



**JUSTICE**

**Briefing for House of Commons**

**Second Reading**

**Identity Cards Bill**

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**For further information contact  
Roger Smith, Director  
Email: [rsmith@justice.org.uk](mailto:rsmith@justice.org.uk) Tel: 020 7762 6412**

JUSTICE, 59 Carter Lane, London EC4V 5AQ  
Tel: 020 7329 5100 Fax: 020 7329 5055 E-mail: [admin@justice.org.uk](mailto:admin@justice.org.uk) Website: [www.justice.org.uk](http://www.justice.org.uk)

1. JUSTICE is an independent all party law reform and human rights organisation which seeks to advance human rights, justice and the rule of law. JUSTICE is also the British section of the International Commission of Jurists.

## Introduction

2. JUSTICE acknowledges the minor amendments made to the Identity Cards Bill as introduced in the House of Commons on 25 May 2005 but remains unconvinced of the case for the introduction of identity cards in the form proposed. We consider that the government should implement:
  - a series of much less ambitious reforms designed to provide greater checks on the identity of those applying for passports;
  - biometric identifiers on passports.
3. There is no evidence of public support for a card that it is likely to cost at least £50. The latest estimated cost for a combined passport and identity card is £93.<sup>1</sup> This has risen 9.4% in six months. We fear that the costs will, in the event, be even higher since the government can currently give no estimate based on a sufficiently scoped project. It does not know the cost of biometrics. The Home Office is in difficulties in finding a project of such a magnitude where implementation was unproblematic and cost did not overrun. Ministers might be pressed on this.
4. We acknowledge that the question of identity cards and an accompanying National Identity Register raise complex issues of practical implementation, human rights and political acceptability. We recognise that most members of society now carry identification issued by private sources, such as banks, as well as a variety of identification from the state.
5. We have, however, consistently doubted the practicability and appropriateness of grand schemes for identity or entitlement cards.<sup>2</sup> They are likely to be just not cost-effective. The enormous sums of money involved could be much better spent. We back the more prosaic but, in our view, more practical alternatives such as those set out in a 2002 Cabinet Office study on identity fraud.<sup>3</sup>
  - Supplementing existing systems with private sector-style checks against 'biographical' evidence of identity from government or private sector databases (or both) ...
  - Greater use of face-to-face interviews for those not passing such 'biographical' tests of identity ...
  - Checking applications against a central register of known frauds and fraudsters ...
  - More use of dedicated IT systems to check applications for internal consistency against other information held by government.
6. The practical matters, many of which have been widely canvassed but should be restated, which concern us include the following:
  - (a) **The enormity of the logistical undertaking.** In some London boroughs, the community charge revealed that there is an annual turnover of addresses greater than 60 per cent.<sup>4</sup> Information from the electoral

register suggests that on average in London 40 per cent of people change addresses each year.<sup>5</sup> The former Home Secretary, David Blunkett, himself acknowledged to the Home Affairs Committee the difficulties encountered by the passport office in 1996 under a Conservative administration and criminal record bureau checks under the Labour Government.

- (b) **The level of unreliability of the most sophisticated current biometric checking procedures.** The Cabinet Office found that 'around 10-15 per cent of 'genuine' people fail biometric tests set at the highest level of corroboration'.<sup>6</sup> Accuracy rates will become crucial when magnified by the intention to include the entire population in the Register.
- (c) **Lack of public acceptability for the likely cost of biometric cards.** All the research indicates massive cost resistance. A widely quoted MORI poll, taken on 21 September 2001, indicated 85 per cent support for identity cards. The relevant question was, however, placed 8<sup>th</sup> in a series of 15, with the preceding seven relating to terrorism and the final question asking if supporters of Osama bin Laden should be prosecuted for inciting religious hatred. A later MORI poll, dated 22 April 2004 and commissioned by an IT consultancy, has also been widely quoted. It found 80 per cent support. However, only 48 per cent of those polled were prepared to pay for the card. Only 20 per cent were willing to pay more than £25. The Head of Public Sector at the IT consultancy, Detica, acknowledged: 'actually asking people to put their hands in their own pockets doesn't appear to be a vote winner.' (Detica Press Release, 22 April 2004). This is entirely consistent with the Home Office's own findings that 49 per cent of those polled were unwilling to pay anything for an ID card and only 7 per cent willing to pay more than £20.
- (d) **The final likely cost.** The issue is twofold: cost of establishing and maintaining scheme and the cost to individuals to purchase the card/passport. Major IT projects seem invariably to overrun their budgets. Predicted costs have already risen from £3.1billion to £5.5billion.
- (e) **The intrusiveness of registration.** Everyone in the country will have to attend a specific centre in order to have their biometrics taken. This again is likely to test public acceptability, particularly for those living outside the major conurbations.
- (f) **The practical effect of the introduction of identity cards in relation to ethnic minorities.** Home Office survey data indicates some degree of support for ID cards among ethnic minority groups. However, two of the stated major purposes of such cards are the control of illegal immigration and as part of the fight against terrorism. Police officers would inevitably be drawn to require the ID cards of those who appeared to be from minorities which they saw as likely to be illegal immigrants or potential terrorists. Comparisons will inevitably be drawn with stop and search powers, figures relating to which are disproportionately higher for ethnic minorities.<sup>7</sup> Thus, in practice and inevitably, certain ethnic minority groups are likely to find that they are required to produce their cards more than white UK nationals. It seems unlikely that this will not prove contentious.
- (g) **The magnitude of the implications of a mandatory card.** Everyone will have a computer-recorded trail of the use of their card. Everyone will have

to pay for a card – the additional cost of which will be somewhat disguised for the holders of passports because of existing fees. Anyone without their card will be liable to screening to establish their identity against the database. In practice, everyone is likely to be required to carry their card whether or not this is technically mandatory in order to avoid inconvenience. No other major common law country has sanctioned such a high level of intrusiveness into the individual privacy of its subjects.

- (h) **ID cards seem unlikely to meet many of the alleged needs for which they are being introduced.** David Blunkett acknowledged before the Home Affairs Committee that their use against terrorism is limited. So, too would be their use against illegal immigration. It is difficult to see that the position of the illegal Chinese workers discovered in Morecambe would have been any different if an ID register had been in effect. Spain found its ID cards useless in preventing the outrage in Madrid though it did apparently help in identifying the victims. ID may inhibit – but will undoubtedly not eliminate - identity fraud and they should limit entitlement to public services. It seems unlikely that, by reference to these objectives alone, they are cost-effective.
- (i) Finally, we are concerned about the possibility of ‘**function creep**’. This is particularly so as the Government’s justification of the cards seems to vary considerably in emphasis. It found public resistance to calling them ‘entitlement’ cards but yet the regulation of entitlement to state benefits seems to remain a major objective and, indeed, the cards may prove more effective in this regard than as guarantors of identity.

7. The Bill is an enabling bill, granting wide powers to the Secretary of State to make orders to determine the detail of the scheme. The current Bill would be largely unnecessary if a more incremental approach was taken to reform. Furthermore, if the decision was taken to introduce the Bill at a later date then two difficulties could disappear.

- First, a difficulty with the Bill is that Parliament will be approving the introduction of a mandatory card - at what would appear to be a highly unpopular charge – which will apparently only be implemented at the earliest in 2014. This should be acknowledged by the full parliamentary legislative process, not simply a debate and vote in both Houses as outlined in the Consultation paper. Parliament needs to ratify such proposals only after the most intense scrutiny and only at the time when the public will feel that they are directly involved in the decision. A vote now in relation to reforms to be implemented in a decade’s time creates too distant an accountability to the electorate.
- Second, the current Bill is, of necessity, an enabling bill that does not specify what will be required in a decade’s time. Thus, the Secretary of State has wide regulatory powers to make orders:
  - to alter the age of those who are entitled to be entered into the Register (Clause 2(6));
  - to alter the type of information that is contained in the Register (Clause 3(5));
  - designating the types of document to be used ‘for the purposes of this Act’ (Clause 4(1));
  - for compulsory registration, imposing an obligation on the individuals described by the order to be entered in the Register

(Clause 6. Under Clause 7 a draft of the order has to be laid before Parliament and approved by both Houses. The resolutions approving the draft are to be agreed more than 60 days after the draft was laid in Parliament);

- to require an individual to provide information to be used to verify the information in the Register (Clause 11);
- to modify the required information from the Register for verification purposes (Clause 14(4)(a));
- for the disclosure of information concerning an individual entry in the Register without the individual's consent in specified circumstances (Clauses 19 – 23);
- to determine the level of all fees to be paid in relation to each part of the scheme (Clause 37(1)).

An incremental approach would remove the need for such broad powers.

8. The Identity Cards Bill is not just about identity cards. The National Identity Register (Clause 1) is an enormous undertaking, both in terms of principle and practice. There is no doubt that the National Identity Register proposed in the Bill would represent a major invasion of individual privacy. The information to be kept on the register is set out in Schedule 1. It will even include details of second homes. Access records will be kept of all use of the database by third parties (Schedule 1, paragraph 9). Individuals will not themselves be able to access all details on their records, in particular in relation to who has had access to them (Clause 14(2)).

## Human Rights

9. As an invasion of privacy, the European Convention of Human Rights requires that the creation of such a register be justified as a proportionate response to meet a specific need. The European Court of Human Rights has found that neither ID cards nor a personal identity number necessarily infringe the provisions of the Convention.<sup>8</sup> However, we are not convinced that the present proposals meet the appropriate threshold in terms of the ability to address a clearly perceived and articulated need in a proportionate way.
10. This concern was also addressed by the Joint Committee on Human Rights in their reports on the previous Bill<sup>9</sup> which was heavily critical of the lack of any detailed explanation of the Bill's compatibility with human rights, especially in relation to Article 8 of the European Convention on Human Rights, which guarantees the right to respect for privacy<sup>10</sup>:

*We are concerned that the universal retention of this high level of information by way of compulsion in respect of large groups of persons and, ultimately, in respect of all UK residents, may not be sufficiently targeted at addressing the statutory aims set out in clause 1(3) to ensure proportionate interference with Article 8 rights.*<sup>11</sup>

The Committee also expressed concern about the compatibility of the Bill with Article 14 of the ECHR, the right to non-discrimination in the protection of the Convention rights. It is essential that there is open detailed debate about the issues, and further consideration of the human rights implications of the revised Bill is necessary.

11. Disclosure of the information on the register has serious implications for the right to privacy. Under Clause 19(2) the information on the register is available to the Security Service, the Secret Intelligence Service, GCHQ and the Serious Organised Crime Agency under a minimal test of relevance: 'carrying out the functions' of the organisation concerned. This must be subject to a focused test of purpose, such as that under clause 19(3) which allows the provision of information to a chief officer of police in the interests of national security or for purposes connected with the prevention or detection of crime.

## **General issues**

12. We consider that public support for ID cards should be regarded as highly volatile. This was, of course, the case in Australia where an initial passive acceptance turned into major opposition as the details of actual implementation became clear.
13. We acknowledge that the International Civil Aviation Organisation has approved the use of biometric information in passports and the United States' Enhanced Border Security and Entry Visa Reform Act 2002 requires that countries which are members of its visa waiver programme should have machine readable passports including biometric information. We accept the benefit of the UK being part of such a scheme and that 'British citizens will increasingly need to possess secure biometric travel documents'.<sup>12</sup> We have, however, expressed our concern about the safeguards on information passed between countries.
14. Passports must be supported by a database. This can, however, remain separate. It does not need to be part of National Identity Register as proposed in the Bill. Indeed, an alternative approach would be an incremental approach to linking discrete databases, the first stage of which would be a cleaning up of information on the passports database and the introduction of biometric identifiers; the second the introduction of a voluntary card and the final stage, if thought appropriate, would be linking the databases and a mandatory card.
15. The consequence of devolution means that the use of the card to access public services will be different around the country. In any event, procedures will have to exist for those who have, for some reason, lost their card. Clause 15 states that regulations may be introduced for England to make public services conditional on using an identity card, other evidence of registrable facts or both. Clause 16 means regulations can be introduced to disclose information contained in the Register to those who provide a public service. It is not clear that the public will find this a comforting protection against misuse of facilities or a tiresome bureaucratic procedure which devolved jurisdictions seem, at present, unlikely to implement.
16. The Bill introduces a variety of new offences, both criminal and civil. The imposition of civil penalties may not create 'criminal martyrs', stated by David Blunkett, when Home Secretary, as the reason for the terminology being used. The Secretary of State imposes the penalty upon an individual by way of a notice (Clause 33) and also will assess an appeal against an initial objection to the civil penalty (Clause 34). There is also then provision for the penalty to be appealed to court (Clause 35) where the penalty may be cancelled, reduced or the appeal dismissed. Whatever the language, these provisions are coercive and, in essence and probably law, criminal.
17. It is essential that such a major scheme needs independent oversight. We welcome the introduction of a National Identity Scheme Commissioner (Clauses

24-26) and acknowledge the slight changes to the Commissioner's function under Clause 24 in the revised Bill. However we strongly urge that the powers of investigation and reporting should be greater than those granted under the Bill. In particular the Commissioner must have the power to report direct to Parliament, not initially to the Secretary of State who must not be able to exclude matters from the report as currently proposed. The Commissioner must be, and be seen to be, independent. Clause 24(3) should allow the Commissioner to review the whole scheme and clause 25 should allow the Commissioner to lay a report annual to both Houses of Parliament. This is the same power granted to the Information Commissioner under s52 Data Protection Act 1998.

18. Accordingly, we regard the Bill as over-ambitious; would urge considerably more caution on the Government; and would ultimately advise a vote against the Bill in its current form.

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<sup>1</sup> Home Office Regulatory Impact Assessment 25 May 2005

<sup>2</sup> JUSTICE has previously responded to two previous Home Office Consultation papers on the topic of identity, or as previously proposed, entitlement cards, *Entitlement Cards and Identity Fraud*, Cm 5557, July 2002 and *Identity Cards: The Next Steps*, Cm 6020, November 2003 and has also published a joint paper with the Institute of Public Policy Research in 1995 entitled *Identity Cards Revisited*.

<sup>3</sup> Cabinet Office *Identity Fraud: a study* October 2002.

<sup>4</sup> HC Debates col 240, 22 June 1994, quoted in *Identity Cards Revisited*, JUSTICE and IPPR, 1995

<sup>5</sup> Gerald Vernon-Jackson, Local Government Association, uncorrected evidence to the Home Affairs Committee, 10 February 2004, q250.

<sup>6</sup> P61, Cabinet Office *Identity Fraud: a study* July 2002

<sup>7</sup> Home Office figures released in March 2003 relating to stop and search powers showed that black and ethnic people were eight times more likely to be stopped.

<sup>8</sup> *Reyntjens v Belgium* App No 16810/90; 73 D.R. 136, *Lundvall v Sweden* App No 10474/83; 45 D.R. 121

<sup>9</sup> Fifth Report of Session 2004-05 and Eight Report of Session 2004-05

<sup>10</sup> Article 8(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

<sup>11</sup> Eighth Report of Session 2004-05, page 10 para 1.13

<sup>12</sup> Home Office memorandum to Home Affairs Committee inquiry on identity cards, ID52, January 2004