



JUSTICE

**JUSTICE amendments to the Identity Cards Bill
for the Committee Stage
in the House of Lords**

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Introduction

1. JUSTICE accepts that both an identity card scheme and a national identity register could be introduced in ways that are compatible with human rights considerations of privacy. Our scepticism of the value of this particular Bill is based on three core issues:
 - a. undue invasion of privacy;
 - b. practicality and cost-benefit;
 - c. compulsion.

2. The Identity Cards Bill is a major piece of enabling legislation, granting wide powers to the Secretary of State to make orders to determine the detail of the scheme. It is increasingly clear that ministers need this ability to decide on the scheme at a later date because too much remains uncertain at the present time. The Bill has been produced at too early a date.

3. It is important to recognise that the bill is less about identity cards than a National Identity Register. The advance of technology and the creation of a register make a physical card largely redundant. People will not be required to carry an identity card because they can be checked directly against the register. The register is an enormous undertaking, both in terms of principle and practice. There is no doubt that it will be a major invasion of individual privacy. We fear that it may deter some low-level theft of identity but encourage high-level identity construction by organised crime and sophisticated terrorist groups. The government could potentially find that it gets the worst of all worlds: the expense of an apparently foolproof system that can, in fact, be fooled.

4. Accordingly, we regard the Bill as flawed. It is over-ambitious. We would urge considerably more caution on the government; and advise a vote against the Bill in its current form. The government, having correctly indicated that its intention is to move to a compulsory scheme, would be well advised to strip the Bill down to provisions relating to biometrics on passports. Once these have been shown to work, a decision could be made on whether to extend the scheme.

Restrict national identity register to the purposes of passports only

5. The current Bill would be largely unnecessary if a more incremental approach was taken to reform. 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. An incremental approach would limit the need for the Bill to grant the Secretary of State such wide enabling powers. This is the recommendation of the select committee on the constitution.
6. It is reasonable that passports be supported by a database. This can, however, be separate from other government databases. 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 would be a series of much less ambitious reforms designed to provide greater checks on the identity of those applying for passports and the introduction of biometric identifiers; the second state would be the introduction of a voluntary card and the final stage, if thought appropriate, would be the introduction of primary legislation linking the databases and a mandatory card.

Amendments

Page 1, line 3, delete clause 1(1) and insert –
“ The National Passport Register

- (1) It shall be the duty of the Secretary of State to establish and maintain a register of individuals to whom passports are issued (to be known as ‘the National Passport Register’).”

Page 1, line 7, delete clause 1(3) and insert –

“The statutory purpose is to facilitate, by the maintenance of a record of registrable facts about individuals in the United Kingdom to whom passports are issued, a secure and reliable method for registrable facts to be verified for the purposes of issuing passports.”

Page 1, line 14, delete clause 1(4)
Unnecessary

Compulsory registration to be required only after further legislation

Page 6, line 13, delete clause 7 and insert –

“The Secretary of State shall not make any order containing (with or without other provision) any provision for compulsory registration unless authorised so to do by further primary legislation which comes into force within six months of his making of any such order.”

This would remove the ability of the Secretary of State to move to a compulsory scheme without primary legislation and not, as provided in the Bill, on the basis of secondary legislation.

Proportionality of the scheme

7. In their most recent report on the Bill the Joint Committee on Human Rights commented:

We maintain the view of the previous committee that the Bill's provision for the retention of extensive personal information relating to all or large sections of the population may be insufficiently targeted to be justified as proportionate to the statutory aims and may lead to disproportionate interference with Article 8 rights.¹

8. The Information Commissioner has also stated his concern:

that the extensive personal information retained on the proposed National Identity Register and the requirement on individuals to keep notifying changes is excessive and disproportionate.²

9. In some London boroughs, the community charge revealed that there is an annual turnover of addresses greater than 60 per cent.³ Clause 12(1) places a duty on the individual to notify the Secretary of State about 'every prescribed change of circumstances affecting the information recorded about him in the Register'. Schedule 1 details the huge list of recordable information about individuals. Under Clause 37 the Secretary of State is able to impose fees for updating such information. This is likely to be hugely unpopular.

Amendments

Remove history of use of register

Page 43, line 1, delete paragraph 9 of Schedule 1

Reduce information on register to matters relating to identity and current address

Page 2, line 8, delete clauses 5(c) and (d)

Require Secretary of State to be reasonable in requiring further information

Page 5, line 26, clause 5(6) insert "reasonably" before "required by the Secretary of State".

Remove right to charge fees for modifying information in the Register

Page 31, line 25, clause 37(1)(b) delete "or modification"

Requirement of reasonableness in the power of the Secretary of State to require information from a third party

Page 9, line 29, clause 11(1), insert "reasonably" between "it" and "appears to the Secretary of State"

Page 9, line 40, clause 11(2) insert "reasonably" between "it" and "appears"

Page 10, line 6, clause 11(3) insert-
"and"

¹ First Report of Session 2005-06 page 20 para 4.11

² The Identity Cards Bill – The Information Commissioner's Concerns, October 2005, www.ico.gov.uk

³ HC Debates col 240, 22 June 1994, quoted in *Identity Cards Revisited*, JUSTICE and IPPR, 1995

(c) the requirement is, in all the circumstances, reasonable”.

Restriction in use for purposes of public authorities etc

Page 17, line 10, delete clauses 19(2) and (3) and insert –

“(2) The provision of information is authorised in this section where it is –

- (a) the provision of information to the Director-General of the Security Service, the Chief of the Secret Intelligence Service, the Director of the Government Communications Headquarters, the Director-General of the Serious Organised Crime Agency, a chief officer of police; and
- (b) it is:
 - (i) in the interests of national security; or
 - (ii) for the purposes connected with the prevention or detection of crime.”

This limits the purposes for which the information may be disclosed. Clause 20 specifically already covers disclosures under the Anti-Terrorism, Crime and Security Act 2001.

Notification to individual of correction of inaccurate or incomplete information

Page 19, line 23, clause 21 insert –

“(c) In such a case, the Secretary of State shall notify the individual concerned in writing that he has taken action under clause 21(2)”

This would require the Secretary of State to tell an individual when he has contested a request for verification of his identity.

Deletion of power to Secretary of State to make further disclosures without consent

Page 19, line 38, delete Clause 22.

Wider powers of National Identity Scheme Commissioner

10. 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 that slight changes have been made to the Commissioner's function under Clause 24. 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

Amendments

Page 21, line 18, leave out "for the time being"

Page 21, line 28, leave out "do not" and substitute "shall also"

This would give the Commissioner power to keep under review the operation of the whole scheme, with no exceptions.

Page 22, line 14, delete clause 25(1) and insert –

"The Commissioner shall lay annually a report before both Houses of Parliament on the carrying out of the Commissioner's functions under the Act."

Page 22, line 18, delete clause 25(2) and insert –

"The Commissioner may also, at any other time, make such report on any matter relating to the carrying out of those functions as the Commissioner thinks fit."

Page 22, line 21, delete clauses 25(3) – (5)

These clauses are not necessary if the Commissioner has the right to lay a report directly to Parliament.

Fees: no charge for a simple ID card

11. The cost, in relation to both individuals to purchase a card and the entire cost of the scheme, is unclear, and will be vital to public acceptance of the scheme. The latest estimated cost from the Home Office for a combined passport and identity card is £93⁴ and £30 for a standalone identity card.⁵ 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 would seem highly doubtful that a commercial business would embark on such an ambitious scheme on the information about costs and practicability currently available to the government.
12. A highly publicised report from the London School of Economics concluded that the Home Office had substantially underestimated the cost of the scheme.⁶ The report put the median costs of the project at £14.5billion, leading to speculation that the cards could cost as much as £300.⁷ The Home Office has issued a rebuttal to the LSE, but significant questions remain unanswered in relation to the technological detail on the scheme, for example, the length of time that the cards will last or the type or types of biometric to be used, which are likely to have considerable impact on the overall cost of the scheme. Recent press reports have indicated that further LSE report is likely to place the cost of cards at £500.⁸
13. All research indicates that there is likely to be massive cost resistance from individuals when asked to pay for an identity card. A MORI poll, dated 22 April 2004 and commissioned by Detica, an IT consultancy, found 80 per cent support for identity cards. 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 issue of cost becomes very significant when the scheme is to become one of compulsion. Public support should be considered highly volatile in relation to likely costs.

Amendment

Page 31, line 21, insert new clause 37(1)

“No fee shall be imposed for a card issued in consequence of an order by the Secretary of State for compulsory registration”

⁴ The Home Office Regulatory Impact Assessment introduced to the House of Commons on 25 May 2005 at para 22. The Assessment also states that the current best estimate is that the total average running costs for issuing passports and ID cards to UK nationals is estimated at £584m (para 19).

⁵ ‘It will be affordable to set a charge of £30 at current prices for a stand-alone ID card which is valid for 10 years’, Charles Clarke, HC Debates 13 Oct 2005: column 562W

⁶ <http://is.lse.ac.uk/IDcard/>

⁷ See for eg ‘Anger of ‘sale’ of ID details’ *The Telegraph*, ‘Rebel MPs to get price promise for poor on ID cards’ *The Times*, and ‘Ministers play down claims on high cost of ID card’ *The Guardian*, 27 June 2005

⁸ See ‘New report claims cost of ID cards will be £500 each’ *The Sunday Times*, 6 November 2005