



House of Lords
House of Commons
Joint Committee on
Human Rights

Identity Cards Bill

Fifth Report of Session 2004–05



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Report, together with formal minutes and an appendix

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Publications

The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/commons/selcom/hrhome.htm. A list of Reports of the Committee in the present Parliament is at the back of this volume.

Current Staff

The current staff of the Committee are: Nick Walker (Commons Clerk), Ed Lock (Lords Clerk), Murray Hunt (Legal Adviser), Róisín Pillay (Committee Specialist), Duma Langton (Committee Assistant), Pam Morris (Committee Secretary) and Tes Stranger (Senior Office Clerk).

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Summary

The Joint Committee on Human Rights examines every Bill presented to Parliament. With Government Bills, its starting point is the statement made by the Minister under section 19 of the Human Rights Act 1998 in respect of compliance with Convention rights as defined in that Act. However, it also has regard to the provisions of other international human rights instruments which bind the UK.

In this report, the Committee draws the special attention of each House to the Identity Cards Bill. The provisions of the Bill raise a number of serious questions of human rights compatibility on which the Committee has written to the Home Secretary requesting clarification or further information. A copy of this letter is appended to the report.

The report raises concerns about the compatibility of provisions of the Bill with the right to respect for private life under Article 8 of the European Convention on Human Rights (ECHR), and the right to non-discrimination in the protection of the Convention rights under Article 14 ECHR. In particular it questions—

- The extent of the personal information which will be included within the “registrable facts” held on the Register, and whether all of the information held serves a legitimate aim, and is proportionate to that aim, as required by Article 8 (paragraphs 10–15);
- The potential for personal information to be recorded on the Register without the knowledge or consent of the individual concerned, under clause 2(4), which allows the inclusion on the Register of information “otherwise available” to the Home Office (paragraph 17);
- The potential for the system of “designated documents” to render registration and ID cards effectively compulsory for certain groups of people who hold these documents, and the resultant potential for arbitrary or disproportionate interference with Article 8, and for discrimination in breach of Article 14 (paragraphs 18–21);
- The potential for a “phased in” system of compulsory registration and ID cards to lead to interference with Article 8 rights which is not justified by any legitimate aim, and may discriminate against those groups subject to compulsion, contrary to Article 14 (paragraphs 22–25);
- Under a compulsory scheme, the extent of personal information which may be disclosed from the Register to a service provider as a condition of access to public services under clause 17, potentially in breach of Article 8, and the lack of safeguards against unnecessary disclosure to service providers under clause 17 (paragraphs 26–29);

- The potential, under a compulsory scheme, for both public and private persons to make contracts or services conditional on production of an ID card, or access to information on the Register, without sufficient safeguards under clause 18, and the risk of breach of Article 8 (paragraphs 30–33);
- Provision for extensive data sharing from both the public and private sectors in order to confirm information on the Register, or information which the Home Office wishes to enter on the Register, under clause 11 (paragraphs 34–36);
- Provision for extensive disclosure of personal information on the Register to public bodies for a wide range of purposes under clauses 19–21, and for unlimited extension of these powers of disclosure by way of regulations under clause 22, without sufficient safeguards, risking breach of the Article 8.2 requirements that an interference with private life be in accordance with law, that it pursues a legitimate aim, and is proportionate to that aim (paragraphs 37–43).

Report

Date introduced to the House of Commons	29 November 2004
Current Bill Number	House of Commons 8
Previous Reports	None

Background

1. The Identity Cards Bill is a Government Bill, introduced in the House of Commons on 29 November 2004. The Bill follows a 2002 Consultation Paper, *Entitlement Cards and Identity Fraud*,¹ a government White Paper, *Identity Cards, The Next Steps*,² and a draft Identity Cards Bill published in April 2004.³ The House of Commons Home Affairs Committee conducted pre-legislative scrutiny of the draft Bill in the context of an inquiry into all aspects of identity cards, and published its Report in July 2004.⁴

2. A statement of compatibility with the Convention rights has been made by the former Home Secretary Mr David Blunkett in respect of the Bill. Explanatory Notes to the Bill have been published.⁵ They do not, however, contain any explanation of the Government's reasons for believing the Bill to be compatible with the Convention rights. **We consider the absence of such explanation to be deeply unsatisfactory in a Bill which is concerned throughout with issues of personal privacy, and with the delicate balances to be struck between individual rights to private life and the protection of the community.** As we have pointed out in previous reports, most recently in our report on the Serious Organised Crime and Police Bill,⁶ the absence of human rights analysis in the Explanatory Notes inhibits effective parliamentary scrutiny in general and our work in particular. **We draw this matter to the attention of both Houses.**

3. This report contains our initial consideration of the Identity Cards Bill and identifies the most significant human rights issues raised by the Bill, on which we have written to the Home Secretary to request clarification or further information. Our letter is appended to this Report. On receipt of the Home Secretary's response, we will consider and report further on the Bill.

Purpose of the Bill

4. The Bill creates a National Identity Register ("the Register") to be maintained by the Home Office, which will contain information capable of establishing the identity of individuals, to allow their identity to be verified where necessary in the public interest.⁷ "Public interest" is defined as including the interests of national security, the prevention or

1 Home Office, *Entitlement Cards and Identity Fraud A Consultation Paper*, Cm 5557, July 2002

2 Home Office, *Identity Cards The Next Steps*, Cm 6020, November 2003

3 Home Office, *Legislation on Identity Cards A Consultation*, Cm 6178, April 2004

4 Home Affairs Committee, Fourth Report of Session 2003–04, *Identity Cards*, HC 130-I

5 HCB 8 EN (Hereafter 'EN')

6 Fourth Report of Session 2004–05, *Scrutiny: First Progress Report*, HL Paper 26, HC 224, paras. 1.1–1.144

7 Clause 1(2)

detection of crime, the enforcement of immigration controls, prohibition of unauthorised working or employment; and the efficient and effective provision of public services.⁸ Information may be gathered, stored on the Register, and disclosed to others, in pursuit of these aims. Persons whose information is held on the Register must be issued with ID cards, except in circumstances prescribed by the Secretary of State.⁹ ID cards, under clause 8 of the Bill, may contain any of the information which is recorded about an individual on the Register, and may allow authorised persons to check an individual's entry on the Register.¹⁰

5. The Bill is framework legislation, which makes provision both for a voluntary scheme of registration and ID cards, and a compulsory scheme, with the possibility that these two schemes can co-exist, compulsory entry on the Register being phased in for some groups before others. Under a nominally voluntary scheme, some people may also be in effect compelled to enter their details on the Register, where this becomes a condition of holding another document designated by order of the Secretary of State or where an ID card becomes a condition for access to particular services. The Bill also provides for a system of data sharing, between the Home Secretary as holder of the Register, and other public and private bodies.

Human Rights Implications

6. Gathering and storage of information on the Register, use of the information as an identity check and disclosure to other bodies, will each engage the right to respect for private life protected by Article 8 ECHR. Article 8 provides—

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

7. Article 8 ECHR does not prevent the issue of any form of identity card. It has been held by the European Court of Human Rights (ECtHR) that the issue of an identity card containing only a person's name, sex, date and place of birth, current address, and the name of their spouse, does not in itself raise issues of the right to private life under Article 8 ECHR. Neither does the obligation to hold or carry such a card engage Article 8.¹¹

8. Article 8 rights are engaged, however, by the gathering and recording of personal data, including data to establish a person's identity.¹² The use or disclosure of information

8 Clause 1(4)

9 Clause 8(4)

10 Clause 8(2)

11 *Reyntjens v Belgium*, App No 16810/90

12 *Friedl v Austria* (1996) 21 EHRR 83, para 52, where the questioning of the applicant to establish his identity and the recording of personal data including fingerprints constituted an interference with Article 8 rights; *X v UK* App No 9702/82

relating to a person's private life also engages Article 8.¹³ Under Article 8.2, such interference must be justified as sufficiently clear and foreseeable in its application to be in accordance with law; as serving one of the legitimate aims listed in Article 8.2; and as necessary for and proportionate to the aim it serves, and a response to a pressing social need. For interferences with Article 8 rights to be legitimate, therefore, it must be shown that they interfere with privacy rights to the minimum degree necessary, and that their aim could not be achieved by less intrusive means. The Bill is also likely to raise issues under Article 14 ECHR which, read in conjunction with Article 8, prohibits unjustified discrimination in the protection of rights to respect for private life. In this Report, we consider the application of these standards to the main aspects of the Bill.

9. We note that doubts have been raised in debates on the Bill¹⁴ and in previous discussions on the Consultation Paper, as to whether the creation of a National Identity Register and a system of ID cards would in practice be an effective means of addressing the aims set out in clause 1(4): the interests of national security, the prevention or detection of crime, the enforcement of immigration controls; the enforcement of the prohibition on unauthorised working and securing the efficient and effective provision of public services. Although the aims in clause 1(4) could be considered to be legitimate aims under Article 8.2, we note that questions of the relevance and effectiveness of the Register and ID cards system in addressing these concerns, would be highly relevant to an assessment of compliance with Article 8. In each individual case of the collecting, holding, use or disclosure of personal information held on the Register, the intrusion on the individual's privacy rights must be justified as the minimum necessary, so that the aim pursued could not have been achieved by measures less restrictive of Convention rights. We consider the application of this principle in relation to the detail of the Bill below.

Contents of the Register

10. The information about an individual which may be held on the Register and recorded on an ID card includes information that can be used to establish "registrable facts"¹⁵ which are—

- Identity, which includes full name and any previous names, date and place of birth and on death, the date and place of death, information on any physical characteristics capable of being used for identification, including photograph, fingerprints, and other biometric information, and a signature;
- Place or places of residence in the UK;
- Previous places of residence in the UK;
- Dates at which resident at each place in the UK and abroad;
- Current residential status, including nationality, entitlement to remain in the UK, and the terms of any grant of leave to enter or remain;

13 *Leander v Sweden* (1987) 9 EHRR 433, para. 48; *MS v Sweden* (1999) 28 EHRR; *Z v Finland* (1997) 25 EHRR 371

14 HC Deb, 20 December 2004, cols. 1943–2037

15 Clause 1(5) and Schedule 1

- Any previous residential status;
- Information on any identity numbers and the documents to which they relate;
- Records of occasions on which information from an individual’s entry on the Register has been provided to others;
- Information about an individual entered in the Register at his or her own request.

11. An individual who has been issued with an ID card is under an obligation to notify the Secretary of State of every change in circumstances affecting the information held on his or her record on the Register (clause 12(1)(a)), or any inaccuracies which he or she becomes aware of in the information held (clause 12(1)(b)).

12. The European Court of Human Rights has held that “information relating to private life” is to be construed broadly¹⁶ to include any information relating to an identified or identifiable individual.¹⁷ Publicly available information concerning an individual does constitute personal information within the scope of Article 8 where it is systematically collected and stored.¹⁸

13. The systematic collection and storage of information on the Register therefore engages Article 8, even without any further use or disclosure of the material.¹⁹ The information which the Bill envisages will be held on the Register allows for significant intrusion into private life. This is particularly the case since a person’s record on the Register will include a record of the occasions on which his or her entry on the Register has been accessed by others (clause 1(5)(h)), for example, in the use of public services, or by prospective employers, or as part of criminal investigations (regardless of whether these result in prosecutions or convictions). Thus the information held on the Register may amount to a detailed account of their private life.

14. Information may be held on the Register for as long as consistent with the statutory purpose of verifying the registrable facts about an individual. This implies that information will be held at least for a person’s lifetime, or at least where they remain resident in the UK. The interference with Article 8 rights is likely to increase as information on an individual is held for lengthy periods. This is particularly the case since, as noted above, the Register will hold a record of the occasions on which a person’s records have been accessed by others, potentially providing, over time, a detailed picture of private life. The ECtHR has emphasised that holding information concerning someone’s distant past raises particular Article 8 issues.²⁰ As regards each of the registrable facts entered in respect of an individual, it must be shown first that the consequent interference with private life pursues a legitimate aim listed under Article 8.2; and can be justified as necessary in a democratic society,

16 *Niemietz v Germany* (1993) 16 EHRR 97, para. 29; *Halford v UK* (1997) 24 EHRR 52

17 *Amann v Switzerland* (2000) 30 EHRR 843, para. 65; *Rotaru v Romania* (2000) 8 BHRC 43

18 *Rotaru v Romania* (2000) 8 BHRC 43, para. 44

19 *Leander v Sweden* (1987) 9 EHRR 433; *Hilton v UK* App No 12015/86; *Chave v France* App No 14461/88; *Martin v Switzerland* App No 25099/94

20 *Rotaru v Romania* (2000) 8 BHRC 43, para. 43, “public information can fall within the scope of private life where it is systematically collected and stored in files held by the authorities. That is all the truer where such information concerns a person’s distant past”.

proportionate to the aim it pursues, and in pursuit of a pressing social need. This requires that privacy rights should be interfered with to the minimum degree necessary.

15. We are concerned at the range of the information which may be held on an individual's record on the Register, and at its apparent lack of relation to the statutory aims, and to the aims listed as legitimate for the purposes of Article 8 ECHR. In particular, we do not see why the statutory purposes necessitate a record of a person's previous residential status, where, for example, someone has previously held a temporary residence permit, but later acquired UK citizenship. Neither do we see why it is necessary for the statutory purposes to record not only a person's main residence, but also any second homes they may have. Thirdly, it is not clear why it is necessary for the statutory purposes to retain records of each occasion on which a person's entry in the Register has been accessed by others, a provision which is potentially highly intrusive of privacy, if the information is disclosed to third parties. **We have written to the Home Secretary asking why the gathering and storage of this information is considered to serve a legitimate aim, and to be a necessary and proportionate interference with Article 8 rights.**

Voluntary Entry on the Register

16. Under a voluntary scheme, registrable facts concerning an individual could be entered on the Register in a number of ways. The first is on the application of the individual to be entered on the Register (clause 2(1)). Those entitled to apply for entry onto the Register are persons over the age of 16 resident in the UK, and other prescribed descriptions of individuals who have or propose to reside in the UK. Within these groups, regulations made by the Secretary of State may exclude from registration certain categories of short-term residents, or persons who are residing in the UK without entitlement to remain (clause 2(3)). Voluntary entry onto the Register in this way and the consequent issue of an ID card does not in itself engage Article 8 ECHR, although subsequent use or disclosure of information voluntarily entered will do so.

Entries on the Register from other Recorded Sources

17. The second means by which an individual's details may be entered on the database is if information capable of being recorded in an entry is "otherwise available to be recorded" (Clause 2(4)). The Explanatory Notes cite the example of a failed asylum seeker who had not applied to be entered on the Register, but whose biometric data was already retained.²¹ This provision appears to allow for a person's data to be transferred to the Register without their knowledge or consent. This raises two concerns in relation to Article 8 rights. First, that the interference with privacy is not sufficiently foreseeable, in that individuals will not be able to ascertain with sufficient certainty whether and how the interference with private life permitted by the Bill will apply to them, and that the interference will therefore not be in accordance with law as required by Article 8.2. Second, that the gathering and retention of data in this way may not constitute a proportionate interference with Article 8, since there is nothing to ensure that the criteria for entry onto the Register in this way will be

21 EN para. 24

relevant to the statutory aims. **We have written to the Home Secretary asking for clarification of the effect of clause 2(4) and its compliance with Article 8 rights.**

Entry on the Register by way of Designated Documents

18. A third means by which an individual may be entered on the Register is through application for a document which is designated by order of the Secretary of State (clause 4). This may include any document issued under statute or other ministerial powers. The effect of Clause 5(2) is that once a document is designated, anyone applying for that document must also apply to be entered on the Register, if he or she is not on the Register already. It is intended that passports, for example, will become designated documents.²² Designation of some types of documents may also render entry onto the Register compulsory, in effect, for certain categories of people who are obliged to hold the document designated. This would certainly be the case, for example, in relation to residence permits required to be held by certain non-nationals, and might effectively be the case in relation to passports or driving licences, which may be essential to a person's family or working life.

19. We note that where entry onto the database and holding an ID card become compulsory in this way, rather than expressly under section 6, receipt of benefits or public services cannot be made conditional on the production of an ID card²³ and the individual cannot be required by any organisation to produce an ID card (rather than any other form of identification) as proof of identity. Nevertheless, effective compulsory registration resulting from the designation of documents will amount to an interference with Article 8 rights. Entry of a person's details onto the Register, either by application to be entered on the Register, or by application for a designated document, will require the person to allow fingerprints and other biometric information (information relating to an individual's external characteristics) to be taken and recorded, to allow him or herself to be photographed; and to provide any other information required by regulations (clause 5(5)). The taking of information relating to personal identity in this way engages Article 8.²⁴

20. The phased introduction of effective compulsory registration through the designation of documents, raises particular questions of proportionality under Article 8 ECHR. Firstly, an obligation to hold an ID card which is dependent on relatively arbitrary criteria of whether a person holds a document such as a passport or a driving licence, or whether their passport or driving licence requires renewal, is more difficult to justify as necessary and proportionate to an Article 8.2 legitimate aim or to the aims of the Register listed under clause 1(4)—the interests of national security; the prevention or detection of crime; the enforcement of immigration controls; the enforcement of prohibitions on unauthorised working or employment; or securing the efficient and effective provision of public services. Requiring only those who hold driving licences or passports, and who apply to hold or renew them, to enter their details on the Register appears unlikely to provide an effective means of addressing any of these concerns. It is correspondingly unlikely to be seen as a proportionate response to one of the legitimate aims listed by

22 EN para. 38

23 Under clause 15(2)

24 *Friedl v Austria* (1996) 21 EHRR 83

Article 8.2. One of the conditions of a proportionate interference with Article 8 rights is that relevant and sufficient reasons must be advanced in support of the measure;²⁵ and it is not clear to us that relevant and sufficient reasons have been put forward to justify a scheme where interference with Article 8 depends on whether someone holds a passport, or whether their passport requires renewal. **We have therefore written to the Home Secretary to ask how the aims of the Bill support a scheme where entry on the Register depends on application for a designated document unrelated to one of these aims, such as a passport, and how an interference with Article 8 rights on this basis can be justified as proportionate.**

21. Such a system also appears likely to lead to discrimination contrary to Article 14, read in conjunction with Article 8. Article 14 prohibits unjustified discrimination on any grounds,²⁶ so that, for example, unjustified discrimination against those requiring renewal of a designated document, could breach Article 14. Under Article 14, a difference in treatment may be permitted where there is an objective and reasonable justification for it, and where it is proportionate to a legitimate aim.²⁷ It is not clear that the discriminatory interference with the private life of those who find it necessary to apply for certain designated documents, as described above, could be justified in this way. **We have therefore written to the Home Secretary asking why it is considered that the scheme of designated documents can operate in compliance with Article 14 ECHR read in conjunction with Article 8.**

Entry on the Register by Compulsion

22. Clause 6 provides for entry on the Register to be made compulsory either for all registrable individuals, or for designated groups by order of the Secretary of State²⁸ subject to a “super-affirmative” process of parliamentary authorisation under clause 7.²⁹ Such persons would be required to apply for entry onto the Register, and therefore to allow themselves to be photographed, to have fingerprints and other biometric data taken and recorded, and to provide such other information as may be required by the Secretary of State. Persons within the categories designated by order, who did not apply for entry onto the register within a specified time, would be liable to a civil penalty of £2500.

23. Clause 6(1) provides that the Secretary of State may impose an obligation of registration on individuals of a specified description. This reflects the intention that a compulsory scheme of registration would be phased in. The Explanatory Notes suggest that—

this subsection provides the facility to phase in the compulsory registration, for example, so that different categories of people over a certain age may initially or permanently be excluded from the requirement to register. It might also be

25 *Olsson v Sweden* (1988) 11 EHRR 259; *Dudgeon v UK* (1981) 4 EHRR 149

26 *Pine Valley Developments Ltd v Ireland* (1992) 14 EHRR 319

27 *Belgian Linguistics Case (No 2)* (1968) 1 EHRR 252

28 Clause 6(1)

29 EN para. 50

compulsory, for example, for a third country national to register before such time as the scheme becomes compulsory for European Economic Area or UK nationals.³⁰

24. Such a scheme raises questions of disproportionate interference with private life under Article 8, as well as of discrimination under Article 14 ECHR, read in conjunction with Article 8. Since obligatory entry on the Register amounts to an interference with Article 8 rights, it must be established in relation to each category of persons whose entry on the Register is made compulsory, that the measure is in accordance with law, pursues a legitimate aim and is necessary and proportionate to that aim. It must also be shown that the imposition of compulsory registration on a particular group is non-discriminatory under Article 14 ECHR, read in conjunction with Article 8 ECHR.

25. Where, for example, a move to compulsory registration was sought to be justified by the government in the interests of the prevention of crime, or the prevention of benefit fraud, it would need to be shown that there were relevant and sufficient reasons for the designation of a particular group for compulsory registration in support of this aim. We are not convinced that such justification could be made, under a phased programme of the type suggested in the Explanatory Notes. A scheme of compulsory registration that is sought to be justified as necessary for the prevention of crime, for example, would be difficult to justify as necessary and proportionate in response to this legitimate aim where only those persons under a particular age were required to register. Such a scheme would be equally difficult to justify as non-discriminatory in accordance with Article 14 ECHR. The government might seek to justify compulsory registration for groups of non-nationals as being in the interests of effective immigration control, and therefore serving the legitimate aim under Article 8.2 of maintaining the economic well-being of the country. However, in order for such a measure to be a proportionate interference with Article 8, and to meet a pressing social need, it would need to be shown that other measures less intrusive of Convention rights, including other documentation required to be held by those within the group concerned, could not serve this aim. Making registration compulsory for a particular group of non-nationals would be unlikely to be justified as necessary for the reduction of crime, since it would be likely to amount to both a disproportionate and a discriminatory interference with Article 8 rights. Were information held on the Register as a result of the compulsory registration of non-nationals (only) to be used for crime prevention purposes, such use would be difficult to justify as a legitimate interference with privacy rights under Article 8, and could risk breach of Article 8 in conjunction with Article 14. Further discrimination issues may arise, under Articles 8 and 14 ECHR as well as in relation to the UK's international human rights obligations of non-discrimination, in particular under the International Covenant on Economic Social and Cultural Rights (ICESCR) where essential services such as healthcare became dependent on entry onto the Register, for certain groups. **We have therefore written to the Home Secretary asking how a phased introduction of compulsory ID cards, as envisaged by the Bill, can be compatible with Article 8 and Article 14 ECHR.**

30 EN para. 45

Disclosure of Information: Benefits and Public Services

26. Where entry on the Register, and therefore possession of an ID card, become compulsory for all persons or for a group of persons under section 6, then under clause 15, access to public services, including services available free of charge, or to benefits, may become conditional on production of an ID card, where provision to this effect is made in regulations by the Secretary of State.³¹ In respect of persons who are not compulsorily required to be entered on the Register, such a condition may not be imposed in relation to benefits or to services that are free of charge, but may be imposed in relation to other services. Under clause 17 (1), regulations may allow public service providers, when assessing applications for public services where there is a requirement to produce an ID card, to access information in the Register “for the purposes of verifying registrable facts about an individual who has applied for the provision of the service.” This could include, for example, address and former address, residential status and former residential status, and identifying physical characteristics. It could also include records of previous access to the Register.³² As we have noted above, this information could provide extensive information about someone’s private life. There is no requirement that the information accessed should be limited to that necessary for provision of the particular service, so that there would appear to be nothing to prevent access to information on former residential status, for example, even where this was irrelevant to entitlement to the service (such as a healthcare service) being provided. Disclosure of personal information held on the Register would amount to an interference, in its own right, with Article 8 rights.³³ We doubt that the extent of the information, including potentially irrelevant information, that could be accessed by public service providers under clause 17 would constitute a necessary and proportionate interference with privacy rights under Article 8 ECHR. **We have written to the Secretary of State asking how the extent of disclosure under clause 17 can be justified in relation to Article 8, and asking whether the information that can be accessed will be more tightly defined on the face of the Bill.**

27. It is likely that clause 17 would permit a wide category of persons to access data from the Register in respect of persons subject to compulsory registration, or other persons subject to regulations made under clause 15. A “public service” under clause 17 is defined as including services provided by any “public authority” which has the same meaning as under section 6 of the Human Rights Act.³⁴ However it is also likely to extend beyond the current application of the HRA since “public service” also expressly includes provision of contracted out public services.³⁵ It would include, for example, private care homes or housing associations.

28. This may, under regulations, become subject to certain limitations under clause 17 (3) and clause 41(6). The Secretary of State may in regulations require that persons to whom information from the register may be disclosed must be authorised by the Secretary of

31 Clause 15(3) makes clear that this does not extend to an obligation to carry an ID card at all times.

32 Schedule 1, para. 9

33 *MS v Sweden* (1999) 28 EHRR; *Leander v Sweden* (1987) EHRR 433

34 The extent to which this includes private organisations providing public services remains unclear under the case law applying section 6 of the Human Rights Act. See our Seventh Report of Session 2003–04, *The Meaning of ‘Public Authority’ under the Human Rights Act*, HL Paper 39, HC 382

35 Clause 43(2)(d)

State. However, such regulation is at the discretion of the Secretary of State and the nature of the safeguards which might be applied are unclear from the face of the Bill.

29. Safeguards requiring that persons accessing the Register must be authorised by the Secretary of State would provide an important safeguard to ensure that access is limited to those organisations that serve a legitimate aim under Article 8.2, and that they would be likely to access the Register only where necessary and proportionate in pursuit of a legitimate aim. **We have written to the Secretary of State asking whether a requirement for authorisation will be introduced on the face of the Bill.** We also note that the Bill does not contain any requirement to assess the relevance and proportionality of a disclosure to the statutory aims in clause 1(4), prior to disclosure. **We have also asked the Secretary of State whether a requirement to this effect will be introduced on the face of the Bill.**

Disclosure of Information: Verification of Identity

30. Where a person is subject to compulsory registration, any person or organisation, whether public or private, may require him or her to produce an ID card, or to give consent for an identity check against the information held on the Register, as a condition of doing any thing in relation to that person (clause 18(2)(c)).

31. The information which may be accessed by way of an identity check under clause 14 includes personal information (name, date and place of birth, address and previous addresses); information on current and previous residential status in the UK; personal reference numbers; photograph; and signature. Fingerprints and biometric data are not to be provided, although if such data are submitted it will be confirmed whether they match the biometric data held on the Register. Information on records of previous access to the entry in the Register³⁶ cannot be disclosed under clause 14.

32. This provision is potentially highly intrusive of private life, in that it would be likely to result in verification checks of personal data by a wide range of private persons including, for example, potential employers. Although, under clause 14, information from an individual's entry on the Register can only be accessed with his or her consent, this consent may be notional where a person may be unable enter into contracts or access services without giving consent. On the face of the Bill, there is nothing to require that access to the Register under clause 14 should be limited to those who are acting in pursuit of a legitimate aim under Article 8.2, such as the prevention of crime, or one of the purposes of the Bill listed in clause 1(4). Given the unlimited terms of clause 18, it seems unlikely that this should be the case. Clause 14(6) allows for regulations to be made which would require authorisation of those accessing the Register under clause 14. **We are concerned that the range of persons who may access personal data under clause 18 and clause 14 may lead to interferences with the right to respect for private life which cannot be justified as necessary and proportionate in pursuit of a legitimate aim. We have written to the Secretary of State asking whether a requirement of authorisation will be included on the face of the Bill, and whether it will be specified in the Bill that such authorisation will be conditional on relevance to one of the statutory purposes in clause 1(4).**

³⁶ Schedule 1, para. 9

33. As the Explanatory Notes point out, clause 14 (4) “allows regulations to be made further restricting the information that may be provided under clause 14. This could be used for example, to ensure that certain 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 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 14(2) is not necessary for their verification purposes.” In our view, such restrictions would be an essential safeguard, without which Article 8 compliance could not be assured. **We have written to the Secretary of State to ask whether such safeguards will be included on the face of the Bill, rather than left to regulations.**

Exchange of information

34. Clause 11 allows for data sharing between the Secretary of State, designated documents authorities, and other public and private bodies in order to confirm information which is already held on the Register, or which is provided to the Secretary of State or is “otherwise available” to the Secretary of State to be recorded on the Register (clause 11(1)). The Secretary of State can require central government, or public or private bodies, to provide the verifying information (clause 11 (1)). A designated documents authority may also require such information to be provided, where it needs to verify information supplied to it for the issue or modification of a designated document or ID card (clause 11(2)).

35. Those persons who may be required to produce information under clause 11 include private sector organisations performing statutory functions, as well as central and local government, and public bodies (clause 11(5)). They may also, under regulations made by the Secretary of State, include private organisations (clause 11(6)).³⁷ Where an obligation is imposed to provide information under clause 11, it may be enforced in civil proceedings, including by way of injunction or proceedings for specific performance (clause 11(6)).

36. The circumstances in which verifying information can be required by the Secretary of State under clause 11 appear to be wide. Powers to require information may be exercised not only where an individual has had details entered in the Register, or has applied to be entered in the Register, but where some identifying information is available to the Secretary of State from other sources. This suggests that, even under a voluntary scheme, personal information may be gathered about an individual without that individual’s knowledge or consent. **We have written to the Secretary of State asking for further information as to the range of circumstances in which information could be required to be provided under clause 11.**

Disclosure of Information

37. Clauses 19–21 of the Bill allow the Home Secretary to disclose information concerning an individual from the Register to certain public authorities without the individual’s consent in certain circumstances. The effect of these provisions is as follows.

³⁷ Subject to Parliamentary approval under the affirmative resolution procedure under clause 11(8). The Explanatory Notes confirm that an obligation to provide information may be imposed on the private sector (EN para. 77).

- Any information from the Register may be disclosed to the Director General of the Security Service; the Chief of the Secret Intelligence Service; the Director of GCHQ; or the Director General of the Serious Organised Crime Agency (clause 19(2)) for any purposes connected with the carrying out of their functions.
- Information from the Register, excluding information on previous records of access to the register, may be disclosed to
 - a chief officer of police in the interests of national security, or of the prevention or detection of crime, or for other purposes specified by order made by the Secretary of State (clause 19(3));
 - the Inland Revenue or the Commissioners of Customs and Excise for wide ranging purposes, including the prevention and detection of crime, national security, verification of any information relating to the commissioners' work, as well as for purposes connected with "conduct in respect of which the Commissioners have the power to impose penalties" (clause 19(4)(d)) or for other purposes specified by order of the Secretary of State (clause 19(4)(f)).
 - any government department "for purposes connected with the carrying out of any prescribed functions of that department or of a Minister in charge of it". (clause 19(5))
- Information on records of access to an entry on the Register may be accessed by a chief officer of police, the Inland Revenue or Commissioners of Customs and Excise, or any government department for the purposes of the prevention or detection of serious crime; or by any person in relation to criminal investigations or proceedings actual or potential, whether in the UK or abroad, (under clause 20(2)) where the purpose is the prevention or detection of serious crime (clause 20(4)).
- Information from the Register may be disclosed to a designated documents authority³⁸ in connection with any of its powers or duties under the Bill, or other powers or duties relating to designated documents (clause 19(6)).
- Information from the Register (excluding information on records of access to an entry in the Register) may be provided to any person in relation to criminal investigations or proceedings, actual or potential, whether in the UK or abroad, subject to a power of the Secretary of State to prohibit the provision of information for use in overseas proceedings, or particular overseas proceedings (clause 20 (2) and (3), and sections 17 and 18 of the Anti-Terrorism Crime and Security Act 2001);
- Where a person provides information to verify an entry into the Register, and that information proves to be inconsistent with the Register, they may be given the relevant information recorded on the Register. This may include either public or private organisations (clause 21).

38 A body with power to issue designated documents

38. These extensive powers of disclosure are open to further unlimited extension under clause 22, which allows the Secretary of State the power to authorise by order the disclosure of any specified type of information from the Register to any specified person or category of persons, for any specified purposes. Such an order is subject to an affirmative resolution procedure.

39. Disclosure of personal data without consent interferes with Article 8 rights.³⁹ Even without the additional scope for disclosure in clause 22, the wide and uncertain extent of disclosure under clauses 19–21—extending as it does to every function of every government department and to wide-ranging functions of a number of state agencies—risks non-compliance with Article 8. We are concerned that the range of bodies to which personal information may be disclosed, and the purposes for which personal information may be disclosed to them, will be insufficiently foreseeable in their application to individuals to be in accordance with law as required by Article 8(2). The possibility of further extension of the powers of disclosure, under clauses 19(3), 19(4) and 22, by order of the Secretary of State, compounds this concern. **We are not satisfied that the range of bodies to which information can be disclosed, and the range of purposes for which it can be disclosed, is sufficiently certain or foreseeable for the interference with the right to respect for private life to be in accordance with law as required by Article 8.2. We have written to the Home Secretary asking whether these matters will be more closely defined on the face of the Bill, in order to ensure Article 8 compliance.**

40. We are also concerned that disclosure of information permitted by these provisions would not in every case pursue a legitimate aim under Article 8.2. It is not clear, for example, that every function of every government department will necessarily fall within one of the Article 8.2 legitimate aims. Furthermore, under clause 19(4)(d), information may be disclosed to the Commissioners for Customs and Excise or the Revenue Commissioners for purposes connected with “conduct in respect of which the Commissioners have the power to impose penalties”. If this relates to civil penalties then it is unlikely to fall within the Article 8.2 legitimate aim of the prevention or detection of crime. **We have written to the Home Secretary asking how it is to be ensured that disclosure of personal information under clauses 19–22 would in every case serve a legitimate aim under Article 8.2.**

41. Article 8 compliance also requires that every disclosure of personal information must represent a proportionate response to the aim pursued. **We are concerned at the absence on the face of the Bill of any requirement for an assessment of necessity or proportionality prior to the disclosure of information under clauses 19 to 22.** Under clause 23(1), information from the Register may be provided without the individual’s consent only where the Secretary of State is satisfied that “it would not have been reasonably practicable for the person to whom the information is provided to have obtained the information by other means.” Further safeguards may be provided for in regulations under clause 23, and may limit the persons to whom information may be disclosed or require their approval by the Secretary of State. However, no such safeguards are required by the Bill. **We have written to the Secretary of State asking whether such**

39 *Leander v Sweden* (1987) 9 EHRR 433

safeguards, as well as safeguards requiring a prior assessment of relevance and proportionality, will be included in the Bill.

42. The provisions of the Bill which allow for the disclosure of information under Schedule 1 Paragraph 9, relating to records of previous access to an entry in the Register, require particular scrutiny. Disclosure of particularly personal data, such as medical records, has been held by the ECtHR to be permissible only where there is an overriding public interest justification.⁴⁰ Although nothing in the Bill allows for the degree of intrusion involved in the disclosure of medical records, the record of access to the Register could contain highly intrusive and comprehensive information on a person's private life, including for example, information on whether and when they have accessed medical services or any other public services, any applications for benefits, and applications for jobs. In this regard, it is a particular concern that the order-making power in clause 22 would allow the Secretary of State to make further provision for disclosure of this material, without the need for additional primary legislation. **We have written to the Secretary of State drawing particular attention to the potential breach of Article 8 rights in the disclosure of paragraph 9 Schedule 1 information, and asking whether this provision for disclosure of this information will be restricted on the face of the Bill.**

43. We have already pointed out, in our reports on the Anti-Terrorism Crime and Security Bill 2001,⁴¹ the potential for breach of Article 8 in the disclosure of information under what are now sections 17 and 18 of the Anti-Terrorism Crime and Security Act 2001, allowing for disclosure of information to any person in relation to criminal investigations or proceedings, actual or potential, whether in the UK or abroad. **Since clause 20 allows for information from the Register (excluding information on records of access to an entry in the Register) to be provided on the same terms, we reiterate those concerns here.**

40 *MS v Sweden* (1999) 28 EHRR

41 Second Report of Session 2001–02, *Anti-terrorism, Crime and Security Bill*, HL Paper 37, HC 372; Fifth Report of Session 2001–02, *Anti-terrorism, Crime and Security Bill: Further Report*, HL Paper 51, HC 420

Formal Minutes

Wednesday 26 January 2005

Members present:

Jean Corston MP, in the Chair

Lord Bowness

Mr David Chidgey MP

Lord Campbell of Alloway

Baroness Falkner of Margravine

Lord Plant of Highfield

Baroness Stern

The Committee deliberated.

* * * * *

Draft Report [Identity Cards Bill], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 43 read and agreed to.

Resolved, That the Report be the Fifth Report of the Committee to each House.

Ordered, That a paper be appended to the Report.

Ordered, That the Chairman do make the Report to the House of Commons and that Baroness Stern do make the Report to the House of Lords.

[Adjourned till Wednesday 2 February at Four o'clock.]

Appendix

Letter from the Chair to Rt Hon Charles Clarke MP, Secretary of State for the Home Department

The Joint Committee on Human Rights is considering how to report on the Identity Cards Bill. It has carried out an initial examination of the Bill, and will be reporting its preliminary views shortly. The Committee has identified a number of provisions of the Bill which are of particular concern in relation to rights under Article 8 and Article 14 of the European Convention on Human Rights (ECHR). The Committee would therefore be grateful for your views on the following points.

INFORMATION HELD ON THE REGISTER

The systematic collection and storage of information on the National Identity Register (“the Register”) engages the right to private life under Article 8 ECHR, even without any further use or disclosure of the material.¹ The European Court of Human Rights has held that “information relating to private life” is to be construed broadly² to include any information relating to an identified or identifiable individual.³ As regards each of the registrable facts entered in respect of an individual, it must be shown first that the consequent interference with private life pursues a legitimate aim listed under Article 8.2; and can be justified as necessary in a democratic society, proportionate to the aim it pursues, and in pursuit of a pressing social need. This requires that privacy rights should be interfered with to the minimum degree necessary.

The information which may be held on the Register (under clause 1(5) and Schedule 1) allows for significant intrusion into private life. This is particularly the case since a person’s record on the Register will include a record of the occasions on which his or her entry on the Register has been accessed by others (clause 1(5)(h)). We also note that information may be held on the Register for as long as consistent with the statutory purpose of verifying the registrable facts about an individual. This implies that information will be held at least for a person’s lifetime, or at least where they remain resident in the UK. The interference with Article 8 rights is likely to increase as information on an individual is held for lengthy periods.⁴

We are concerned at the range of the information which may be held on an individual’s record on the Register, and at its apparent lack of relation to the statutory aims, and to the aims listed as legitimate for the purposes of Article 8 ECHR. In particular, we do not see why the statutory purposes necessitate a record of a person’s previous residential status, where, for example, someone has previously held a temporary residence permit, but later acquired UK citizenship. Neither do we see why it is necessary for the statutory purposes to record not only a person’s main residence, but also any second homes they may have. Thirdly, it is not clear why it is necessary for the statutory purposes to retain records of each occasion on which a person’s entry in the Register has been accessed by others, a provision which is potentially highly intrusive of privacy. The Explanatory Notes do not provide any explanation of the compatibility of clause 1(5) with Article 8.

1 *Leander v Sweden*; *Hilton v UK* App No 12015/86; *Chave v France* App No 14461/88, *Martin v Switzerland* pp No 5099/94

2 *Niemietz v Germany* (1993) 16 EHRR 97 para. 29; *Halford v UK* (1997) 24 EHRR 52

3 *Amann v Switzerland* (2000) 30 EHRR 843 para. 65; *Rotaru v Romania* (2000) 8 BHRC 43

4 *Rotaru v Romania*, para. 43

Question 1: Why is it considered that the gathering and storage of each of the registrable facts serves a legitimate aim, and is a necessary and proportionate interference with Article 8 rights?

ENTRY ON THE REGISTER OF INFORMATION "OTHERWISE AVAILABLE"

Under clause 2(4), an individual's details may be entered on the Register if information capable of being recorded in an entry is "otherwise available to be recorded". This provision appears to allow for a person's data to be transferred to the Register without their knowledge or consent. This raises two concerns in relation to Article 8 rights. First, that the interference with privacy is not sufficiently foreseeable, in that individuals will not be able to ascertain with sufficient certainty whether and how the interference with private life permitted by the Bill will apply to them, and that the interference will therefore not be in accordance with law as required by Article 8.2. Second, that the gathering and retention of data in this way may not constitute a proportionate interference with Article 8, since there is nothing to ensure that the criteria for entry onto the Register in this way will be necessary for the statutory aims.

Question 2: Can you clarify the circumstances in which clause 2(4) will allow for information to be entered on the Register? Why it is considered that the recording of information in this way will comply with Article 8 rights?

DESIGNATED DOCUMENTS

An individual may also be entered on the Register through application for a document which is designated by order of the Secretary of State (clause 4). The effect of Clause 5(2) is that once a document is designated, anyone applying for that document must also apply to be entered on the Register, if he or she is not on the Register already. It is intended that passports, for example, will become designated documents.⁵ Designation of some types of documents may also render entry onto the Register compulsory, in effect, for certain categories of people who are obliged to hold the document designated. This would certainly be the case, for example, in relation to residence permits required to be held by certain non-nationals, and might effectively be the case in relation to passports or driving licences, which may be essential to a person's family or working life.

The phased introduction of effective compulsory registration through the designation of documents, raises particular questions of proportionality under Article 8. Firstly, an obligation to hold an ID card which is dependent on relatively arbitrary criteria of whether a person holds a document such as a passport or a driving licence, or whether their passport or driving licence requires renewal, is more difficult to justify as necessary and proportionate to a legitimate aim. Requiring only those who hold driving licences or passports, and who apply to hold or renew them, to enter their details on the Register appears unlikely to provide an effective means of addressing any of the aims of the Bill. It is correspondingly unlikely to be seen as a proportionate response to one of the legitimate aims listed by Article 8.2. One of the conditions of a proportionate interference with Article 8 rights is that relevant and sufficient reasons must be advanced in support of the measure;⁶ and it is not clear to us that relevant and sufficient reasons have been put forward to justify a scheme where interference with Article 8 depends on whether someone holds a passport, or whether their passport requires renewal.

5 EN para. 38

6 *Olsson v Sweden* (1988) 11 EHRR 259; *Dudgeon v UK* (1981) 4 EHRR 149

Question 3: How do the aims of the Bill support a scheme where entry on the Register depends on application for a designated document unrelated to one of these aims, such as a passport? How can an interference with Article 8 rights on this basis can be justified as a proportionate interference with Article 8 rights?

Such a system also appears likely to lead to discrimination contrary to Article 14, read in conjunction with Article 8. Article 14 prohibits unjustified discrimination on any grounds,⁷ so that, for example, unjustified discrimination against those requiring renewal of a designated document, could breach Article 14. Under Article 14, a difference in treatment may be permitted where there is an objective and reasonable justification for it, and where it is proportionate to a legitimate aim.⁸ It is not clear that the discriminatory interference with the private life of those who find it necessary to apply for certain designated documents, as described above, could be justified in this way.

Question 4: Why is it considered that the scheme of designated documents can operate in compliance with Article 14 ECHR, read in conjunction with Article 8?

ENTRY ON THE REGISTER BY COMPULSION

Clause 6 provides for entry on the Register to be made compulsory either for all registrable individuals, or for designated groups, by order of the Secretary of State. This reflects the intention that a compulsory scheme of registration would be phased in. The Explanatory Notes suggest that:

“this subsection provides the facility to phase in the compulsory registration, for example, so that different categories of people over a certain age may initially or permanently be excluded from the requirement to register. It might also be compulsory, for example, for a third country national to register before such time as the scheme becomes compulsory for European Economic Area or UK nationals”.⁹

Such a scheme raises questions of disproportionate interference with private life under Article 8, as well as of discrimination under Article 14 ECHR, read in conjunction with Article 8. Since obligatory entry on the Register amounts to an interference with Article 8 rights, it must be established in relation to each category of persons whose entry on the Register is made compulsory, that the measure is in accordance with law, pursues a legitimate aim and is necessary and proportionate to that aim. It must also be shown that the imposition of compulsory registration on a particular group is non-discriminatory under Article 14 ECHR, read in conjunction with Article 8 ECHR.

Where, for example, a move to compulsory registration was sought to be justified in the interests of the prevention of crime, or the prevention of benefit fraud, it would need to be shown that there were relevant and sufficient reasons for the designation of a particular group for compulsory registration in support of this aim. We are not convinced that such justification could be made, under a phased programme of the type suggested in the Explanatory Notes. A scheme of compulsory registration that is sought to be justified as necessary for the prevention of crime, for example, would be difficult to justify as necessary and proportionate in response to this legitimate aim where only those persons under a particular age were required to register. Such a scheme would be equally difficult to justify as non-discriminatory in accordance with Article 14 ECHR. Further discrimination issues may arise, under Articles 8 and 14 ECHR as well as in relation to the UK’s international human rights obligations of non-discrimination, in particular under the

7 *Pine Valley Developments Ltd v Ireland*

8 *Belgian Linguistics Case (No 2)* (1968) 1 EHRR 252

9 para. 45 EN

International Covenant on Economic Social and Cultural Rights (ICESCR) where essential services such as healthcare became dependent on entry onto the Register, for certain groups.

Question 5: How, in your view, can a phased introduction of compulsory ID cards, as envisaged by the Bill, be justified as compatible with Article 8 and Article 14 ECHR?

DISCLOSURE OF INFORMATION: BENEFITS AND PUBLIC SERVICES

Where entry on the Register, and therefore possession of an ID card, become compulsory for all persons or for a group of persons under clause 6, then under clause 15, access to public services, including services available free of charge, or to benefits, may become conditional on production of an ID card, where provision to this effect is made in regulations by the Secretary of State.¹⁰ Under clause 17 (1), regulations may allow public service providers, when assessing applications for public services where there is a requirement to produce an ID card, to access information in the Register “for the purposes of verifying registrable facts about an individual who has applied for the provision of the service.” There is no requirement that the information accessed should be limited to that necessary for provision of the particular service. Disclosure of personal information held on the Register would amount to an interference, in its own right, with Article 8 rights.¹¹ We doubt that the extent of the information, including potentially irrelevant information, that could be accessed by public service providers under clause 17 would constitute a necessary and proportionate interference with privacy rights under Article 8 ECHR.

Question 6: Why is it considered that the extent of disclosure permissible under clause 17 is justified in relation to Article 8? Will consideration be given to a tighter definition of information that can be accessed under this provision?

It is likely that clause 17 would permit a wide category of persons to access data from the Register in respect of persons subject to compulsory registration, or other persons subject to regulations made under clause 15. A “public service” under clause 17 is likely to include the provision of public services by private organisations.¹² This may, under regulations, become subject to certain limitations under clause 17 (3) and clause 41(6). The Secretary of State may in regulations require that persons to whom information from the Register may be disclosed must be authorised by the Secretary of State. However, such regulation is at the discretion of the Secretary of State and the nature of the safeguards which might be applied are unclear from the face of the Bill.

A requirement that persons accessing the Register must be authorised by the Secretary of State would provide an important safeguard to ensure that access is limited to those organisations that serve a legitimate aim under Article 8.2, and that these organisations would access the Register only where necessary and proportionate in pursuit of a legitimate aim. We also note that the Bill does not contain any requirement to assess the relevance and proportionality of a disclosure to the statutory aims in clause 1(4), prior to disclosure.

Question 7: Will consideration be given to introducing a requirement for authorisation, and for assessment of relevance and proportionality prior to disclosure, on the face of the Bill?

¹⁰ Clause 15(3) makes clear that this does not extend to an obligation to carry an ID card at all times.

¹¹ *MC v Sweden, Leander v Sweden*, op cit.

¹² Clause 43(2)(d)

DISCLOSURE OF INFORMATION: VERIFICATION OF IDENTITY

Where a person is subject to compulsory registration, any person or organisation, whether public or private, may require him or her to produce an ID card, or to give consent for an identity check against the information held on the Register, as a condition of doing any thing in relation to that person (clause 18(2)(c)). The information which may be accessed by way of an identity check under clause 14 includes personal information (name, date and place of birth, address and previous addresses); information on current and previous residential status in the UK; personal reference numbers; photograph; and signature.

This provision is potentially highly intrusive of private life, in that it would be likely to result in verification checks of personal data by a wide range of private persons including, for example, potential employers. Although, under clause 14, information from an individual's entry on the Register can only be accessed with his or her consent, this consent may be notional where a person may be unable to enter into contracts or access services without giving consent. On the face of the Bill, there is nothing to require that access to the Register under clause 14 should be limited to those who are acting in pursuit of a legitimate aim under Article 8.2, such as the prevention of crime, or one of the purposes of the Bill listed in clause 1(4). Given the unlimited terms of clause 18, it seems unlikely that this should be the case. Clause 14(6) allows for regulations to be made which would require authorisation of those accessing the Register under clause 14. We are concerned that the range of persons who may access personal data under clause 18 and clause 14 may lead to interferences with the right to respect for private life which cannot be justified as necessary and proportionate in pursuit of a legitimate aim.

Question 8: Will consideration be given to including a requirement of authorisation, and a requirement that such authorisation be conditional on relevance to one of the statutory purposes, on the face of the Bill?

As the Explanatory Notes point out, clause 14 (4) "allows regulations to be made further restricting the information that may be provided under clause 14. This could be used for example, to ensure that certain 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 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 14(2) is not necessary for their verification purposes." In our view, such restrictions would be an essential safeguard, without which Article 8 compliance could not be assured.

Question 9: Will consideration be given to including such safeguards on the face of the Bill, rather than leaving them to regulations, in order to ensure compliance with Article 8 rights?

EXCHANGE OF INFORMATION

Clause 11 allows for data sharing between the Secretary of State, designated documents authorities, and other public and private bodies in order to confirm information which is already held on the Register, or which is provided to the Secretary of State or is "otherwise available" to the Secretary of State to be recorded on the Register (clause 11(1)). The Secretary of State can require central government, or public or private bodies, to provide the verifying information (clause 11 (1)). A designated documents authority may also require such information to be provided, where it needs to verify information supplied to it for the issue or modification of a designated document or ID card (clause 11(2)).

Those persons who may be required to produce information under clause 11 include private sector organisations performing statutory functions, as well as central and local government, and public bodies (clause 11(5)). They may also, under regulations made by the Secretary of State, include private organisations (clause 11(6)).¹³ Where an obligation is imposed to provide information under clause 11, it may be enforced in civil proceedings.

The circumstances in which verifying information can be required by the Secretary of State under clause 11 appear to be wide. Powers to require information may be exercised not only where an individual has had details entered in the Register, or has applied to be entered in the Register, but where some identifying information is available to the Secretary of State from other sources. This suggests that, even under a voluntary scheme, personal information may be gathered about an individual without that individual's knowledge or consent.

Question 10: Please clarify the range of circumstances in which information could be required to be provided under clause 11.

DISCLOSURE OF INFORMATION

Clauses 19–21 of the Bill allow the Home Secretary to disclose information concerning an individual from the Register to certain public authorities without the individual's consent in certain circumstances. These extensive powers of disclosure are open to further unlimited extension under clause 22, which allows the Secretary of State the power to authorise by order the disclosure of any specified type of information from the Register to any specified person or category of persons, for any specified purposes.

Disclosure of personal data without consent interferes with Article 8 rights.¹⁴ Even without the additional scope for disclosure in clause 22, the wide and uncertain extent of disclosure under clauses 19–21—extending as it does to every function of every government department and to wide-ranging functions of a number of state agencies—risks non-compliance with Article 8. We are concerned that the range of bodies to which personal information may be disclosed, and the purposes for which personal information can be disclosed to them will be insufficiently foreseeable in their application to individuals to be in accordance with law as required by Article 8(2). The possibility of further extension of the powers of disclosure, under clauses 19(3), 19(4) and 22, by order of the Secretary of State, compounds this concern. We are not satisfied that the range of bodies to which information can be disclosed, and the range of purposes for which it can be disclosed, is sufficiently certain or foreseeable for the interference with the right to respect for private life to be in accordance with law as required by Article 8.2.

Question 11: Will consideration be given to including, on the face of the Bill, clear limits on the range of bodies to which information can be disclosed, and the range of purposes for which it can be disclosed, in order to ensure that the interference with the right to respect for private life will be in accordance with law as required by Article 8.2?

We are also concerned that disclosure of information permitted by these provisions would not in every case pursue a legitimate aim under Article 8.2. It is not clear, for example, that every function of every government department will necessarily fall within one of the Article 8.2 legitimate aims. Furthermore, under clause 19(4)(d), information may be disclosed to the Commissioners for Customs and Excise or the Revenue Commissioners for

¹³ Subject to Parliamentary approval under the affirmative resolution procedure under clause 11(8). The explanatory notes confirm that an obligation to provide information may be imposed on the private sector, para. 77.

¹⁴ *Leander v Sweden*, op cit.

purposes connected with “conduct in respect of which the Commissioners have the power to impose penalties”. If this relates to civil penalties then it is unlikely to fall within the Article 8.2 legitimate aim of the prevention or detection of crime.

Question 12: How is it to be ensured that disclosure of personal information under clauses 19–22 would in every case serve a legitimate aim under Article 8.2?

Article 8 compliance also requires that every disclosure of personal information must represent a proportionate response to the aim pursued. We are concerned at the absence on the face of the Bill of any requirement for an assessment of necessity or proportionality prior to the disclosure of information under clauses 19 to 22. Under clause 23(1), information from the Register may be provided without the individual’s consent only where the Secretary of State is satisfied that “it would not have been reasonably practicable for the person to whom the information is provided to have obtained the information by other means.” Further safeguards may be provided for in regulations under clause 23, and may limit the persons to whom information may be disclosed or require their approval by the Secretary of State. However, no such safeguards are required by the Bill.

Question 13: Will safeguards requiring authorisation, as well as safeguards requiring a prior assessment of relevance and proportionality, will be included in the Bill?

The provisions of the Bill which allow for the disclosure of information under Schedule 1 Paragraph 9, relating to records of previous access to an entry in the Register, require particular scrutiny.¹⁵ The record of access to the Register could contain highly intrusive and comprehensive information on a person’s private life, including for example, information on whether and when they have accessed medical services or any other public services, any applications for benefits, and applications for jobs. In this regard, it is a particular concern that the order-making power in clause 22 would allow the Secretary of State to make further provision for disclosure of this material, without the need for additional primary legislation.

Question 14: We are particularly concerned at the potential breach of Article 8 rights in the disclosure of paragraph 9 Schedule 1 information. In light of the potential breach of Article 8 rights, will provision for disclosure of this information will be restricted on the face of the Bill?

The Committee would appreciate a response to these points by **Monday 7 February**.

26 January 2005

¹⁵ Disclosure of particularly personal data, such as medical records, has been held by the ECtHR to be permissible only where there is an overriding public interest justification *MS v Sweden* (1999) 28 EHRR

Reports from the Joint Committee on Human Rights since 2001

The following reports have been produced

Session 2004–05

First Report	Protocol No.14 to the European Convention on Human Rights	HL Paper 8/HC 106
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