



House of Commons

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[Publications on the internet](#)

[Other Bills before Parliament](#)

[Arrangement of Clauses \(Contents\)](#)

# Identity Cards Bill

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*These notes refer to the Identity Cards Bill  
as introduced in the House of Commons on Wednesday 25 May 2005 [Bill 9]*

## IDENTITY CARDS BILL

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### EXPLANATORY NOTES

#### INTRODUCTION

1 These explanatory notes relate to the Identity Cards Bill as introduced in the House of Commons on Wednesday 25 May 2005. 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. Where a clause or part of a clause does not seem to require any explanation or comment, none is given.

#### SUMMARY AND BACKGROUND

3 In July 2002, the Government launched a consultation on Entitlement Cards and Identity Fraud (Cm 5557). The consultation period lasted until 31 January 2003. A summary of findings from the consultation exercise was published on 11 November 2003, *Identity Cards: a Summary of Findings from the Consultation on Entitlement Cards and Identity Fraud* (Cm 6019). The detailed Government's response to the Consultation Points was placed on the Home Office website.

4 At the same time as publication of the findings, the Government announced its decision to build a base for a compulsory national identity cards scheme. *Identity Cards: the next steps* (Cm 6020) set out in more detail how the Government would proceed. A draft Identity Cards Bill was published on 26 April 2004 (Cm 6178). This gave effect to the Government's proposals for the introduction of identity cards throughout the UK, as set out in *Identity Cards:*

*the next steps.* Consultation on the draft legislation ended on 20 July 2004.

5 In parallel, the Home Affairs Select Committee carried out an inquiry on all aspects of identity cards, including the pre-legislative scrutiny of the draft Bill. The Committee reported on 30 July 2004 (HC130). The Government published its reply to the Report (Cm 6359) and a Summary of Findings from the consultation (Cm 6358) on 27 October 2004.

6 In November 2004 the Identity Cards Bill was introduced into the House of Commons. The Bill had reached its second reading in the House of Lords when Parliament was dissolved, on 11 April 2005, for the General Election and the Bill fell. The current Bill is very similar to the initial Bill with some minor amendments in relation to, for example: extending the responsibilities of the National Identity Scheme Commissioner, changing the penalty for failing to surrender an ID card from criminal to civil, requiring provision of information from the Register without consent to be subject to an affirmative resolution process.

7 There is currently no legislation providing for UK identity cards. The main features of the legal framework needed to introduce identity cards are:

- Setting out the statutory purposes of the National Identity Register;
- setting up the National Identity Register;
- establishing powers to issue identity cards;
- establishing powers to designate existing documents
  - (i) as documents together with which an identity cards would be issued (for example the passport) or
  - (ii) other documents as ID cards themselves;
- ensuring biographical checks can be made against other databases to confirm an applicant's identity and guard against fraud;
- setting out what information would be held and safeguards to protect an individual's data;
- enabling public and private sector organisations to verify a person's identity with the person's consent before providing services;
- defining the circumstances in which specified agencies, such as the police could be provided with information held on the Register without an individual's consent;
- creating new criminal offences relating to misuse of identity cards and other identity fraud issues;
- including powers to link future access to specified public services to production of an identity card;
- providing a power to make it compulsory for an individual to register, including sanctions against failure to register.

8 In addition, the Bill includes provisions relating to passports:

- to amend the Consular Fees Act 1980 (c.23) in order to create a general power which will allow cross subsidisation of fees for different types of passports and passport services. This will provide a statutory basis, for example, to the issue of free passports which has already been introduced for those born on or before 2 September 1929 to be subsidised by charges made for other passports;
- to ensure biographical checks can be made by the Secretary of State (to be exercised by the United Kingdom Passport Service) for the purpose of verifying information supplied by applicants for UK passports.

## **TERRITORIAL EXTENT**

9 The Identity Cards Bill applies to the whole of the United Kingdom. The identity cards scheme will operate on a UK-wide basis to deal with matters which are reserved to the UK Parliament, notably, immigration and nationality.

10 The legislation allows devolved administrations in Wales and Northern Ireland to make regulations making the production of an ID card a condition of providing a public service for which these administrations are responsible.

11 Any requirement for production of an ID card to be a condition of a public service in Scotland which is within the legislative competence of the Scottish Parliament would require authorisation by an Act of the Scottish Parliament.

12 The legislation for identity cards creates new offences. As these offences relate to documents or databases that operate on a UK basis, they will be applicable throughout the UK.

13 The provisions relating to passports also operate on a UK-wide basis.

## **OVERVIEW OF THE STRUCTURE**

14 The Bill deals with eleven main topics -

- Registration
- ID cards
- Maintaining accuracy of Register etc.
- Provision of information from Register for verification purposes etc.
- Required identity checks
- Other allowed uses of registered information
- Supervision of operation of Act
- Offences
- Civil penalties
- Fees and charges

- Provisions relating to passports

## COMMENTARY ON CLAUSES

### *Registration*

#### **Clause 1: The National Identity Register**

15 This clause establishes the National Identity Register for the identity cards scheme and sets out the purposes of the Register.

16 *Subsection (2)* provides that the Register is only for specified purposes, the "statutory purposes". These specified purposes are set out in *subsection (3)* as the:

- (i) Provision of a convenient method for individuals to prove their identity;
- (ii) Provision of a secure means of identifying individuals where that is in the public interest.

17 *Subsection (4)* defines 'necessary in the public interest' as being in the interests, or for the purposes of:

- National security;
- Prevention and detection of crime;
- Enforcement of immigration controls;
- Enforcements on prohibitions on unauthorised working or employment; and
- Efficient and effective provision of public services.

18 National security as well as the prevention and detection of crime includes action to prevent terrorism. Crime also includes "identity fraud and theft".

19 *Subsections (5) to (7)* give further explanation of what is meant by personal information that may be held, the "registrable facts". This, in particular, includes name, date and place of birth, nationality, gender, immigration status, address, physical characteristics of a person that are capable of being used for identification purposes (e.g. biometric information), information included at a person's request; and historical records of this personal information. These registrable facts may only be amended by further primary legislation and thereby limit the scope of the information that may be held by the scheme.

20 Biometric information is defined in clause 43(1) in relation to an individual as data about his external characteristics. Examples include iris patterns and fingerprints. This biometric information may be recorded in the Register by virtue of the definition of registrable facts, clause 3 and Schedule 1.

#### **Clause 2: Individuals entered in Register**

21 This clause sets out who may be entered on to the Register and the Secretary of State's duty to make arrangements to enable these entries to be made.

22 *Subsection (2)* sets out the individuals who are entitled to be entered on the Register. These include individuals who have attained the age of 16 and are residing in the UK. They also include individuals of a description prescribed in regulations made by the Secretary of State who have resided in the UK, or who are proposing to enter the UK. This is to allow flexibility since whilst the ID card will be for all UK residents, it may be in the future that we would want through regulations to allow for example, British citizens resident overseas to register before returning to live in the UK.

23 *Subsection (3)* gives the Secretary of State power, by regulations, to exclude individuals from the entitlement to be entered on the Register if they do not meet prescribed requirements in relation to time of residence in the UK or if they are residing despite having no entitlement to remain (for example, individuals who are seeking asylum in the UK). The age of 16 mentioned previously may be varied by secondary legislation as provided for in *subsection (6)*.

24 In general, an entry on the Register must be made if an application is made and the person is entitled to be entered (*subsection (1)*).

25 *Subsection (4)* provides that in some circumstances, a person who has not applied or is not entitled may be entered into the Register for reasons consistent with the statutory purposes. For example, this power would allow the entry on to the Register of a failed asylum seeker who had not applied for an ID card but whose information including biometric data was available. This means that if he applies to stay in the UK again using a different identity, his previous status as a failed asylum seeker will have been recorded. This subsection does not constitute a power to obtain the biometric data of a person in the first place.

26 *Subsection (5)* provides for every person registered on the National Register to be assigned a unique number, the National Identity Registration Number to be attached to the information recorded about an individual. The format of the National Identity Registration Number is to be specified in regulations. Other personal reference numbers may be recorded on the Register as provided for in Schedule 1, paragraph 4.

27 *Subsection (6)* provides that the Secretary of State may modify the age of entry on the Register by order subject to the affirmative resolution procedure.

### **Clause 3: Information Recorded in Register**

28 Clause 3 sets out the information that may be recorded in the Register.

29 *Subsection (1)* provides that information may be recorded only if it is included in Schedule 1, if it is otherwise necessary for the administration of the scheme, or if it is provided for in *subsection (2)*.

30 Schedule 1 may be amended by secondary legislation following a resolution in both Houses of Parliament (*subsections (5)-(7)*) to add to the list of information that may be recorded on the Register. However, any additional information must be consistent with the statutory purposes of the Register. So, for example, this power to amend Schedule 1 could not be used to include criminal records in that Schedule without further primary legislation as recording previous criminal convictions is not covered by the definition of registrable facts and so is not consistent with the statutory purposes of the Register in clause 1(3).

31 *Subsection (2)* enables other information to be recorded if:

- an individual has asked for it to be included;
  - regulations include it as information that may be subject to such a request;
- and
- the Secretary of State agrees.

For example, an individual may ask for emergency contact details to be included on the Register.

32 *Subsection (3)* enables the Secretary of State to agree with a person being registered what facts should be registered where there is some doubt as to what the true facts are, for example, place or date of birth. It could also be used where a new identity needs to be established, for example, for those in a witness protection programme. It would prevent the false documents offences in clause 27 from applying.

33 *Subsection (4)* allows information to be kept for as long as it is consistent with the statutory purposes for it to be so kept. This will make verification of individuals easier by ensuring an audit trail of changes is made, so a person changing information held on the Register to avoid detection by law enforcement agencies would be identified. This would also enable the Register to retain information of individuals who had died or left the country and thereby prevent fraudulent use of these identities.

#### **Clause 4: Designation of documents for purposes of registration etc.**

34 Clause 4 provides for the Secretary of State to have the power by order to designate documents for the purposes of the Bill, for example, passports. Any orders will be subject to the affirmative resolution procedure. These documents are referred to in the Bill as "designated documents". Persons responsible for issuing designated documents are referred to in the Bill as "designated documents authorities". If a document is designated, anyone applying for one will also need to apply for an ID card unless he already holds one (see clause 5(2)). Under that clause, application procedures for designated documents must include the information necessary for the identity cards scheme.

35 *Subsection (2)* provides that the Secretary of State may only designate documents which are issued under a statutory power, by a Minister or a Northern Ireland department, for example passports or residence permits.

#### **Clause 5: Applications relating to entries in Register**

36 Clause 5 sets out how an application for entry to the Register should be made.

37 *Subsection (1)* provides that an application can be made by being included in an application for a designated document or by being submitted directly to the Secretary of State.

38 Under *subsection (2)*, if an application for a designated document is submitted, then the application must also include one of the following:

- an application to be entered in the Register;
- confirmation that the individual is already registered and confirming his entry;
- confirmation that the individual is already registered and notifying changes to his entry.

References to confirming an entry relate only to the information in paragraphs 1 to 5 of Schedule 1 or information voluntarily added (clause 43(4)).

39 For example if, as is intended, passports were designated documents, an individual in applying for a passport must at the same time include an application to be entered in the Register if he is not already entered in the Register or else confirm his entry. In practice, information on the designated document application form is likely to include all the information needed to create an entry on the Register or to verify an existing entry.

40 *Subsection (3)* provides that an application for registration or confirmation of entry should be accompanied by such information as may be prescribed by the Secretary of State. The information required may vary for different categories of person. For example, third country nationals may be required to provide information regarding their immigration status.

41 Under *subsection (4)* the Secretary of State may make further requirements of applicants in order to verify information to be entered on the Register and keep that information up to date, for example, in cases of doubt or suspected fraud.

42 *Subsection (5)* expands on what an individual applying to be entered in the Register or confirming his entry in the Register may be required to do under subsection (4). This includes attending in person at a specified place and time, agreeing to be photographed, allowing biometric information to be recorded and providing any other information that may be required by the Secretary of State. The meaning of "biometric information" and "fingerprint" is the same as that provided in clause 43(1).

43 *Subsection (6)* ensures that information may not be required by regulations under this clause unless it is for the statutory purposes of the scheme as set out in clause 1(3) and consistent with the recording of the registrable facts. This is to ensure that there is no expansion in the scope of information that must be provided by individuals without new primary legislation.

#### **Clause 6: Power of Secretary of State to require registration**

44 This clause provides a power to require an individual to apply to register. The identity cards scheme will be introduced in two stages. Initially it will not be compulsory to register although in applying for a designated document from the time that that document is designated, it will be mandatory to register or confirm an entry already made (see clause 5) in order to obtain the designated document. If the Government were to consider that the conditions were right, it would use powers in this clause to make registration compulsory, whether or not a person applies for a designated document. See Cm 6020, *Identity Cards: the next steps* which sets out in more detail the issues which the Government would want to consider before moving to compulsion.

45 Immigration Rules may already include a requirement for foreign nationals to obtain a document, such as a residence permit. If the Government were to designate such a document under clause 4 then it would also become a requirement for such individuals to make an application for registration in line with the Identity Cards Act. However, it would also be possible for an order under clause 6 to make it a requirement for foreign nationals of a description specified in the order to register and to be issued with an ID card in the form of a designated residence permit. If an order was not made under clause 6 and instead the Government relied on a change to the Immigration Rules, then it would not be possible to require production of an ID card under clause 15 and the prohibition on the requirement to use an ID card in clause 18 would remain.

46 *Subsection (1)* provides a power for the Secretary of State to make registration compulsory. This power would

apply regardless of whether a person applies for a designated document (for which an application to register or be registered is a requirement as soon as the document is so designated). However, this power does not extend to requiring people to produce ID cards for required identity checks for the provision of public services (see clause 15). This subsection provides the facility to phase in the compulsory registration, for example, so that different categories of persons are required to register by different dates. It may be, for instance, that 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.

47 *Subsection (2)* ensures that in making registration compulsory, the order to do so may include an obligation on individuals to apply for registration in accordance with clause 5. The order will also set a future date by which people included in the order should have made an application (*subsection (3)*).

48 *Subsection (4)* provides that the maximum civil penalty for failure to register when required to do so or for contravening a requirement under clause 5(4) (i.e. not providing the further information required by the Secretary of State) in connection with an obligation under clause 6 would be a civil penalty of up to £2,500.

49 *Subsection (5)* provides that a person who contravenes a requirement imposed under clause 5(4) other than in connection with an application required under clause 6, is liable to a civil penalty of up to £1,000. This penalty is for those people who are required to and do register but then fail to provide the information required by the Secretary of State to ensure the entry is complete and accurate and is therefore distinct from the penalty in subsection (4).

50 Where an individual fails to satisfy his obligation under subsections (2) and (3), he is liable for a further civil penalty not exceeding £2,500 in respect of each time the Secretary of State gives him notice requiring him to make an application and he fails to do so before the set deadline.

## **Clause 7: Procedures for orders under s. 6**

51 This clause sets out the procedures for the so called "super-affirmative" process which would apply to compulsory registration. This means that if the Government decides that it wishes to make registration compulsory, whether or not a person applies for a designated document, it must proceed in the following stages:

- The Government must publish in a report its reasons for wanting to make registration compulsory, including a proposal for how compulsion will operate, for example the particular categories of individual to whom the requirement would apply and the timetable for its implementation (*subsection (2)(a) and (b)*);
- Both Houses of Parliament must debate and vote on the proposal and they may modify the proposal (*subsection (2)(c)*);
- The Government would lay a draft order consistent with the proposal approved by both Houses;
- The draft order so laid would then need to be approved by both Houses (*subsection (1) and subsection (2)(d)*).

52 If either House did not approve the proposal or the Government was not content with the proposal as modified by either House, it must start the process again with a fresh report and proposal if it decides to make the case again for a move to compulsion (*subsection (3)*);

53 *Subsection (4)* provides that if the Government wishes to make changes to the compulsion provision which do not have the effect of "increasing" the degree of compulsion, for example, lowering the age beyond which it would

not be compulsory to register, it does not need to go through the "super-affirmative" process but may do so through an order subject to the affirmative resolution procedure.

54 *Subsection (5)* sets out how the calculation should be made of the 60 days required between the laying and approving of the draft order mentioned above.

55 *Subsection (6)* defines the term compulsory registration.

### *ID cards*

#### **Clause 8: Issue etc. of ID cards**

56 This clause sets out the procedure for issuing ID cards.

57 The identity cards scheme will involve the issuing of an ID card to every person registered as entitled to remain in the United Kingdom for longer than a specified period. The Secretary of State has the power:

- To issue ID cards;
- To designate documents

(i) such as the passport as documents together with which ID cards would be issued; or

(ii) as ID cards themselves (e.g. if a residence permit issued to a foreign national were designated).

"ID cards" in this Bill is used as the generic name and is defined under this clause.

58 *Subsections (1) and (2)* explain that an ID card is a card which holds personal information as recorded on the National Identity Register and/or data enabling the card to be used for verifying information on the Register, for example, a personal identification number. An ID card may form part of a designated document (e.g. if a residence permit issued to a foreign national were designated). It can be a separate card issued together with a designated document (e.g. if the British passport is designated, a separate ID card would be issued alongside it). Clause 43(6) provides that references to a designated document being issued together with an ID card include references to the two documents being comprised in the same card. It can also be a separate card issued as an ID card (e.g. a standalone ID card issued on its own).

59 *Subsection (3)* provides for prescribed information to be recorded on an ID card and parts of it to be in an encrypted form. The exact specification and design of ID cards has yet to be determined but when it is these will be set out in regulations. This subsection also provides that the ID card will have a limited validity. Different validity periods may be specified for different categories of person, for example, an elderly person's ID card may remain valid for the rest of his life without the need for renewal, whereas a foreign national's may be linked to the length of authorised stay. Subsection (3)(d) ensures that the card remains the property of the person, or authority, which issues it.

60 *Subsection (4)* requires that except in prescribed cases ID cards must be issued to individuals who are entitled to be, and whose personal information has been, entered on the Register. However, there are special cases where someone who is not required to be issued with an ID card may be issued with an ID card, providing registrable facts about him have been entered in to the Register (*subsection (5)*). For example, this may be used for individuals who are not entitled to be entered but who may in special circumstances be entered on the Register e.g. foreign nationals

residing in the UK for less than 3 months but whose passport has been surrendered for bail purposes and who therefore need proof of identity.

61 *Subsection (6)* provides that an ID card will only be issued once an application has been made and sufficient information has been provided for the individual to be entered on the Register or an existing entry is confirmed.

62 Under *subsection (7)* an application for a designated document must include an application for an ID card in the manner prescribed unless the individual already hold an ID card. Where an application for registration is made in pursuance of a requirement under clause 6 (compulsory registration), the application must also include an application for an ID card in the prescribed manner. In practice, the application form for a designated document will contain the information required to make an application for an ID card rather than requiring two separate application forms to be completed.

63 *Subsection (8)* ensures that any other application for an ID card must be in the prescribed manner, and should be made to the Secretary of State or in certain circumstances to a designated documents authority and with the prescribed information.

64 In the case of a designated documents authority, an application for an ID card may in certain circumstances be made separately from any application for the designated document. This allows a designated documents authority to issue an ID card that is not part of or issued with a designated document.

65 Regulations specifying the information that may be recorded in or on an ID card or the form in which the information is to be recorded need the agreement of Parliament via affirmative resolution *Subsection (9)*.

66 None of the provisions in this or any other clause places any constraints on the type of organisations which may be involved in the issuing process. For example, private sector organisations may have certain parts of the process contracted out to them, such as actual production of the card.

[Contents](#)

[Continue](#)

[Commons](#)

[Parliament](#)

[Lords](#)

[Search](#)

[Enquiries](#)

[Index](#)