

# **NO2ID Parliamentary Briefing on Commons Second Reading of the Identity Documents Bill**

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## **1. Summary**

NO2ID has campaigned on a non-partisan basis since 2004 in opposition to the National Identity Scheme, and of course approves of the principal objects of this Bill to repeal the Identity Cards Act 2006 (the 2006 Act, in what follows) and re-enact provisions to prevent the use of forged passports.

We are unhappy with the form of the re-enactment provisions, which broaden some of the already over-broad offences created by the 2006 Act, and worse, in doing so, reintroduce into law some of the official conceptions of ‘identity’ inherent in the ID scheme. It also creates a novel data-sharing power in relation to passport applications, which has no direct counterpart in the 2006 Act.

We further wish to draw to the attention of Parliamentarians that the repeal of the Identity Cards Act is necessary, but not sufficient, to stop the development of a ‘papers please’ culture in Britain, and that the infrastructure for a National Identity Scheme continues to be developed under other legislation.

## **2. Repeals.**

These seem satisfactory. We do wonder why only one of the several statutory instruments made under the 2006 Act is expressly revoked, but this may be a casual drafting problem.

## **3. Re-enactments (ccl.4-6)**

Clauses 4, 5, and 6 of the Bill purport to re-enact the new criminal offences created by s25 of the 2006 Act, which the authors of Blackstone’s Guide to the Identity Cards Act 2006 (OUP, 2006) describe as “particularly broad”. They may well broaden those offences further. We suggest that they ought to be narrowed and clarified. The present Government has made much of the cavalier fashion in which criminal offences were created by the previous administration. This is the first opportunity for it to show it is different.

Clause 4, regarding possession of false identity documents with improper intention, worries us because the definition of this serious offence is drawn so broadly (see also ‘identity document’ and ‘personal information’, below).

A literal reading of cl.4(1)(c) and cl.4(2)(b) – making it an offence to have in your possession or control an identity document relating to someone else with the intention of using it to establish personal information about them – perhaps make anything other than a cursory visual check an offence. The consequences and scope of “ascertaining or verifying” in cl.4(2)(b) are hard to determine and need clarification.

Clause 5, concerned with forgery equipment, does not present a significant problem.

Clause 6 needs to be reconsidered as a whole. As the offences are currently conceived, they perpetuate the underlying problem created by their equivalents in the 2006 Act. As Blackstone’s Guide points out, in that context:

*“One offence has the effect of providing that an individual who uses different names in different contexts may be prosecuted if he or she possesses a document, such as a student card or work photo ID, which lists a version of his or her name which does not appear on the Register. He or she will need to prove that he or she has a reasonable excuse for using two different names in order to avoid being convicted. In effect, this abolishes the right at common law to use a pseudonym or alias without good reason and introduces the concept of ‘one person, one identity’ to UK law for the first time.”*

The equivalent offence, that of clause 6, carrying a sentence of up to 2 years imprisonment for possession of a false identity document, imports similar possibilities, but without a Register creates even greater uncertainty.

There are many reasons why people might legitimately hold documents in different names (quite apart from errors and misprints): they may have been adopted; a woman may use both her married and maiden names; actors and writers may use stage names, or *noms de plume*; people with ‘difficult’ foreign names often use an English equivalent in daily life; a person undergoing gender re-assignment may for a period have documents in both male and female names. While one or more of these might be considered ‘reasonable excuses’, it shifts the burden of proof onto the individual and persists the concept that each person should have one, and only one, ‘official’ identity.

These problems are compounded if an individual is liable to have to justify all the items of ‘personal information’ that might be contained in an identity document.

We note also that the existing offence has been widely used to ‘crack down’ on young people trying to obtain entry to pubs and clubs on inadequate or borrowed credentials. This was not suggested as its purpose at the time, and seems out of all proportion as a means of handling the matter.

It is our recommendation that Parliament considers dropping or reframing the strict liability offences for mere possession of documents under cl.6(1)(a),(b), & (c). The offence in relation to possession of forgery equipment under cl.6(1)(d) & (e) has a knowledge requirement, relates to much more restricted circumstances and is unproblematic.

#### **4. Definition of ‘identity document’ (cl.7)**

There is no objection in principle to defining a set of documents that are to be the subject of the special offences of clauses 4-6, but the strictness of liability and the severity of punishments indicates that that set of documents should be small, clearly defined, and determined by Parliament.

It is a legitimate function of this definition and the offences it supports to protect the integrity of passports and driving licences, but the definition is radically broadened by cl.7(1)(d) “a document that can be used (in some or all circumstances) instead of a passport” potentially captures all those circumstances when a passport among other documents may be requested as ‘proof of identity’. This gives it huge scope. We recommend striking out this unbounded category.

Likewise, the power given to the Secretary of State in cl.7(6) to amend the definition, takes the matter out of the hands of Parliament and makes the offence of potentially infinite scope. This power should be removed.

#### **5. Definition of ‘personal information’ (cl.8)**

A charitable view is that this definition arises from the desire to re-enact as exactly as possible the s25 offences in the 2006 Act which depend on the categories of information prescribed for the National Identity Register. (And internal evidence suggests hurried drafting: cl.8(1)(g) refers to “every other place”, the words of the 2006 Act, where “any other place” would be more applicable.)

Clause 8 has the malign effect of creating a shadow of the National Identity Register in relation to every ‘identity document’ in circulation – a list of information that potentially must, under criminal penalties, be kept in line with an official truth. And it is a term easily

confused with the much more broadly used ‘personal information’ within the meaning of data protection legislation.

Both those problems could be avoided by dropping the definition and appropriate amendment of cl.4. We suggest that a shorter way to the fraudulent intention of clause 4 is an intention that a third party be caused to rely on information *contained in* the false or improperly obtained document.

## **6. Passport data-sharing. (cl.10)**

The 2006 Act provided for a good deal of data-sharing in connection with applications for ID cards and the compilation of the Register, and in particular s9, *Power to require information for validating the register* provided for the Secretary of State to obtain information from almost any public body to check information provided to the National Identity Register. Clause 10 of the present Bill recreates those powers but applies them to passports. In fact, by the inclusion of cl.10(4)(h)&(i) – qualifying credit reference agencies and ‘any other person specified’ by the Secretary of State – it creates much broader data-sharing powers than the parallel ones in the 2006 Act.

In practice, while the ID scheme was going nowhere, its data-sharing powers were benign, applicable only to a few thousand volunteers. This clause would immediately apply to millions. Any government department and any other person might be required to give information about any of the millions of passport applicants each year if the Home Office decides they might have it. Cl.10 is a huge enhancement of the database state and mass surveillance. No case has been made for it. The most plausibly effective change in Home Office issue of passports, a check for a ‘social footprint’ via credit reference agencies, was introduced several years ago without it.

The power is unnecessary and undesirable in itself, but in a broader administrative context it would facilitate the reconstruction of an ID scheme in a slightly different form, based on the passports database. This has actually already been proposed by several advocates of ID cards, including David Blunkett.

Clause 10 should be removed from the Bill.

## **7. The ID scheme continues elsewhere**

Building a National Identity Scheme always had two aspects, the legal and the practical. The previous administration was able to enact the 2006 Act, but bringing it into effect proved

more troublesome. NO2ID noted in briefings for the previous Parliament how the biometric visa scheme had been deliberately gold-plated and presented as “ID Cards for foreigners” in order to allow non-EEA residents to be used as guinea-pigs for registration and biometric collection. This has continued on a separate legal basis, the UK Borders Act 2007, which is unaffected by the present Bill. (NO2ID’s briefing on that Act on its introduction is here: <http://www.no2id.net/IDSchemes/NO2IDUKBordersBillBriefingFEB2007.pdf> )

In December 2006 the Strategic Action Plan for the National Identity Scheme began steps to protect the grand project against cancellation by dividing up what was to have been a ‘single clean database’ into biometric, biographical, and application systems held separately under separate organizations. This schema, mutated in some ways, survives the cancellation.

Passport applications were to have been the primary enrolment mechanism, and contractors are still working on a massively expensive enhanced passport application system (hence the cl.10 powers?), though there seem to be very few problems with the existing one, and the Passport Office has issued passports meeting the ICAO e-passport standard since 2006.

The over-specified<sup>1</sup> scheme of biometric visas or Biometric Residence Permits (BRP) provides a pretext for the continuation of development by IBM of a mass biometric database, the National Biometric Identity Service (NBIS), and the roll-out of a fingerprint-collection infrastructure in Post Offices. Biographical tracking is an explicit part of the visa systems, and implicit in some new passport systems. The continuation of those projects is calculated to make it practically much easier in future to recreate a National ID Scheme, merely by extending systems used to monitor resident foreigners.

## **8. ... As does ‘papers please’**

This Bill certainly does not end the obsession of officialdom with ‘ID’ even when identity is not the issue. NO2ID has many times in the past emphasised the difference between the central function of the passport as a travel document – showing that the person it matches

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<sup>1</sup> The Thirty-Fifth Report of the Select Committee on European Scrutiny makes it clear that former Ministers Tony McNulty and Liam Byrne were deliberately ‘gold-plating’ the BRP specification. They said as much themselves: <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmeuleg/34-xxv/3407.htm>

Their argument rested on integration with the National Identity Scheme, which in turn hinged upon the creation of a central biometric Register – a Register that EC Regulations pertaining to the ‘uniform format for residence permits for third-country nationals’ neither mention nor mandate.

has a particular citizenship and as a counterpart to a visa – and its increasing use for identification. It is increasingly the case that ‘identification’, often in the form of a passport, is demanded to exercise normal day-to-day rights, and of course this Bill can do nothing to address that directly. We submit the Government should consider action to control this tendency in further legislation.

In particular we are concerned that “ID” is inappropriately required where *proof of age* is the issue. This confusion has even been written into law in The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010, coming into force in October, which requires the production of “identification” in specified forms where landlords have an age checking policy – thus effectively banning systems that allow one to prove one’s age but preserve one’s privacy. We hope that this approach will be reconsidered.

## **9. Conclusion**

The Bill is a good start. With some bad features. Were clause 10 deleted and the re-enactments modified along the lines we suggest then we would support it wholeheartedly. But it is not sufficient to remove the threat of a National Identity Scheme from Britain.

We hope that the coalition Government will look at cancelling the continuing massive, and unnecessary, infrastructural projects , and will take the opportunity in connection with its projected ‘Freedom (Great Repeal) Bill’ to cut back demands for ‘identification’ more generally, and specifically the provisions of the UK Borders Act 2007 that support an internal surveillance mechanism rather than border control functions.

We are of course keen to discuss all these issues further with interested MPs and peers.

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