

IDENTITY DOCUMENTS BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Identity Documents Bill as introduced in the House of Commons on 26 May 2010. They have been prepared by the Home Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or a part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND AND SUMMARY

3. The Identity Cards Act 2006 provides the legal framework required to establish a National Identity Register and to issue Identity Cards (ID cards) to those on the Register.
4. The Coalition Agreement of 11 May 2010 set out the Government's intention to abolish ID Cards and the National Identity Register. The Bill is designed to achieve that.
5. The 2006 Act also made provision relating specifically to passports. The Act provided a power to enable biographical checks to be made for the purposes of verifying information supplied by an applicant for a British passport. It also provided a statutory basis to enable cross-subsidisation of fees for different types of passports and passport services (by amending the Consular Fees Act 1980). In addition, section 25 of the 2006 Act created new criminal offences relating to ID cards and other identity documents such as passports and driving licences. These offences related to the possession or making of false identity documents.
6. The Bill re-enacts these provisions so far as they relate to documents other than ID cards.

TERRITORIAL EXTENT AND APPLICATION

7. The Bill applies to the whole of the United Kingdom. It applies in relation to Wales as it applies in relation to England.

COMMENTARY

Clause 1: Repeal of Identity Cards Act 2006

8. *Subsection (1)* provides for the repeal of the 2006 Act. *Subsections (2) and (3)* indicate that provisions of the 2006 Act relating to offences, passport verification and consular fees are re-enacted by the Bill. These provisions, although contained in the 2006 Act, do not relate (or do not solely) relate to ID cards. The offences and verification provisions provide powers to help prevent and detect fraud. The consular fees provision enables the issuing of passports at subsidised rates to particular groups.

Clause 2: Cancellation of ID cards etc

9. *Subsection (1)* provides that the Secretary of State is no longer to issue any ID cards following the passing of the Bill. *Subsection (2)* provides that existing cards remain valid for one month after Royal Assent. *Subsection (3)* places a requirement on the Secretary of State to notify each cardholder by letter of the cancellation of ID cards and to provide such information as appropriate in connection with the cancellation of the card. *Subsection (4)* requires that such correspondence is sent to the recorded address of the cardholder.

Clause 3: Destruction of information recorded in National Identity Register

10. This clause requires the Secretary of State to destroy all information recorded in the Register within two months of Royal Assent. The Register will then cease to exist.

Clause 4: Possession of false identity documents etc with improper intention

11. This clause re-enacts the offence contained in section 25(1) and (2) of the 2006 Act and the penalty for the offence set out in section 25(6) of that Act.

12. *Subsection (1)* provides that a person is guilty of an offence if he is in possession of a document that he knows or believes to be false or a genuine document that has been improperly obtained or relates to someone else. However, to be guilty of an offence, the person must have an improper intention, which is defined by *subsection (2)* (using the document for identity fraud). *Subsection (4)* sets out the maximum penalty for such an offence as being 10 years imprisonment or a fine or both.

Clause 5: Apparatus designed or adapted for the making of false identity documents etc

13. This clause re-enacts the offence contained in section 25(3) and (4) of the 2006 Act and the penalty for the offence set out in section 25(6) of that Act.

14. *Subsections (1) and (2)* provide that a person is guilty of an offence if, with the prohibited intention, he is in possession of equipment which is designed or adapted for making false identity documents. *Subsection (2)* defines what is meant by a person having the prohibited intention. *Subsection (3)* sets out the maximum penalty for such an offence as being 10 years imprisonment or a fine or both.

Clause 6: Possession of false identity documents etc without reasonable excuse

15. This clause re-enacts the offence contained in section 25(5) of the 2006 Act and the penalty for the offence set out in section 25(7) of that Act.

16. *Subsection (1)* provides that it is an offence for a person to have in his possession, without reasonable excuse, a false identity document or a genuine document that has been improperly obtained or relates to someone else, or equipment used for making false identity documents. *Subsection (2)* sets out the maximum penalty for such an offence as being a maximum of two years imprisonment on indictment or a fine or both. On summary conviction, a person may be subject to a term of imprisonment up to the maximum period or a fine or both. *Subsections (3) and (4)* set out the maximum period in England and Wales, Scotland and Northern Ireland. So far as Scotland is concerned, the provisions reflect the effect of s.35 of the Criminal Proceedings etc (Reform) (Scotland) Act 2007 (which has increased the maximum term of imprisonment for an either way offence to 12 months).

Clause 7: Meaning of “identity document”

17. This clause re-enacts section 26 of the 2006 Act.

18. *Subsections (1) to (5)* define what is meant by an “identity document” for the purposes of the Bill. The definition includes an immigration document, a passport and a driving licence. *Subsection (6)* provides that the definition may be amended by order. Such an order would be subject to the affirmative resolution procedure.

Clause 8: Meaning of personal information

19. This clause defines what type of information counts as “personal information” for the purposes of clauses 4 to 6. It re-enacts so much of section 1 of the 2006 Act as relates to the definition of “registrable facts”. In the light of the abolition of the National Identity Register, the expression “personal information” is used instead.

Clause 9: Other definitions

20. This clause re-enacts section 25(8) and (9) of the 2006 Act and other minor definitions contained in section 42 of that Act.

21. *Subsection (2)* states that the definition of “false” in clauses 4 to 6 does not apply in the application of the clause to Scotland because Part 1 of the Forgery and Counterfeiting Act 1981 does not apply in Scotland.

Clause 10: Verifying information provided with passport applications etc

22. This clause re-enacts section 38 of the 2006 Act. It contains provisions necessary to permit data to be shared for the purpose of verifying information provided in relation to an application for a passport or the withdrawal of a passport.

23. *Subsections (1) to (3)* place a duty on a person to provide information within a specified date to the Secretary of State for the purposes of verifying information related to an application for a passport and/or a decision to withdraw an individual’s passport.

24. *Subsection (4)* sets out that the requirement may be imposed on a Minister, Government department, Northern Ireland department, the Welsh Ministers, the offices of the Registrar General for each part of the United Kingdom; certain credit reference agencies (defined in *subsection (5)*); or any person specified for the purposes in an order made by the Secretary of State (which is subject to the affirmative resolution procedure). The list of persons includes those specified by the Identity Cards Act 2006 (Information and Code of Practice on Penalties) Order 2009. *Subsection (7)* provides that the persons who may be specified in an order include anyone carrying out statutory functions that are carried out on behalf of the Crown. *Subsection (8)* provides that orders under this section may specify how a requirement falls to be enforced. This is needed in relation to persons who are not public authorities. In the case of public authorities, normal public law remedies such as judicial review will apply. *Subsection (9)* enables the Secretary of State to make payments to those from whom he is requiring information.

Clause 11: Orders

25. Among other things, this clause provides that an order amending the definition of an identity card, or an order specifying persons on whom requirements to provide information to verify passport applications may be imposed, are subject to the affirmative resolution procedure.

Clause 12: Consequential amendments

26. The consequential amendments are set out in the Schedule to the Bill.

Clause 13: Transitional provision

27. This clause provides for the continuity of the law in relation to the provisions re-enacted by the Bill.

Clause 14: Commencement, extent and short title

28. *Subsection (1)* provides for clauses 2 and 3 to come into force on the day on Royal Assent.

*These notes refer to the Identity Documents Bill
as introduced in the House of Commons on 26 May 2010 [Bill 1]*

29. *Subsection (2)* provides for the remaining provisions to come into force one month after Royal Assent.

Schedule

30. The Schedule sets out the consequential amendments made to legislation containing reference to ID cards and offences under the 2006 Act.

FINANCIAL EFFECTS OF THE BILL

31. The Government expects net costs of around £5 million to be incurred this year. This includes costs associated with terminating contracts with suppliers; write-off costs for equipment already purchased; maintaining the ability to issue cards in respect of new applications until the statutory obligation to do so is removed; contacting cardholders and other stakeholders to inform them of the change; exit costs for staff who cannot be redeployed elsewhere; and payment to contractors for secure destruction of identity information already held.

SUMMARY OF THE IMPACT ASSESSMENT

32. The Bill is accompanied by a full impact assessment which is available through the Vote Office, in the House Libraries and on <http://www.ips.gov.uk>

33. This assessment provides an overview of the impact of the Bill. The assessment identifies areas of spend in the current financial year to abolish the ID card system and the National Identity Register. The assessment identifies savings in future years and the removal of future investment in ID cards proposed up to and including 2019. The impact assessment identifies the benefits in requiring the state to destroy personal data held on those who have applied for an ID card and the future benefits of removing a national database containing the biographical and biometric data of individuals. The impact assessment demonstrates that privacy and financial benefits significantly outweigh the costs of dismantling the ID card system.

COMPATIBILITY WITH THE EUROPEAN CONVENTION OF HUMAN RIGHTS

34. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined in section 1 of that Act).

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35. Having considered the possible implications, the Secretary of State for the Home Department has made a statement saying that in her view, the provisions of the Identity Documents Bill are compatible with the Convention rights.

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