

HOUSE OF LORDS

Delegated Powers and Regulatory Reform  
Committee

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5th Report of Session 2005–06

# **Identity Cards Bill**

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### *Historical Note*

In February 1992, the Select Committee on the Work of the House, under the chairmanship of Lord Jellicoe, noted that “in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion” (Session 1991–92, HL Paper 35–I, para 133). The Jellicoe Committee recommended the establishment of a delegated powers scrutiny committee in the House of Lords which would, it suggested, “be well suited to the revising function of the House”. As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed in the following session, initially as an experiment for a limited period. It was established as a sessional committee from the beginning of Session 1994–95. Also in Session 1994–95, following the passage of the Deregulation and Contracting Out Act 1994, the Committee was given the additional role of scrutinising deregulation proposals under that Act. As a result, the name of the committee was changed to the Select Committee on Delegated Powers and Deregulation. In April 2001, the Regulatory Reform Act 2001 was passed which expanded the application of the deregulation order-making power under the 1994 Act, and the Committee took on the scrutiny of regulatory reform proposals under the Act. With the passage of the 2001 Act, the Committee’s name was further amended to its present form, the Select Committee on Delegated Powers and Regulatory Reform.

# Fifth Report

## IDENTITY CARDS BILL

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### Introduction

1. This bill makes provision for a national scheme of registration of individuals and the issue of cards which can be used to identify those on the register.
2. The Government published a draft Identity Cards Bill in April 2004 for pre-legislative scrutiny by the House of Commons Home Affairs Committee. That Committee reported on the draft in its 4th Report of Session 2003–04. A bill was then introduced last session (2004–05) and was the subject of Reports from the Joint Committee on Human Rights<sup>1</sup> and the House of Lords Constitution Committee<sup>2</sup>. It was passed by the Commons and was given a second reading by the Lords, but did not proceed further due to the General Election. This Committee has not considered any previous version of the bill. The bill is very similar to the 2004–05 bill, and has already been considered and reported on by the Joint Committee on Human Rights<sup>3</sup> and the Constitution Committee<sup>4</sup>.

### The delegated powers

3. There are delegated powers at clauses 2(2)(b), 2(3), 2(6), 3(2)(b), 3(5), 4, 5(1), 5(3), 6(1), 8(2)(b), 8(3), 8(4), 8(5), 8(6), 8(7), 8(8), 9(2), 10(2), 10(3), 10(4), 11(4), 12(1), 12(2), 13(1), 14(4)(a), 14(4)(b), 14(5), 14(6), 15, 17(1), 17(2), 17(3), 19(3)(c), 19(4)(f), 19(5), 22, 23(2), 23(4), 23(5), 28(4), 34(2)(b), 34(5), 35(2), 36(5), 37(1), 39(3)(e), 40(5), 43(10), 45(3) and 45(6).
4. The powers conferred by clauses 2(6), 3(5), 14(4)(a), 28(4) and 40(5) are Henry VIII powers, each made subject to an affirmative procedure in at least most cases of the exercise of the power. The other powers which are or may be subject to affirmative procedure are at clauses 4, 6(1) (“super-affirmative”), 8(3)(a) and (b), 11(4), 15, 17(1), (2) and (3), 22, 23(2) and (4), 37(1) (for the first regulations) and 39(3)(e). The remaining powers, apart from those in clause 45 (which are about commencement and extent), are subject to negative procedure.
5. A memorandum from the Home Office explaining the delegated powers in the bill is printed as an Appendix to this Report. The intent of the bill is clear but the cumulative effect of the delegated powers is such as to raise the question whether the bill is a skeleton bill. Indeed, the Constitution Committee described the 2004–05 bill as a skeleton bill (5th Report of Session 2004–05, paragraph 3).

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<sup>1</sup> 5th and 8th Reports.

<sup>2</sup> 5th Report.

<sup>3</sup> First Report.

<sup>4</sup> 3rd Report.

## ANALYSIS OF PROVISIONS

### Altering the information for inclusion in the Register – Clause 3(5)

6. Clause 1 requires the Secretary of State to establish a National Identity Register, for the purposes set out in clause 1(3). These purposes are defined by reference to a record of “registrable facts” about individuals. “Registrable fact” is defined in clause 1(5) and explained in paragraph 19 of the Explanatory Notes. The term in effect defines the outer limits of the information which may be recorded under the bill.
7. Clause 2 deals with who must or may be registered. Clause 3(1) sets out the only information which may be recorded in the register, the most significant item being the information mentioned in Schedule 1.
8. Clause 3(5) enables the Secretary of State, by order subject to affirmative procedure (if it adds information) or negative procedure (if it does not) to alter the list of information in Schedule 1, but information may be added only if that would be consistent with the statutory purposes. This in turn means that information may be added only if consistent with the definition of “registrable facts”. **We consider that the existence of this limitation sufficiently defines the extent of the power and that, although a significant power, we find it acceptable; but we draw to the attention of the House that the power is not necessarily limited to information needed to prove identity, because “registrable facts”, though including identity (clause 1(5)(a)), extends to matters such as previous addresses, terms of residence in different parts of the UK and elsewhere and an “audit trail” of disclosure of register entries.**

### Designation of documents – Clause 4

9. Clause 4 enables the Secretary of State, by order subject to affirmative procedure, to designate descriptions of documents for the purposes of the bill. (If the order removes a description of document it is subject to negative procedure.) Documents may be designated if:
  - any person (not just a Minister or Northern Ireland department) may or must issue them by or under an enactment; or
  - a Minister or Northern Ireland department may or must issue them otherwise than by or under an enactment.
10. This power is thus not limited to Government documents, and appears to be wider than is necessary to achieve the Government’s aim: paragraph 22 of the memorandum describes clause 4(2) as limiting the kind of documents that may be designated to “official Government issued documents”.
11. The main significance of designating a document is that a person applying for it must (if not already registered) apply to be registered in the National Identity Register (clause 5(2)) and apply for an ID card (clause 8(7)(a)). A person who applies to be registered may be required to allow fingerprints or other biometric information to be taken and to provide information as required by the Secretary of State (clause 5(4) and (5)). Clause 5(6) expressly limits information which regulations may require to accompany the application for entry in the Register to that required for the statutory purposes, but this express limitation does not apply to information

subsequently required by the Secretary of State under clause 5(5) or required in connection with the application for the ID card under clause 8.

12. An order under clause 4 makes applying to be registered *de facto* compulsory for someone who needs to apply for a designated document. The memorandum (paragraph 20) indicates that passports are proposed to be designated and that it would be possible to use the power to designate driving licences. This power is significant because the Secretary of State could use it to apply *de facto* compulsory registration at any time to a significant proportion of the population, because potentially so many documents might be designated.
13. At second reading, the Minister said that “only Government-issued documents can be designated under clause 4...there is no power in the bill to designate...documents issued by private bodies”<sup>5</sup>. Although this statement accords with the Government’s expressed intention in the memorandum, our interpretation is that the power in the bill is in fact broader. It seems to us that it may include documents as varied as home information packs<sup>6</sup> or solicitors’ practising certificates<sup>7</sup>: any document issued under statutory powers. The power in clause 4(2) is not presently limited to Government documents but extends to documents issued by any person (whether or not a Government body) by or under an enactment. **The extent to which, and the pace at which, the power to designate documents will be used to achieve registration is of considerable importance and the power in clause 4(2) appears to us to be wider than the Government’s stated intentions for its use and we draw it to the attention of the House accordingly.**

#### Compulsory registration – Clause 6

14. Clause 6 enables the Secretary of State by order to impose an obligation on those described in the order to be registered. Except when an order relaxes a previously imposed obligation (when the affirmative procedure applies), the order is subject to a super-affirmative procedure involving the following stages:
  - the Secretary of State’s report, with a proposal and reasons for it, is laid before Parliament;
  - each House may approve the Report (on a motion for approval), either as laid or with modifications;
  - if approval is given, a draft order is laid before Parliament, giving effect to the proposal in the form in which it was approved by both Houses;
  - at least 60 days after laying (calculated under clause 7(5)) the draft order is to be approved by each House;
  - if it is approved, the order is made.

This procedure is designed to recognise the importance of the move to compulsory registration and is explained at paragraphs 29 to 34 of the memorandum.

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<sup>5</sup> HL Deb 31 October 2005 col 114.

<sup>6</sup> Part 5 of the Housing Act 2004.

<sup>7</sup> Section 10 of the Solicitors Act 1974.

15. Although there is nothing to prevent this power being exercised at any time, the Explanatory Notes (paragraph 45) make it clear that it is intended to be used only if the conditions are right. The memorandum for the Committee speaks of enabling compulsory registration to be phased in (paragraph 30) and that the objective is to have a universal (and hence, presumably, compulsory) scheme (paragraph 31).
16. The move to compulsory registration is important, not just generally but for individuals, even those who might find themselves already *de facto* in the position of having to register. For example, producing an ID card can only be made a condition of entitlement to statutory payments and to the provision of free public services if the individual is subject to compulsory registration (clause 15(2)).
17. Paragraph 34 of the memorandum says that Parliament is being asked now to endorse the idea of compulsory registration, a point the Minister made at second reading<sup>8</sup>.
18. The House of Commons Home Affairs Committee felt that “the move to compulsion is a step of such importance that it should be taken only after the scrutiny afforded by primary legislation: the proposed “super-affirmative procedure” is not adequate.” (4th Report (2003–04) paragraph 248). The House of Lords Constitution Committee felt that “since...these measures reflect a significant change in the constitutional relationship between the State and the individual, we consider that the change to a universal and compulsory scheme should not be brought about by secondary legislation, even by a “super-affirmative” procedure” (5th Report (2004–05) paragraph 12). That conclusion was reiterated in that Committee’s 3rd Report (2005–06), accompanied by the recommendation that the extension of the scheme to the entire population should require further primary legislation.
19. Although the Secretary of State’s proposal is amendable under the super-affirmative procedure, the procedure does not provide the same level of scrutiny or opportunity for debate as a bill. We consider that the super-affirmative procedure is not an appropriate alternative to a bill for potentially controversial measures of great public concern; and this is consistent with our attitude to other super-affirmative powers and their use<sup>9</sup>.
20. **Any assessment of the appropriateness of this delegation of power is dependent on whether one considers this bill as introducing a voluntary scheme which may gradually be extended towards compulsion, or a bill which provides for a compulsory scheme preceded by a voluntary stage. If the former (i.e. if the House is not at this time willing to endorse the principle of a compulsory scheme for all), then the power in clause 6 is inappropriate and a compulsory scheme should only be introduced by means of a bill. If the latter (which accords with the Minister’s invitation at second reading and with the provision in the bill and policy in the memorandum<sup>10</sup>), then the power in clause 6 is the most appropriate method to commence a compulsory scheme. We have taken the latter view, that this bill**

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<sup>8</sup> HL Deb 31 October 2005 col 16.

<sup>9</sup> See 18th Report (2004–05) paragraph 53 and 3rd Report (2004–05) (Proposal for the draft Regulatory Reform (Registration of Births and Deaths) (England and Wales) Order 2004).

<sup>10</sup> Which will provide *de facto* phased compulsory registration for large sectors of the population through the designation of documents.

**legislates in principle for a compulsory scheme of identity registration for all; and that the super-affirmative procedure proposed for its introduction is thus the most stringent available secondary legislative mechanism for its scrutiny.**

#### ID cards – Clause 8

21. Clause 8 provides that an ID card may either be a separate card or part of another document (such as a residence permit). The card records some information about the individual which is contained in his or her register entry and/or carries data enabling an application to be made for information recorded in a part of the register.
22. The Explanatory Notes state (paragraph 60) that “the exact specification and design of ID cards has yet to be determined but when it is these will be set out in regulations.” It is therefore not possible to find out from the bill what an ID card itself will provide by way of information. The following are all to be prescribed by regulations by the Secretary of State:
  - the information recorded on the card;
  - the part(s) of the register which can be accessed using the card;
  - those parts of the information on the card that must be encrypted;
  - the period of validity;
  - the registrable facts which must be recorded in the register to entitle an individual to a card.
23. In accordance with the definition of “prescribed” in clause 43(1), details of all those matters may either be set out in the regulations themselves or left to be determined in accordance with the regulations by a person specified in the regulations. Regulations which provide for the information to be recorded on an ID card or the form in which it is to be recorded are subject to affirmative procedure. Other regulations under clause 8 are subject to negative procedure.
24. Although a surprising level of detail is here proposed to be left to regulations, with one exception we accept the provision in this clause. Clause 8(4) requires an ID card to be issued to certain individuals, except in cases prescribed by regulations<sup>11</sup> subject to the negative procedure. Those to whom an ID card must be issued are individuals who are entitled to be registered (or subject to compulsory registration) and about whom “the prescribed registrable facts” are recorded in the register. So whether there is a duty to issue a card will depend on which registrable facts are prescribed. **This seems to us to be of a similar level of importance to prescribing the information recorded on the card and we therefore recommend that the power be subject to affirmative rather than negative procedure.**
25. There is a similar provision in clause 8(5)(b) which enables regulations to prescribe the registrable facts which will trigger the discretion to issue an ID card to those to whom one does not have to be issued. Since this provision is not about entitlement, and is likely to apply only to a limited number of cases, the negative procedure appears sufficient for clause 8(5)(b).

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<sup>11</sup> The power to prescribe exceptions is explained at paragraphs 41 and 42 of the memorandum.

### Functions of designated documents authorities – Clause 10

26. Clause 8 prescribes requirements which can apply to all ID cards, whether issued by the Secretary of State or by an authority issuing designated documents for the purposes of clause 4 (“designated documents authority”). Clause 10(2) is only about ID cards issued by designated documents authorities. It provides that an authority which issues a designated document to somebody who does not hold an ID card must issue an ID card “satisfying the prescribed requirements”.
27. Unless this is intended to be a reference to requirements prescribed by regulations under clause 8(3), this appears to be an additional power to prescribe requirements. Regulations under clause 10 are subject to negative procedure only. **We recommend that, so far as the power under clause 10 extends to prescribing matters which, were they prescribed using the powers in clause 8(3), would be in regulations subject to affirmative procedure, the regulations under clause 10(2) should also be subject to affirmative procedure.**

### Information to validate register – Clause 11

28. Clause 11 is about obtaining information to verify entries in the Register or information provided in connection with entries in the Register. Subsection (1) sets out the type of information which may be required by the Secretary of State. Subsection (2) sets out the information which may be required by a designated documents authority. The requirement can be made enforceable through civil proceedings (subsection (6)). The consent of the individual to whom the information relates is not required. The bill itself does not say on whom a requirement may be imposed. It is left to the Secretary of State (by order subject to affirmative procedure) to specify the categories of person, whether in the public or the private sector.
29. An order has significant consequences both for those who must supply the information and those whose entry is being verified. Although the power to specify any category is very wide, we accept that it provides a targeted approach which allows Parliamentary control over the categories and we find the power acceptable. (There is a similar power relating to passports in clause 39(3)(e).)

### Notification of changes – Clause 12

30. Clause 12(1) requires an individual to whom an ID card has been issued to notify the Secretary of State about changes of circumstances affecting the information recorded about him in the register, but the details of the changes which must be notified (and how and when) are left to regulations by the Secretary of State, subject to negative procedure. The regulations may either themselves specify the details, or say how and by whom the details are to be determined (see paragraph 50 below). We accept that the detail may be left to regulations.
31. This is a new scheme which, even before the compulsory stage, will *be de facto* compulsory for a number of people; and the individual will not necessarily feel there is an identifiable benefit for participation. In these circumstances, the balance between ensuring that all necessary information is given and avoiding excessive burdens on the individual is especially critical, and initially requires a higher level of parliamentary scrutiny. **We**

**recommend that the first set of regulations be subject to the affirmative procedure.**

**Provision of information with consent – Clause 14**

32. Clause 14(1) enables people to be provided with information from an individual's entry in the register, with that individual's consent. Subsections (2) and (3) qualify that provision by providing that the only information that may be provided is that set out in subsections (2) and (3). There is a Henry VIII power at subsection (4)(a) for subsections (2) and (3) to be modified by order subject to affirmative procedure. Because, in accordance with clause 43(1), "modify" includes "omit", this power appears to extend to omitting subsections (2) and (3) altogether, so leaving no limit on what may be provided with the individual's consent. This seems wider than is appropriate in the light of the Government's stated intentions (paragraphs 70 and 71 of the memorandum).
33. Clause 18 makes it unlawful for anyone to make it a condition of doing anything in relation to an individual that he makes an application or gives a consent for the purposes of clause 14(1). But this does not apply in the case of those subject to compulsory registration (see clause 18(2)), who can be required both to produce an ID card and give a consent for the purposes of clause 14(1), as a condition of a service they want or need. For them the significance of the power in clause 14(4)(a) is very significant indeed.
34. **We are not persuaded that the case for so wide and significant a power has been made out and we draw it to the attention of the House accordingly.**

**Public services conditional on ID check – Clause 15**

35. Clause 15 enables regulations to be made by the Secretary of State, a Northern Ireland department or the National Assembly for Wales (NAW) making it a condition of the provision of a public service (as defined in clause 43(2)) that somebody produce an ID card or other evidence of registrable facts, or both. Regulations by the Secretary of State or a Northern Ireland Department are subject to an affirmative procedure. Regulations by the NAW are subject to the NAW procedures.
36. Clause 15(2) provides that regulations cannot impose a condition on entitlement to a statutory payment or public services which must be free of charge, unless the individual is subject to compulsory registration (by an order under clause 6). So it would appear, for example, that the condition can be applied in relation to the supply of drugs under the NHS to those who pay the prescription charge but only to those subject to compulsory registration in relation to hospital treatment (which must be provided free of charge).
37. **Clause 15 allows every chargeable public service to be liable to the imposition of the ID card condition; and in the compulsory phase, state benefits and non-chargeable services would also be so liable. This policy is quite plain from the bill itself and we consider it is not inappropriate to leave the application of that policy to subordinate legislation. The level of parliamentary scrutiny is also appropriate.**

## Provision of registered information

### *Information for public authorities – Clause 19*

38. Clause 19 is about the provision to public authorities of information from an individual's entry in the register, without the individual's consent. Clause 19(3), (4) and (5) allows information other than that in paragraph 9 of Schedule 1 (details of records of provision of information – “audit trail”) to be provided. It thus covers record history, registration history and ID card history as well as personal information, identifying information etc. The powers in clause 19 are all subject to negative procedure (explained at paragraph 97 of the memorandum).
39. Clause 19(3) allows information to be provided to a chief officer of police in the interests of national security or for purposes connected with the prevention or detection of crime. The Secretary of State can by order add additional circumstances in which information may be provided, as described in paragraph 96 of the memorandum.
40. Clause 19(4) makes similar provision relating to Her Majesty's Revenue and Customs. Again, the Secretary of State may add to the purposes by order, but the memorandum (paragraph 98) gives few details of the need for this power, especially given the apparently comprehensive list of purposes in clause 19(4)(a) to (e).
41. Clause 19(5) is a much wider power which enables the Secretary of State to prescribe any Government department or any Northern Ireland department and any functions of theirs, thereby making lawful the provision of information without consent to that department in the exercise of that function: the power can be used to make information on the register freely available within Government for legitimate Government purposes.
42. Clause 19(7) applies a “public interest” test as respects orders and regulations by the Secretary of State. But the definition in clause 1(4) of the Bill is wide, and includes securing the efficient and effective provision of public services.
43. **We are not persuaded by the memorandum's justification for the negative procedure and we recommend that the powers in clause 19(3), (4) and (5) be made subject to the affirmative procedure due to the significance of allowing information on the register to be given and the legitimate concerns of all those affected.**

### *Information in other circumstances – Clause 22*

44. The power in clause 22 is wider than that in clause 19(5). It enables the Secretary of State, by order subject to affirmative procedure, to describe any information in a register entry (apart from the “audit trail” information in paragraph 9 of Schedule 1), any public authority (as defined for the purposes of section 6 of the Human Rights Act 1998) and any purposes, thereby making lawful the provision of that information to that authority for those purposes without the individual's consent. This enables the Secretary of State to make information very freely available, including to non-Government bodies that perform some public functions.
45. **In the light of public concerns about the wide dissemination of information to different state organisations, the power in clause 22**

**requires the fullest justification, and we consider it to be inappropriate unless it can be shown to be justified. Paragraph 104 of the memorandum states that “it is regarded as essential to have a reserve power to use in the public interest if it should be necessary”. This is an insufficient justification and we draw the issue to the attention of the House.**

*Rules for provision of information – Clause 23*

46. Each of clauses 19 to 22 (which permit the provision of information without the individual’s consent) is conditional upon any requirement imposed by or under clause 23 being complied with (clauses 19(1)(b), 20(1)(b), 21(3) and 22(1)(e)). But only subsection (1) of clause 23 sets out a requirement and that relates only to the identifying information in paragraph 2 of Schedule 1. Any other requirements are left to the Secretary of State to provide for by regulations. The present government intends to bring forward such regulations (paragraph 104 of the memorandum). **We consider that the powers conferred by clause 23 are appropriate and that the affirmative procedure provided is also appropriate, but we draw to the attention of the House that there is no duty on the Secretary of State to make regulations and that clause 23 (like clauses 14 and 17) does not by itself secure that there shall be an accreditation system for those to whom the information is given.**

*Identity documents – Clause 28*

47. Clause 27 creates a number of offences in connection with false identity documents etc. Clause 28(1) lists the identity documents concerned, but there is a Henry VIII power at clause 28(4) to alter the list by order subject to affirmative procedure. While the power is not specifically limited in any way (e.g. to documents issued by public authority), it is in our view impliedly limited to documents which might be used to establish identity. The affirmative procedure is provided and we can accept the provision.

*Fees – Clause 37*

48. Clause 37 enables the Secretary of State by regulations to impose fees in respect of a range of matters set out in subsection (1). The costs that may be taken account of in setting fees are set out in subsection (3) and are described in paragraph 197 of the Explanatory Notes.
49. The regulations are subject to affirmative procedure for the first regulations and negative procedure thereafter. In view of the fact that ID cards will for many be *de facto* compulsory from the start (and may eventually be compulsory for all), the likely cost of a card and running the system has attracted a great deal of interest. For example, it is likely that a change of address will be one of the items which regulations under clause 12(1) will require to be the subject of notification and a charge may be made by regulations under clause 37(1)(b) for any consequent alteration of the entry in the register. We do not consider it by any means certain that only the first exercise of the power will raise significant issues. **We thus consider that all regulations made under clause 37 should be subject to the affirmative procedure unless they are made only to take account of changes in the value of money.**

**“Prescribed” – Clause 43(1)**

50. Clause 43 defines “prescribed”. The term is used frequently throughout the bill and, in effect, gives a power to make regulations whenever the term is used. This is perfectly common. In this bill “prescribed” is defined as “prescribed by regulations made by the Secretary of State or determined in accordance with such regulations by the prescribed person”. This means that if something is to be “prescribed” then either the regulations may set out the detail or the regulations may set the framework and may specify a person who is to determine things within that framework. Although the provision is not unusual, there is no indication of how it is intended that this will be applied or who is to do the determining. This applies to the following provisions:

- Clause 2(2)(b) (additional individuals entitled to registration);
- Clause 2(3)(a) and (b) (exclusion from entitlement – periods and description of individuals)
- Clause 2(5) (requirements for National Identity Registration Number);
- Clause 5(1)(a) and (b) (application for registration – manner of inclusion or submission of application);
- Clause 5(3) (information to accompany application for registration etc.);
- Clause 8(3) (information on, and period of validity of, ID card);
- Clause 8(4) (exceptions to requirement to issue ID card);
- Clause 8(5) (exceptions to power to issue ID card);
- Clause 8(6) (manner of confirming contents of register entry);
- Clause 8(7) (manner of including ID card application in other applications);
- Clause 8(8)(a) (manner of applying for ID card);
- Clause 8(8)(b) (cases where application may be made to designated documents authority);
- Clause 8(8)(c) (information to accompany application for ID card);
- Clause 9(2) (time for applying for ID card in compulsory cases);
- Clause 10(2) (requirements for ID card issued with designated document);
- Clause 12(1) (changes of circumstances to be notified);
- Clause 12(2) (manner and time of notification of changes);
- Clause 14(6) (particulars, manner of approval of persons and apparatus);
- Clause 17(3) (condition of provision of information – particulars, manner of approval of persons and apparatus);
- Clause 19(5) (Government departments and functions – provision of information);
- Clause 23(4) (condition of provision of information – manner of approval of applicants and apparatus);

- Clause 34(2) (manner and time of giving notice of objection);
- Clause 34(5) (manner and time of notification of consideration of objection).

**We draw to the attention of the House that some of the matters left to regulations under these provisions may not be fully itemised in the regulations themselves.**

## APPENDIX 1: IDENTITY CARDS BILL

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### Memorandum by the Home Office

#### Introduction

1. The Identity Cards Bill is enabling legislation to provide the legislative framework for the identity cards scheme which it is currently planned to introduce from 2008. The bill was introduced in the House of Commons on 25 May 2005 and this memorandum refers to the bill as amended in the House of Commons and introduced into the House of Lords on 19 October 2005. Many of the administrative arrangements, for example relating to the application process, the format of the card itself and detailed rules for the provision of information from the National Identity Register are not dealt with on the face of the bill but will be governed by secondary legislation. These matters will require flexible provision for different cases and may not be finalised until nearer the time of implementation. They will also need to be added to and amended once the identity cards scheme is in place. Other powers are included in the bill to allow for future changes to the scheme in the light of experience once it is operating in practice, for example to alter the information which may be kept on the Register or the age of eligibility for entry. The bill also contains power to make registration compulsory either generally or for particular groups. The level of parliamentary scrutiny varies from negative resolution to a form of the super-affirmative process depending on the importance of the subject matter.

2. In exercising his powers under the bill the Secretary of State will be required to act in accordance with his general public law obligations and his specific duties under the Human Rights and Data Protection Acts. Recipients of information from the Register will also be subject to Data Protection Act rights and obligations and, in so far as they are exercising public functions, the Human Rights Act.

3. This memorandum identifies provisions for delegated legislation in the bill. It seeks to explain the purpose of the delegated powers taken; describe why the department considers that its subject matter is suitable for delegated legislation; and explain the parliamentary procedure selected for each power and why it has been chosen.

4. Clause 41(1) provides that orders and regulations under the bill must be made by statutory instrument. Where the enabling power is subject to the affirmative or “super-affirmative” procedure, the procedure is set out in the relevant clause. Apart from commencement orders, all other orders or regulations made by the Secretary of State are made subject to the negative resolution procedure by virtue of clause 41(3). By virtue of clause 43(1), references to “prescribed” in the bill mean prescribed by regulations.

5. The bill is in 12 parts: –

- Part 1 contains provisions establishing the National Identity Register, details what information may be recorded on it and establishes the powers of the Secretary of State to require registration on the Register.
- Part 2 contains provisions about the issue and renewal of ID cards.
- Part 3 contains provisions relating to the maintenance of the accuracy of the Register and the invalidity and surrender of ID cards.
- Part 4 relates to the provision of information from the Register for verification purposes etc.
- Part 5 sets out provisions in relation to required identity checks and prohibitions on requirements to produce identity cards.

- Part 6 provides for other allowed uses of registered information including the provision of information without consent.
- Part 7 establishes the National Identity Scheme Commissioner and makes provision for the supervision of the operation of the Act.
- Part 8 sets out criminal offences under the Act.
- Part 9 contains provisions on the imposition of civil penalties under the Act.
- Part 10 contains provisions for the imposition of fees and charges in respect of functions carried out under the Act and amends the Consular Fees Act 1980.
- Part 11 sets out provisions relating to passports.
- Part 12 sets out supplementary provisions about orders and regulations, the Secretary of State's expenses, application of the Act in Scotland and general interpretation.
- Schedule 1 lists information that may be recorded in the Register and Schedule 2 lists repeals of existing legislation.

## Devolution

6. The Identity Cards Bill applies to the whole of the United Kingdom and the system for issuing ID cards will operate on a United Kingdom wide basis. The civil penalties and criminal offences created under the bill will also be applicable throughout the United Kingdom.

7. However, any requirement to produce an ID card to access a public service will be a matter for the administration which has responsibility for that service. There is no power in the Identity Cards Bill for secondary legislation to be made that would require an ID card to be produced as a condition of access to a devolved public service in Scotland, because that is within the legislative competence of the Scottish Parliament. Clause 45 makes clear that such provision would require an Act of that Parliament.

8. Clauses 15 and 16 would allow regulations to be made under the bill by the National Assembly for Wales in relation to public services in Wales the provision of which is within the functions of the National Assembly. Similarly Clauses 15 and 16 would allow regulations to be approved by the Northern Ireland Assembly in relation to access to transferred public services in Northern Ireland.

## Registration

*Clause 2 (2) (b): Enables the Secretary of State to extend the entitlement to register by prescribing persons who have previously resided in the UK, or who are proposing to enter the UK*

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by statutory instrument*

*Parliamentary procedure: Negative resolution*

9. Clause 2 sets out the circumstances in which an entry should be made in the Register. Clause 2(2) sets out the people who are entitled to be entered in the Register. Entitlement is derived primarily from current residence in the United Kingdom, but clause 2(2)b enables the Secretary of State to prescribe groups of people who have previously resided in, or who are proposing to enter, the United Kingdom as being entitled to be entered in the Register. Although there are no current plans to register individuals living outside the UK, this subsection provides the option of doing so in the future. The power would only

be used if there were a demand for it, and if it were practical to do so. It could be used in the future to enable, for example, British Citizens resident abroad or foreign nationals applying to enter the UK to register before arrival.

10. The negative resolution procedure is regarded as the appropriate level of parliamentary scrutiny for this power. It could only be used to confer an entitlement to registration on a limited number of people who had already had a period of residence in the UK or who were proposing to come to the UK.

*Clause 2 (3): Enables the Secretary of State to exclude certain groups from being entitled to be registered*

*Power conferred on: Secretary of State*  
*Power exercisable by: Regulations made by statutory instrument*  
*Parliamentary procedure: Negative Resolution*

11. The power in clause 2(3) enables the Secretary of State to exclude certain groups of people from an entitlement to be registered. The groups referred to in Clause 2 (3) are individuals who are residing in the UK for less than a specified period and individuals who are residing in the UK without any legal entitlement to remain.

12. The National Identity Register is intended to include UK residents, not short-term visitors, nor, in general, those who have no right to be in the UK. It is anticipated that when regulations are made under this section, the specified period will be 3 months. However, flexibility is required to allow the period to be varied and to enable a different period to apply to different categories of persons. For example, the Immigration Rules currently provide that residence permits need only be issued for some categories of foreign person resident for 6 months or more. The categories of person who may be excluded from an entitlement to registration are limited to those set out in subsection (3). It is considered that the negative resolution procedure provides an appropriate level of parliamentary scrutiny for these regulations.

*Clause 2 (5): Enables the Secretary of State to prescribe requirements with which each unique National Identity Registration Number should comply*

*Power conferred on: Secretary of State*  
*Power exercisable by: Regulations made by statutory instrument*  
*Parliamentary procedure: Negative Resolution*

13. The technical requirements of the National Identity Registration Number are an appropriate subject for subordinate legislation, both because of the subject matter and the likelihood that requirements will need to be added to and varied over time.

14. The department considers that the negative resolution procedure is the most suitable level of scrutiny.

*Clause 2 (6): Enables the Secretary of State to modify the minimum age at which a person is entitled to be entered on the Register*

*Power conferred on: Secretary of State*  
*Power exercisable by: Order made by statutory instrument*  
*Parliamentary procedure: Affirmative resolution*

15. The current proposal is that everyone who is resident in the UK for more than 3 months, and who is over the age of 16, shall be entitled to be entered on the Register. However, this power recognises that it may be necessary to vary this age. For example, during the enrolment of rising 16 year olds, it might be helpful to allow some 15 year olds to register. There are no immediate plans to vary the age.

16. The department considers that the affirmative resolution procedure provides an appropriate level of scrutiny for any proposal to change the age at which persons are entitled to be registered.

*Clause 3 (2)(b): Enables the Secretary of State to make regulations describing information which an individual may request to be included in his entry*

*Power conferred on: Secretary of State*  
*Power exercisable by: Regulations made by statutory instrument*  
*Parliamentary procedure: Negative resolution*

17. In general, only the information set out in Schedule 1 to the bill may be included in the Register. However, clause 3(2) makes provision for additional information to be recorded at the request of the person to whom it relates. The power in clause 3(2)(b) would allow the Secretary of State to describe the type of information which may be held in response to such requests. For example, this might include organ donor preference. Giving the Secretary of State the power to decide which categories of additional information may be recorded, as opposed to empowering individuals to require certain information to be recorded about them, will ensure that the Register is not used to record irrelevant or excessive information. It is considered that the negative resolution procedure provides a sufficient level of parliamentary scrutiny.

*Clause 3 (5): Enables the Secretary of State to modify the information which may be recorded in the Register by amending Schedule 1*

*Power conferred on: Secretary of State*  
*Power exercisable by: Order made by statutory instrument*  
*Parliamentary procedure: Affirmative or negative resolution*

18. Clause 3(5) enables the Secretary of State to amend the list of information that may be recorded in the Register as set out in detail in Schedule 1. This would allow for the inclusion of information currently not thought to be necessary for the purposes of the scheme. Conversely, the power would enable the exclusion of information that may, in the future, become surplus to the requirements of the scheme.

19. Clause 3(6) provides that any additions must be consistent with the statutory purposes of the Register set out in clause 1(3) and (4). Those purposes are tied to the registrable facts set out in clause 1(5). The power could therefore not be used to add any information to Schedule 1 unless it was relevant to one of the registrable facts. In addition, if the power is used to add any information to Schedule 1, the order will be subject to the

affirmative resolution procedure. An order which only removes information will be subject to the negative resolution procedure. The department considers that this provides an appropriate level of scrutiny.

*Clause 4 (1): Enables the Secretary of State to designate documents with which, or as part of which, an ID card may be issued*

*Power conferred on: Secretary of State*  
*Power exercisable by: Order made by statutory instrument*  
*Parliamentary procedure: Affirmative resolution*

20. The Government's proposal is to provide for a single standardised identity card available to all UK residents. Clauses 5(2) and 8(7) have the effect that once a document is designated, an application for it must include an application to be entered on the Register and to be issued with an ID card. It is initially proposed to designate British passports issued to those entitled to be entered on the Register. As regards foreign nationals, registration certificates and residence permits could be designated. They would then be issued to the same standard as the cards issued with passports and would become ID cards – the ID Card being combined with the registration certificate or residence permit.

21. Clause 8 provides that an ID card may be issued either “together with” or “as part of” a designated document. This provision ensures the flexibility of maintaining a “family” of designated documents. That way it will be possible to include other cards in the future as new documents are designated, or existing document security changes, making them suitable for inclusion as ID Cards. For example, although not currently proposed, it would be possible to use this power to designate driving licences.

22. Clause 4 (2) limits the kind of documents that may be designated to official Government issued documents. Any designation order would be subject to the affirmative resolution procedure. The department believe that this provides an appropriate level of scrutiny.

*Clause 5 (1): Enables the Secretary of State to specify the manner in which applications for an entry in the National Identity Register may be made*

*Power conferred on: Secretary of State*  
*Power exercisable by: Regulations made by statutory instrument*  
*Parliamentary procedure: Negative resolution*

23. Clause 5(1) enables regulations to set out the manner in which applications are to be made for entry in the Register in applications for designated documents or in stand alone applications to the Secretary of State. This power will enable administrative procedures for applications to be set out in regulations and will also allow the manner in which applications are made to be varied depending on the nature of the designated document concerned and for the application process to be varied over time. This may happen if emerging technologies allow other methods of application to become possible (for example, online applications were not possible 10 years ago).

24. For example, if a British passport is designated, the regulations may provide that an application for a passport should include an application to be entered in the Register by completing part of a prescribed form and sending it to the United Kingdom Passport Service. Regulations are also likely to make provision for the special needs of some applicants, for example the visually impaired.

25. The department takes the view that the negative resolution procedure provides the necessary flexibility and appropriate level of scrutiny for these detailed administrative issues.

*Clause 5 (3): Enables the Secretary of State to specify the information that must accompany the application*

*Power conferred on: Secretary of State*  
*Power exercisable by: Regulations made by statutory instrument*  
*Parliamentary procedure: Negative resolution*

26. This provision allows the Secretary of State to prescribe the information required to accompany an application. Depending on the circumstances of the individual, different information may be relevant.

27. The sort of documentation that may be required to support the application where relevant to the particular applicant is:

- Passport;
- Birth certificate;
- Adoption certificate;
- Driving licence;
- Marriage certificate;
- Naturalisation certificate.

28. Clause 5 (6) restricts the information to that which is required for the statutory purposes in clause 1. Given this limitation, it is considered that the negative resolution procedure is appropriate for these regulations.

*Clause 6 (1): Enables the Secretary of State to require people of a specified description to be entered in the National Identity Register*

*Power conferred on: Secretary of State*  
*Power exercisable by: Order made by statutory instrument*  
*Parliamentary procedure: "Super-Affirmative"/affirmative resolution*

29. Clause 6 enables the Secretary of State to require individuals of a description specified to be entered on the Register. The power would apply regardless of whether a person applies for a designated document. The order would also have to set out the timetable as to when the requirement to apply for registration arises and the period after that time within which an application must be made.

30. Read with clause 41(4), this would allow the registration of some groups before others and so would allow for compulsory registration to be phased in and for different categories of persons to register by different dates. It might for example be used to require foreign nationals to register before UK or EEA nationals were required to do so. It would also allow for exceptions to be made, so that, for example, the very elderly could be exempt from compulsory registration. In making an order under clause 6, the Secretary of State will be obliged to have regard to relevant human rights obligations including the prohibition on unjustified discrimination under Article 14 of the ECHR.

31. The Government has made it clear that the objective in principle is to have a universal scheme for UK residents over 16. It is necessary for practical reasons to phase such a

scheme in over time. It is anticipated that voluntary applications and the link with designated documents in clause 5 will ensure that a large proportion of the population will be registered without the need for an order under clause 6. Any order for compulsory registration which is made is likely to require different provision for different categories of person and for exceptions to be made. For these reasons the department believe that secondary legislation is appropriate for this purpose.

32. Clause 7 sets out the details of the “super-affirmative’ process whereby: –

- (1) the Government must publish a report setting out its proposal and its reasons for making that proposal;
- (2) the report must include details of the categories of persons to whom it would apply and the timetable;
- (3) the report must be laid before Parliament for debate and vote in both Houses. Either House may amend the proposition;
- (4) if approved, the Government then lays an order for compulsion. The order must be consistent with the proposition agreed by Parliament and must be laid for a minimum of 60 days before the resolution is debated;
- (5) there would be a further debate and vote in both Houses.

33. If either House did not approve the proposal or the Government was not content with the proposal as modified by either House, the Government must go back to step (1), if it decides to make the case again for a move to compulsion. This “super affirmative” resolution procedure ensures proper consultation and debate in two stages in both Houses of Parliament before the move to compulsion. An order under clause 6 which did not impose a new obligation to register on anyone (for example, an order which lowered the age beyond which registration would not be required) is subject to the ordinary affirmative resolution procedure by virtue of clause 7(4).

34. The department’s view is that although the principle of compulsory registration is a very significant one, that principle will be debated and decided during the passage of the bill. Once the principle of compulsion is accepted, the phasing of implementation is a suitable matter for subordinate legislation and the super-affirmative procedure set out in clause 7 provides an appropriate level of parliamentary scrutiny.

## **ID Cards**

*Clause 8 (2) (b): Provides part of the definition of an ID card by reference to prescribed parts of an entry on the Register*

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercisable by:</i>	<i>Regulations made by statutory instrument</i>
<i>Parliamentary procedure:</i>	<i>Negative resolution</i>

35. Clause 8(1) contains the definition of an ID card for the purposes of the bill. In order to be an ID card, a card must have both of the functions in clause 8(2). Clause 8(2)(b) refers to a card which carries data enabling it to be used to facilitate applications for information recorded in a prescribed part of the Register. This provision is separate from the provisions which govern the content of the Register and to the detailed procedures for provision of information with consent under Clause 14 or without consent under Clauses 19 to 23. It does not in itself create a power to record or disclose information: it simply identifies the information on the Register which brings a document within the definition of

an ID card. As such, it is considered that the negative resolution procedure will provide the appropriate parliamentary scrutiny.

*Clause 8 (3) (a) & (b): Enables the Secretary of State to prescribe the information which may be recorded on a card, and to prescribe the information which must be recorded in encrypted form*

*Power conferred on: Secretary of State*  
*Power exercisable by: Regulations by statutory instrument*  
*Parliamentary procedure: Affirmative resolution*

36. Clause 8(3) provides the Secretary of State with powers to regulate what information should be held on the ID card and chip. This is expected to include information such as the holder's name and photograph, number and date of expiry of the card etc. It is appropriate that detailed provision should be made in subordinate legislation. Different provision may be made for different categories of person and different types of ID card and the information may change over time as the needs of the Scheme and technology develop.

37. The details of the information shown visibly on the face of the ID Card and encrypted, for example, on a computer chip are key elements of the Identity Cards Scheme and of substantial public interest. Accordingly, clause 8(9) provides that these regulations should be subject to affirmative resolution procedure.

*Clause 8 (3) (c): Enables the Secretary of State to prescribe the period for which the card is valid*

*Power conferred on: Secretary of State*  
*Power exercisable by: Regulations made by statutory instrument*  
*Parliamentary procedure: Negative resolution*

38. Current proposals are that cards issued as part of the renewal of a designated document would be valid for the same time as the designated documents, e.g. ten years for an ID card issued with a passport.

39. Regulations are needed to ensure flexibility for different circumstances. For example, a card issued to a foreign national with limited leave to remain is likely to be valid for the same period as that leave.

40. General periods of validity may also be liable to change as technical capabilities, such as chip life, improve. It is considered that the negative resolution procedure provides appropriate parliamentary scrutiny.

*Clause 8 (4): Allows the Secretary of State to exclude certain individuals from the general rule that ID cards must be issued to a person who is entitled or required to be entered on the National Identity Register*

*Power conferred on: Secretary of State*  
*Power exercisable by: Regulations made by statutory instrument*  
*Parliamentary procedure: Negative resolution*

41. This power is designed to be used for a limited number of cases in order that individuals could be registered but not issued with an ID card. For example it may be that certain categories of vulnerable or elderly people would have an entitlement to registration but it would not be appropriate or necessary for them to be required to provide biometric information or be issued with ID cards.

42. It is desired to retain flexibility so that exceptions could be made to the general rule that everyone registered should be issued with an ID card. It is considered that the negative resolution procedure provides a sufficient level of scrutiny.

*Clause 8 (5): Enables the Secretary of State to prescribe cases in which ID cards may be issued to individuals who are not required to be issued with one but whose registrable facts have been entered on the National Identity Register*

*Power conferred on: Secretary of State*  
*Power exercisable by: Regulations made by statutory instrument*  
*Parliamentary procedure: Negative resolution*

43. This provision would provide the flexibility to issue ID cards in special circumstances. It is limited to cases where the individual's details are already recorded in the Register despite their having no entitlement to be registered. It will therefore only be relevant in exceptional cases but might be used, for example, to issue ID cards to UK or to foreign or EU nationals who are not residing in the UK for 3 months but will do so for shorter periods regularly.

44. This subsection needs to be read with the power in clause 2(4) to register people who would otherwise not be entitled to register. That power is explicitly limited to cases where the making of an entry in the Register would be consistent with the statutory purposes of the scheme in clause 1.

45. The provisions would be relevant only to limited groups of individuals and can only be used to issue them with a card to which they would otherwise not be entitled. It is considered that a negative resolution procedure is the suitable level of parliamentary scrutiny.

*Clause 8 (6): Enables the Secretary of State to set out the manner in which an individual, already recorded on the National Identity Register, must confirm the contents of his entry when applying for an ID card*

*Power conferred on: Secretary of State*  
*Power exercisable by: Regulations made by statutory instrument*  
*Parliamentary procedure: Negative resolution*

46. This power allows for the administrative procedures relating to the confirmation of an entry on the Register made in conjunction with an application for an ID card to be dealt with in regulations. It provides the flexibility to alter the way in which information is confirmed by an individual and will allow for different administrative procedures from the initial application process under clause 5.

47. The negative resolution procedure is appropriate in this case for what will be a detailed administrative procedure.

*Clause 8 (7): Enables the Secretary of State to prescribe the manner in which an application for an ID card must be made when: the application is made in conjunction with an application for a designated document; or in conjunction with an application to be registered consequential to an obligation under Clause 6*

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by statutory instrument*

*Parliamentary procedure: Negative resolution*

48. This power needs to be read in conjunction with clauses 4 (designated documents), 5(1) and (2) (applications to be entered on the Register) and 6 (compulsory registration). When applying for a designated document or when registering under clause 6, an applicant will also be required to apply for an ID card unless excepted under clause 8(4).

49. The intention is that if an applicant is applying for a designated document which requires them to apply also for an ID card, they will follow the general process outlined below: –

- Applicant will submit one application form for both the designated document and the ID card
- Applicant will make one payment
- Applicant will attend any face to face meetings as is required for the application process of both the designated document and the ID card.
- If successful, the applicant will be issued with the designated document and the ID card.

50. The designation of any document under Clause 4 will be subject to the affirmative resolution procedure. However, this power is in relation to the detailed administration of the Identity Cards Scheme and the link with designated documents. The manner in which such an application should be made will vary depending on the designated document concerned. Accordingly it is considered that subordinate legislation is appropriate and that the negative resolution procedure provides appropriate parliamentary scrutiny. In relation to those required to register under clause 6, it is also proposed that an application to register and to apply for an ID card should be made in one application form. Again, it is considered that the details of the application process are suitable for subordinate legislation subject to negative resolution.

*Clause 8 (8) (a): Enables the Secretary of State to prescribe how all other applications (apart from those made with a designated document or under Clause 6) for an ID card must be made*

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by statutory instrument*

*Parliamentary procedure: Negative resolution*

51. As with the provisions for other applications, the exact procedure for being issued with an ID card in circumstances other than those covered by clause 8(7), for example a voluntary application for a stand alone ID card) is regarded as suitable for subordinate legislation.

52. The power will be subject to the negative resolution procedure as the appropriate level of parliamentary scrutiny.

*Clause 8 (8) (b): Enables the Secretary of State to prescribe the cases in which an application under Clause 8(8) may be made to a designated document authority*

*Power conferred on: Secretary of State*  
*Power exercisable by: Regulations made by statutory instrument*  
*Parliamentary procedure: Negative resolution*

53. The regulations under this sub-section enable applications for an ID card to be made to a designated documents authority, that is an organisation issuing designated documents, regardless of whether a simultaneous application for a designated document is being made. This would enable a designated documents authority to issue a standalone ID card in addition to the cards linked to the designated documents. The power to designate documents in clause 4 is subject to the affirmative resolution procedure. This ancillary power relates to the administrative handling process, so as with Clause 8(8)(a) is subject to negative resolution procedure.

*Clause 8 (8) (c): Enables the Secretary of State to prescribe the information which should accompany an application for an ID card under Clause 8(8)*

*Power conferred on: Secretary of State*  
*Power exercisable by: Regulations made by statutory instrument*  
*Parliamentary procedure: Negative resolution*

54. This provision allows the Secretary of State to specify the information required to accompany an ID card application and for this to be varied on the basis of experience for example, excluding that which proves to be non-essential, and adding information thought to be necessary. The same considerations apply as to the power in Clause 5(3)(b) relating to an application for registration.

55. This power covers administrative procedures for the ID Cards Scheme and therefore is subject to the negative resolution procedure as the appropriate level of parliamentary scrutiny.

*Clause 9 (2): Enables the Secretary of State to prescribe the period within which those who are required to be entered in the Register must apply to renew an ID card or, where the person doesn't hold a valid ID Card, must apply for one*

*Power conferred on: Secretary of State*  
*Power exercisable by: Regulations made by statutory instrument*  
*Parliamentary procedure: Negative resolution*

56. The requirement under this provision will apply only to those persons required to register under Clause 6. It allows a time limit to be set within which the individual must apply for issue or for renewal of an ID card. This period may vary for different categories of person and is a suitable matter to be left to subordinate legislation.

57. This is an administrative time limit and the negative resolution procedure is regarded by the department as appropriate.

*Clause 10 (2): Enables the Secretary of State to prescribe the requirements an ID card issued with a designated document, must meet*

*Clause 10 (3) (a): Enables the Secretary of State to impose requirements regulating how designated document authorities handle applications made to them for individuals to be entered in the National Identity Register*

*Clause 10 (3) (b): Enables the Secretary of State to impose requirements regulating how designated documents authorities handle applications made to them for the issue of ID Cards*

*Clause 10 (3) (c): Enables the Secretary of State to impose requirements regulating how designated document authorities handle applications made to them to confirm entries on the Register*

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by statutory instrument*

*Parliamentary procedure: Negative resolution*

58. As discussed above, an order designating a document is subject to the affirmative procedure. “Designated documents authorities” are defined in clause 43(1) as a person or body with a power or duty to issue a designated document. Clause 10 sets out the functions of such authorities in relation to ID cards. If the only documents which are designated are issued by the Secretary of State (such as British passports), the regulation making powers under clause 10 will not be needed. If a document issued by another authority were to be designated, clause 10 is necessary to ensure that documents which are to be regarded as ID cards by virtue of clause 8(1) meet common standards. The requirements may change over time as the design of the card, the information held and the application process vary.

59. Clause 10(2) therefore gives the necessary power to prescribe the requirements of any ID card issued, in line with the similar provisions in clause 8(3). Clause 10(3) provides powers for the Secretary of State to regulate the manner in which designated documents authorities deal with applications relating to the Register and ID cards. It is considered that the negative resolution procedure provides the appropriate level of parliamentary scrutiny for these regulations.

*Clause 10 (4): Enables the Secretary of State to require designated documents authorities to notify him when a designated document which was issued with an ID card is modified, revoked or required to be surrendered*

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by statutory instrument*

*Parliamentary procedure: Negative resolution*

60. It is proposed that a designated documents authority will notify the Secretary of State when a designated document is modified, suspended, revoked or otherwise surrendered as this may impact on the validity of an ID Card. This is an administrative matter suitable for the negative resolution procedure.

## Maintaining the Accuracy of the Register

*Clause 11 (4): Enables the Secretary of State to specify persons on whom the Secretary of State or a designated documents authority may place a requirement to provide information in order to verify entries on the National Identity Register*

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercisable by:</i>	<i>Order made by statutory instrument</i>
<i>Parliamentary procedure:</i>	<i>Affirmative resolution</i>

61. Clause 11 provides a power to require information to be provided for validating the identity of a person applying for entry on the National Identity Register. It is drafted so as to allow data to be shared in order to make thorough background checks on people applying for ID cards. It may also be necessary to use other databases over time, as new ones become available.

62. The bill provides the necessary power to confirm an applicant's identity through querying a range of information sources holding identity related information. Information requested from these sources will be that which can be used as part of the enrolment process to prove the identity of applicants, for example: –

- Identity related information held by DVLA (i.e. names, addresses, dates of birth, gender, driver number) but excluding driving record (i.e. categories of vehicles which may be driven or details of endorsements)
- Identity related information held by Department of Work and Pensions (i.e. names, addresses, dates of birth, gender, National Insurance Number) but excluding pension or national insurance contribution records
- Birth, marriage and death records held by the Registrars General for England and Wales, Scotland and Northern Ireland, but excluding census, or survey data.

63. As those persons or bodies specified under this power will be under a legal obligation to provide the information, and the consent of the person concerned is not required, it is thought appropriate that the power is subject to the affirmative resolution procedure.

*Clause 12 (1) & (2): Enables the Secretary of State to prescribe the changes of circumstances about which a person will be under a duty to notify him and the manner and time in which those changes must be notified*

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercisable by:</i>	<i>Regulations made by statutory instrument</i>
<i>Parliamentary procedure:</i>	<i>Negative resolution</i>

64. Individuals will be required to update certain identity information held on the Register if there are relevant changes to, for example names and addresses. The detail of which changes must be notified, the manner of notification and the time period in which notification must be made are all appropriate subject matter for subordinate legislation. It may also be necessary to amend requirements over time, for example, if the information in Schedule 1 were amended and it was decided that a consequential obligation to keep information up to date were required.

65. It would be to the individual's advantage to keep their information on the Register up to date. However, the Scheme could be open to abuse if people were able to change key identity details without notification. Accordingly, there is a power under Clause 12 (1) for

the Secretary of State to require individuals to provide up-to-date information as details change to enable the Register to maintain accurate information, with a civil penalty which could be imposed for failure to update details.

66. Under clause 12 (2) the Secretary of State can require the changes to information to be specified in a particular fashion within given timescales. Provision is likely to be needed for special cases, for example students in temporary accommodation or homeless people who have no fixed address. The powers in clause 12, with those in clause 41(4) and 43(10) will enable appropriate provision to be made. Clause 12(5) limits the information which can be required to that which is needed for the statutory purposes of the scheme in clause 1. It is considered that the negative resolution procedure provides appropriate parliamentary scrutiny.

*Clause 13 (1): Enables the Secretary of State to require a person to whom an ID card has been issued to notify him when a card has been lost, stolen, damaged, destroyed or tampered with and to specify others who must be notified*

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by statutory instrument*

*Parliamentary procedure: Negative resolution*

67. It is important for card holders to inform the Secretary of State where there is reason to suspect that a card has been lost, stolen, damaged, tampered with or destroyed both in their own interests in proving their identity and to prevent fraudulent use by others.

68. Exceptions to requirements may be appropriate, for example to cater for those with mental health problems who might not be in a position to report loss of cards. This flexibility is more easily expressed in regulations than on the face of the bill.

69. The power to prescribe other persons who must be notified may be needed if ID cards were to be issued by designated documents authorities under clause 10. These powers relates to the administration of the scheme, and it is considered the negative resolution procedure provides appropriate parliamentary scrutiny.

### **Provision of information from the Register**

*Clause 14 (4) (a): Enables the Secretary of State to amend the subset of information held on the National Identity Register that may be provided, with consent, for verification purposes*

*Power conferred on: Secretary of State*

*Power exercisable by: Order made by statutory instrument*

*Parliamentary procedure: Affirmative resolution*

70. Clause 14(2) and (3) limit the categories of information that may be provided with the consent of the cardholder to a third party (e.g. to a bank when opening an account). This is limited to core identity information and excludes other administrative and historic data that may be held on the Register. The power in subsection (4)(a) allows the Secretary of State to modify subsections (2) and (3) by order. The power is necessary to cater for changes in the light of experience of the scheme in operation, for example, if it were found that individuals regularly needed to prove some information on the Register which is currently not within the clause 14(2) subset.

71. Information can only be provided from the Register under clause 14 with the consent of the individual concerned. Subsections (2) and (3) limit the information which can be lawfully be provided under this power. Within this limit, the information which is actually

provided will depend on the purposes for which the recipient needs it (see below as to subsections (5) and (6)). The clause does not affect the subject access rights of the person to whom the information relates under the Data Protection Act 1998.

72. As this order making power would enable primary legislation to be amended, affirmative resolution procedure is considered appropriate.

*Clause 14 (4) (b): Enables the Secretary of State to further restrict the information which may be provided under Clause 14*

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercisable by:</i>	<i>Regulations made by statutory instrument</i>
<i>Parliamentary procedure:</i>	<i>Negative resolution</i>

73. This provision allows further restrictions to be imposed on the information which may be provided under clause 14 by regulations. The power might be used to restrict information generally or in particular classes of case. For example, it could ensure that only a very limited subset of the information in subsection (2) could be provided unless the recipient was already approved under subsection 6(b). It also gives the flexibility to cater for different groups who may want to have their entry on the Register protected further, for example, in the case of previous names of transsexual people.

74. As the power can only be used to add additional safeguards, a negative resolution procedure is considered to provide the appropriate level of parliamentary scrutiny.

*Clause 14 (5): Enables the Secretary of State to specify how an authority for provision of information with consent for the purposes of verifying identity is to be given, the persons by whom, the circumstances and the manner in which applications under Clause 14 may be made*

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercisable by:</i>	<i>Regulations made by statutory instrument</i>
<i>Parliamentary procedure:</i>	<i>Negative resolution</i>

75. The precise arrangements for checks to be made to verify identity will be detailed and will need to make different provision for different cases. In addition, it is probable that these processes would change over time, for example because of technological advances. It is therefore appropriate that they be set out in regulations.

76. Regulations will need to provide for different ways of giving authority for a check to be made, the persons by whom and the manner in which an application can be made. Provision of information will be managed by the accreditation of user organisations as provided in Clause 14 (6). The type of information provided to user organisations will vary depending on the level to which they have been accredited.

77. As these regulations will be concerned with matters of administrative detail, the negative resolution procedure is regarded as appropriate.

*Clause 14 (6): Enables the Secretary of State to introduce an accreditation system for those seeking to make use of the verification scheme*

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by statutory instrument*

*Parliamentary procedure: Negative resolution*

78. It is intended to establish an accreditation scheme using the power in clause 14(6) in conjunction with clause 41(6) so that only those organisations that have been approved would be able to make checks on the Register. No one will have “access” to the register, but accredited organisations will be able to seek online verification of ID cards presented to them.

79. In order to use any National Identity Register verification services, including the provision of information, private sector user organisations will be subject to an accreditation process to ensure they are suitable to support the services they have requested.

80. Accreditation is the process whereby organisations that require verification services will be requested to provide evidence that they will be able to manage securely the provision of information and the use of that information.

81. Although there will be one core accreditation process, the rigour and detail of accreditation will be proportionate to the level of information that organisations require. There will, therefore, be a number of optional elements which will also be dependent on the type of organisation applying.

82. The accreditation process will evolve over time to take into account the necessary changes in technology, particularly in relation to the approval of apparatus under subsection (6)(c).

83. Regulations made under this power would be adding additional safeguards to the use of the ID card verification scheme, and are likely to need to change over time. It is considered that the negative resolution procedure will provide an appropriate level of parliamentary scrutiny.

### **Required identity checks**

*Clause 15 (1): Enables regulations to be made linking the identity cards scheme with the provision of public services*

*Power conferred on: Secretary of State/Northern Ireland department/ National Assembly for Wales*

*Power exercisable by: Regulations made by statutory instrument*

*Procedure: In relation to regulations made by the Secretary of State, affirmative resolution procedure; in relation to regulations made by a Northern Ireland department, approval by Northern Ireland Assembly*

84. This provision would allow or require public service providers to make it a condition of providing that service that an individual produces an ID card and/or other evidence of registrable facts.

85. Public service and provision of a public service are defined in clause 43(2) and (3) and potentially cover a wide range of activities.

86. It is impractical to include on the face of the bill details of all services for which this power may be relevant and their own eligibility criteria and exemptions now and in the

future. However, many key public services such as those provided by the Department of Health or Department of Work and Pensions may require production of an ID card as proof of identity.

87. Clause 15(2) prevents regulations made under the subsection from imposing conditions on an individual's entitlement to receive a payment made under or in accordance with an enactment or his entitlement to receive public services which must be provided free of charge, prior to that individual being subject to compulsory registration under clause 6. Clause 15(3) precludes this power being used to make it a requirement to carry an ID Card.

88. Clause 16 sets out the procedure for regulations under clause 15. The regulations are subject to the draft affirmative procedure if made by the Secretary of State and parallel procedures if made by the devolved administrations in Wales and Northern Ireland in relation to services for which they are responsible. Clause 16(4) to (6) set out consultation requirements before the draft regulations can be laid or made. The reasons for making the regulations and why other powers are not being relied on must be published and those likely to be affected must be consulted. Subsection (6) ensures that any existing consultation requirements in other relevant powers must also be followed.

89. The department considers that given the need to make different provision in relation to different public services, the safeguards in clause 15 and the requirements of clause 16, the powers are appropriately delegated to subordinate legislation and subject to proper public and parliamentary scrutiny.

*Clause 17 (1): Enables the Secretary of State to make regulations authorising public service providers to be provided with information from the National Identity Register*

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by statutory instrument*

*Parliamentary procedure: Affirmative resolution*

90. Clause 17 allows the Secretary of State to authorise the provision of information from the Register to public service providers. It can only be used in connection with access to the provision of a public service which has been linked to ID Cards under Clause 15 or under any other enactment. The information must be required for the purpose of verifying registrable facts (as defined in clause 1(5)) about the applicant.

91. The subject matter is suitable for subordinate legislation as the content of the regulations will vary depending on the public service concerned. Flexibility is needed to take account of the contents of the relevant regulations under Clause 15 or other power to make public services conditional on identity checks. For example, not all services will need to be provided with the same information. It is envisaged that different subsets of the information on the Register may be provided, depending on the purposes and functions of the service and the relevant conditions of eligibility for receipt of it.

*Clause 17 (2): Enables the Secretary of State to specify the manner in which, persons by whom and circumstances in which applications for checks on the National Identity Register may be made in connection with a public service and the information which may be provided in response*

*Power conferred on: Secretary of State*  
*Power exercisable by: Regulations made by statutory instrument*  
*Parliamentary procedure: Affirmative resolution*

92. This provision covers the persons by whom, and the circumstances in which, applications may be made; the information that may be provided in response to an application and the manner in which it may be provided when identity checks are being made to access a public service.

93. These regulations will deal with matters of detail about the mechanics of the provision of information. Their contents will vary depending on the public service concerned and will need to be tailored to the relevant eligibility conditions, the nature of the service and the need for particular information. They are therefore suitable material for subordinate legislation.

*Clause 17 (3): Enables the Secretary of State to provide for an accreditation scheme to apply to public service providers*

*Power conferred on: Secretary of State*  
*Power exercisable by: Regulations made by statutory instrument*  
*Parliamentary procedure: Affirmative resolution*

94. This power would enable a scheme to be established for public service providers similar to the accreditation scheme established under Clause 14(6) discussed above. As with the other regulations under this section, the contents are likely to vary depending on the public service concerned. They are also likely to require change over time as technology develops.

95. Regulations made under clause 17 are subject to the special consultation requirements set out in subsection (5). Steps must be taken to inform members of the public about the reasons for any proposal to make regulations and to consult them about it before any draft regulations are laid. The regulations are then subject to the affirmative resolution procedure. The department regard this as an appropriate degree of public and parliamentary scrutiny.

#### **Other purposes for which registered information can be provided**

*Clause 19 (3) (c): Enables the Secretary of State to specify “other purposes” for which information, not falling within paragraph 9 of Schedule 1, may be disclosed to the police*

*Power conferred on: Secretary of State*  
*Power exercisable by: Order made by statutory instrument*  
*Parliamentary procedure: Negative resolution*

96. Provision of information from the Register to the police is allowed by Clause 19(3)(a) & (b) in the interests of national security and for purposes connected with the prevention or detection of crime. This additional power has been included to cater for cases which can not be categorised under crime or national security but where provision of information from the Register would be in the public interest. For example, the power

could be used to allow the police to identify victims of accidents or natural disaster using a biometric check against the Register. Without this flexibility in the bill there is a risk of inhibiting the potential benefits of the scheme to the police and the public.

97. The purposes for which information could be provided would need to be specified in the order. The power cannot be used to provide information within paragraph 9 of Schedule 1 (the audit trail of disclosures from the Register) and can only be used if the Secretary of State is satisfied that the provision of information is necessary in the public interest as defined in clause 1(4). Provision of information would also need to comply with the requirements of regulations made under clause 23. In using any information provided, the police would be subject to the obligations imposed by the Human Rights Act and Data Protection Act. Given these safeguards, it is considered that the negative resolution procedure provides the appropriate level of parliamentary scrutiny.

*Clause 19 (4) (f): Enables the Secretary of State to specify “other purposes” for which information, not falling within paragraph 9 of Schedule 1, may be provided to the Inland Revenue/HM Customs and Excise*

*Power conferred on: Secretary of State*  
*Power exercisable by: Order made by statutory instrument*  
*Parliamentary procedure: Negative resolution*

98. It is considered that provision of information to the Commissioners will be primarily for the express purposes set out in clause 19(4)(a) to (e). However, in order to avoid a case where it would be in the public interest for information to be provided from the Register, but which is not provided for, a power has been included to allow for the possibility of additional purposes being specified in regulations.

99. The safeguards applicable to clause 19(3)(c) are also applicable in this case.

*Clause 19 (5): Enables the Secretary of State to prescribe the Government and Northern Ireland departments to which information, not falling within paragraph 9 of Schedule 1, may be provided, and to prescribe the functions of those departments for which information may be provided*

*Power conferred on: Secretary of State*  
*Power exercisable by: Regulations made by statutory instrument*  
*Parliamentary procedure: Negative Resolution*

100. This power would allow the Secretary of State to prescribe the particular Government departments and the functions of the departments in relation to which information may be provided from the National Identity Register, without the consent of the individual concerned.

101. Clause 19(5) will allow for information held on the National Identity Register to be provided to Government departments and Northern Ireland departments for specified purposes. For example, information may be provided to the Department of Work and Pensions for investigation of social security fraud or to the Department for Social Development in Northern Ireland in connection with social security benefits or national insurance numbers.

102. Regulations for this purpose are appropriate for secondary legislation as they will require details to be set out of the departments and functions for the purposes of which information can be provided. They are also likely to require amendment to cater, for example, for Government reorganisations. The safeguards applicable to subsection (3)(c)

and (4)(f) will also apply to this power. It is considered that the negative resolution procedure offers sufficient parliamentary scrutiny.

*Clause 22 (1): Enables the Secretary of State to specify public authorities to whom information may be provided, without the individual's consent, in addition to the powers under Clauses 19 – 21*

*Power conferred on: Secretary of State*  
*Power exercisable by: Order made by statutory instrument*  
*Parliamentary procedure: Affirmative resolution*

103. The information supplied under this clause must be of a specified description and must be provided to specified public authorities for specified purposes.

104. The provision of information must comply with regulations made under clause 23 and excludes information falling within paragraph 9 of Schedule 1. The power may only be exercised when it is necessary in the public interest (defined in clause 1) to do so. The public authorities concerned will be subject to their own statutory and/or common law duties and powers as well as the legal obligations imposed under the Human Rights and Data Protection Acts. The more obvious recipients of information from the Register are dealt with explicitly in the preceding clauses, but it is regarded as essential to have a reserve power to use in the public interest if it should be necessary. For example, it is conceivable that the power could be used to specify public authorities that are not Government departments such as the emergency services or local authorities for specified purposes.

105. This provision is subject to the affirmative resolution procedure which is regarded by the department as providing the appropriate level of parliamentary scrutiny.

*Clause 23 (2): Enables the Secretary of State to impose requirements which must be met before information may be provided under Clauses 19 – 22, and to restrict the persons who may be authorised to act on his behalf in making such a provision of information*

*Power conferred on: Secretary of State*  
*Power exercisable by: Regulations made by statutory instrument*  
*Parliamentary procedure: Affirmative resolution*

*Clause 23 (4): Subsection (a) enables the Secretary of State to provide for an accreditation scheme for those to whom information may be provided under Clauses 19 – 22. Subsection (b) provides for an accreditation system for approving the apparatus used in connection with applications*

*Power conferred on: Secretary of State*  
*Power exercisable by: Regulations made by Statutory Instrument*  
*Parliamentary procedure: Affirmative resolution*

*Clause 23 (5): Enables the Secretary of State to make regulations allowing information to be provided under Clauses 19 – 22 to persons authorised by the recipient of the information, of a specified office, rank or position and under the direction or control of the recipient*

*Power conferred on: Secretary of State*  
*Power exercisable by: Regulations by statutory instrument*  
*Parliamentary procedure: Affirmative resolution*

106. The powers in Clause 23 (2), (3), (4) & (5) are needed to provide safeguards before information is provided without the consent of the individual to whom it relates under the powers in clauses 19 to 22. It would be difficult to cover in primary legislation all the different requirements for disclosing information in each of the circumstances permitted under those clauses. It is sensible, because of the level of detail required, to provide for this in secondary legislation.

107. For example, the regulations are likely to provide that applications from the police under clause 19(3) would need to be made by officers of a specified rank. Similar provision may be needed in relation to Government departments so that information is only made available under clause 19(5) at the request of a person of appropriate seniority. Clause 24(5) gives power to specify the appropriate level of recipient of the information.

108. The power under clause 23(4) read with clause 41(7) may be used to impose conditions as to security and confidentiality. The exact nature of the requirements and conditions will vary depending on the recipient of the information and will need to be drawn up in consultation with the recipient authorities. It is also likely that it will be necessary to change these requirements in the light of experience, for example if it were found that additional safeguards were required, or in the light of developing technology.

109. These provisions are suitable for subordinate legislation because of the need for detailed provision, the need to make different provision for different cases and the likely need to alter them from time to time. As they will contain important safeguards as to the use of information the affirmative resolution procedure is regarded as providing the appropriate level of parliamentary scrutiny.

## Offences

*Clause 28 (4): Enables the Secretary of State to modify the list of identity documents on which the Clause 27 offences of possession of false identity documents will bite*

*Power conferred on: Secretary of State*  
*Power exercisable by: Order made by statutory instrument*  
*Parliamentary procedure: Affirmative resolution*

110. The offences in clause 27 are intended to target identity fraud generally, hence the comprehensive list of “identity documents” in Clause (28)(1). However, over time, the types of relevant documents may change or new documents may be issued which should be included in this list. Clause 28((4) therefore gives the Secretary of State power to modify the list of documents by order.

111. As the exercise of this power would be amending primary legislation and extending the scope of a criminal offence, the affirmative resolution procedure is regarded as appropriate.

## Civil Penalties

*Clause 33 (2): Enables the Secretary of State to specify the manner in which a notice imposing a civil penalty must be given*

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercisable by:</i>	<i>Regulations made by statutory instrument</i>
<i>Parliamentary procedure:</i>	<i>Negative resolution</i>

112. Clause 33 sets out the procedure for the imposition of civil penalties under the bill. The level of detail required would not be suited to the face of the bill and may need to be changed as the scheme is developed.

113. It is considered that the negative resolution procedure would provide an appropriate level of parliamentary scrutiny for this administrative procedure.

*Clause 34 (2): Enables the Secretary of State to prescribe the manner in which a notice of objection to a civil penalty should be given and the period of time within which the objection must be made*

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercisable by:</i>	<i>Regulations made by statutory instrument</i>
<i>Parliamentary procedure:</i>	<i>Negative resolution</i>

114. The bill provides for those on whom civil penalties have been imposed to be able to object to them. It is expected that those objecting would do so by completing a form and submitting this to the Secretary of State within a set period. However, the exact details are yet to be determined. For example, it may be that online objections as well as the traditional paper objections should be acceptable.

115. As with Clause 33 (2) above, this level of detail is not suitable for primary legislation. It is also an administrative procedure which would be expected to be updated over time and should also be subject to the negative resolution procedure.

*Clause 34 (5): Requires the Secretary of State to specify the manner in which notification of the outcome of an objection must be made, and the timescale within which it must be made*

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercisable by:</i>	<i>Regulations made by statutory instrument</i>
<i>Parliamentary procedure:</i>	<i>Negative resolution</i>

116. As with Clause 34 (2) above, there will need to be a process dealing with the conclusion of the internal objection process. It is expected that the notification will be in writing but it may be that there are other details that will need to be prescribed, such as to what address it should be sent and with what accompanying information etc. The exact timescales for concluding the process may also change over time as technology improves.

117. In line with the other powers relating to the procedure for civil penalties, it is considered that regulations under Clause 34(5) should also be subject to the negative resolution procedure.

*Clause 35(2): Enables rules of court to specify the period in which an appeal against a civil penalty must be brought*

*Power conferred on: Civil procedure rule committee*

*Power exercisable by: Rules of court*

*Parliamentary procedure: Negative resolution*

118. Time periods for appeals to be brought are generally matters for rules of court. The relevant rules are made by the Civil Procedure Rule Committee under the Civil Procedure Act 1997 and are subject to the negative resolution procedure.

*Clause 36 (5): Enables the Secretary of State to bring the Code of Practice on civil penalties into force by Order*

*Power conferred on: Secretary of State*

*Power exercisable by: Order made by statutory instrument*

*Parliamentary procedure: Negative resolution*

119. A Code of Practice will set out matters to which the Secretary of State and the courts must have regard in imposing civil penalties under the Act and in considering objections and appeals to them. The Code will be a detailed document setting out matters to be taken into account in the exercise of functions relating to civil penalties. It may be necessary to revise the Code of Practice from time to time in the light of experience once it has been issued.

120. The Code will need to be laid in draft before Parliament pursuant to clause 36(4) before it is issued and the order provided for in clause 36(5) will specify when it comes into force. The order itself will be subject to negative resolution procedure. This is regarded as the appropriate level of parliamentary scrutiny.

## **Fees and Charges**

*Clause 37 (1): Enables the Secretary of State to set fees for, amongst other things, applications, modification of entries, issue of ID cards and applications for the provision of information*

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by statutory instrument*

*Parliamentary procedure: Affirmative resolution – first occasion*

*Negative resolution thereafter*

121. Clause 37(1) allows the Secretary of State to set fees for the ID Card Scheme. Fees provision is a suitable matter for subordinate legislation. Charges will have to be varied from time to time and different provision will be needed for different cases, for example there may be reduced fee or free cards for certain groups.

122. Subsection (2) gives power to make provision for payment by instalments or in advance. Subsections (3) and (6) set out the factors which the Secretary of State may take into account in setting fees.

123. Subsection (5) provides power to take account of costs of identity cards in setting fees for designated documents.

124. Treasury consent is required to regulations under this power. The Home Secretary agreed, following 2<sup>nd</sup> Reading of the Identity Cards Bill on 28 June 2005, that he would

consider making the first tranche of fees levied to be subject to the affirmative resolution procedure. The bill was subsequently amended at Committee stage. Subsequent changes to the fees would be subject to the negative resolution procedure and would also require Treasury consent.

### Provisions relating to passports

*Clause 39 (3) (e): Enables the Secretary of State to specify persons on whom a requirement to provide information may be imposed in order to verify information in connection with a passport application or a decision to withdraw a passport*

*Power conferred on: Secretary of State*  
*Power exercisable by: Order made by statutory instrument*  
*Parliamentary procedure: Affirmative resolution*

125. This provision is drafted to allow data to be shared in order to make thorough background checks on people applying for passports in a similar way to the validation of ID Card applications under clause 11. It will allow additional data sources to be specified by order so that identity information provided by passport applicants may be checked by the United Kingdom Passport Service. The Secretary of State can only require the provision of information which could be used to verify information provided with an application for a passport or in deciding whether to withdraw a passport.

126. As bodies specified in an order under this power will be under a legal obligation to provide relevant information and the consent of the person concerned is not required, it is thought appropriate that the power is subject to the affirmative resolution procedure.

*Clause 40 (5): Enables the Secretary of State to amend primary and secondary legislation to add a reference to ID cards to any reference to a passport*

*Power conferred on: Secretary of State*  
*Power exercisable by: Order made by statutory instrument*  
*Parliamentary procedure: Affirmative resolution (if primary legislation amended); Negative resolution (if subordinate legislation amended)*

127. This reserve power will ensure changes can be made in any case where there is a reference to passports in existing primary or subordinate legislation. This provision provides the flexibility to ensure that the ID card, as a highly reliable form of identity, may be used in the widest range of circumstances by an individual to establish his identity, but conversely could not be used to evade travel restrictions. In cases already identified, appropriate changes are made to the legislation concerned in clause 40.

128. Although this power would enable amendments to be made to primary legislation, the scope of any such change is extremely limited (adding “ID card” where there is a reference to a passport). The bill provides that any such amendments to primary legislation require the affirmative resolution procedure, whilst it is considered that amendments to existing subordinate legislation should be subject to the negative resolution procedure.

### Supplemental

129. Clause 41 contains general provisions about subordinate legislation under the bill.

130. Subsection (4) provides that all the order and regulation making powers in the bill can be used to make different provision for different cases; to provide exceptions; and to make incidental, supplemental consequential and transitional provision.

131. Subsection (5) provides that any order or regulations which relate to under 16s includes power to designate someone to act on their behalf and for any obligations and liabilities under the Act to be placed instead on that person. This power will only be necessary if an order is made under clause 2(6) which reduces the age of entitlement to registration.

132. Subsection (6) has the effect that if an order under clause 3(5) amends Schedule 1, it can also make consequential modifications to cross references in the Act and to sections 14(2) and (3).

133. Clause 41(7) extends the powers in clauses 14(5) and (6), 17(2) and (3) and 23(3) and (4) so that regulations for the approval of a person or of apparatus include power to prescribe and modify conditions to which approval is subject and to suspend or withdraw an approval.

134. In conjunction with the powers in those sections, clause 41(7) allows regulations to provide for grant of approval subject to specific conditions, for example that the organisation maintains an agreed level of security, which can be modified as greater levels of security are available. The power can also be used to suspend or withdraw an approval, for example where the organisation has misused the verification service.

*Clause 43 (10): Enables the Secretary of State to make regulations in relation to the circumstances in which a place is to be regarded as the place where a person resides, or as his principal place of residence within the United Kingdom*

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by statutory instrument*

*Parliamentary procedure: Negative resolution*

135. This provision provides an opportunity for a more detailed definition of residence. Places of residence are registrable facts for the purposes of clause 1(5)(b) to (d) and an individual's principal place of residence and other addresses where he has a place of residence may be recorded in the Register under paragraph 1(f) and (g) of Schedule 1. The changes of circumstance which must be notified under clause 12(1)(a) are likely to include changes to these particulars.

136. Regulations are likely to be necessary to set out how a place of residence is to be attributed to those who have no fixed abode and to establish how a principal place of residence is established for those who have more than one residence, for example students who may have a term time and a permanent home address. This type of detailed provision which will require different provision for different categories of person is suitable for subordinate legislation. In the department's view, negative resolution procedure will provide adequate parliamentary scrutiny.

