should be reissued (Clause 13). If the SoS cancels your card for any of these broad reasons you will need to pay for a new one.
- Renew or Fine - failure to renew the identity card when required to have it (via Clause 6) will result in a fine (Clause 9).
- Damaged / Lost / Stolen Cards - Failure to notify the SoS that your Card has been damaged / lost / stolen may be deemed a *criminal offence* (Clauses 13(6) with 13(1)). A 'damaged' card means one where, for example, the reader doesn't work. Even if unaware that the card is damaged, an individual will still be committing an offence if he 'has reason to suspect' that it may be.

- Possession of an ID card without permission or lawful authority – It is a *criminal offence* to be knowingly in possession of an ID card without the lawful authority of the person to whom it was issued or the SoS's permission (Clauses 13(6) with 13(4)). In these circumstances, the card must be surrendered as soon as practicable. As the ID card remains the property at all times of the person issuing it (Clause 8(3)(d)) an individual may be lawfully issued with a card but may no longer have the SoS's permission if the card falls into a designated class.
- Provision of Public Services is not conditional on producing a card (under Clause 15) unless the individual has been compelled to register under Clause 6. As everyone will eventually be required to register this safeguard is a temporary one only.

## **Criminal Offences**

- The Bill creates a number of criminal offences. It is an offence to provide false information relating to an entry on the register (Clause 30), tamper with the Register (Clause 31), or knowingly have an ID card without the SoS's permission (Clause 13). The SoS may by regulation require individuals to notify him if their cards are lost, stolen, damaged, tampered with or destroyed, and failure to do so may be a criminal offence (Clause 13).
- The Bill also makes whistleblowing an offence (Clause 29). It will be a criminal offence to disclose 'confidential' information to others without lawful authority, e.g. journalists or opposition politicians. Information learnt in the course of employment by individuals who have any responsibility for the establishment or maintenance of the Register, or the issuing, modification, cancellation or surrender of ID cards is deemed to be confidential.

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