



House of Lords
House of Commons
Joint Committee on
Human Rights

Legislative Scrutiny: Identity Documents Bill

Second Report of Session 2010-11

*Report, together with formal minutes and
written evidence*

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Joint Committee on Human Rights

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

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

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The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

Publications

The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at <http://www.parliament.uk/jchr>

Current Staff

The current staff of the Committee is: Mike Hennessy (Commons Clerk), Rob Whiteway (Lords Clerk), Murray Hunt (Legal Adviser), Angela Patrick (Assistant Legal Adviser), James Clarke (Senior Committee Assistant), Michelle Owens (Committee Assistant), Claudia Rock (Committee Assistant), Greta Piacquadio (Committee Support Assistant), and Keith Pryke (Office Support Assistant).

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Summary

The Identity Documents Bill implements the Government's commitment to abolish ID Cards and the National Identity Register (NIR) by repealing the Identity Cards Act 2006. Our predecessor Committee raised concerns about the compatibility of ID Cards and the NIR with the right to respect for private life and the right to enjoy that respect without discrimination. On the grounds that the Bill removes these concerns, we welcome it as a significant human rights enhancing measure.

Although the Bill has a significant human rights enhancing effect, we believe certain provisions raise human rights concerns.

Personal Information gathered in relation to the National Identity Register

Clause 3 of the Bill requires the Secretary of State to destroy all information recorded in the NIR within two months of the Bill receiving Royal Assent. We recommend that Clause 3 be amended to ensure that not only information held on the NIR but all other information collected in connection with the NIR be destroyed in line with the requirements of the Data Protection Act 1998, and without delay.

We welcome the Government's decision to consult with the Information Commissioner's Office on the destruction of the information and recommend that the Government provide information on the outcome of this consultation during the next stages of the Bill's passage. We believe that the Government should report to Parliament on the progress of the destruction of the information and welcome the Government's commitment to produce a Written Ministerial Statement on completion of the destruction.

Offences related to Identity Documents

Clauses 4, 5 and 6 of the Bill re-enact Section 25 of the Identity Cards Act 2006, retaining offences relating to the possession of false identity documents. The practical use of these offences could engage the right to private life and we call on the Government to provide Parliament with a more detailed justification of why these offences are necessary and an explanation of what conduct is criminalised by these offences that is not already caught by existing legislation.

Information sharing and passport related information

Clause 10 of the Bill gives the Secretary of State the power to compel a range of public and private bodies to provide any "relevant information" for purposes connected with the issuing of a passport. These powers engage the right to respect for private information, but it is unclear what information the Minister would seek and what safeguards apply, as the power in Clause 10 is widely defined. The Government should provide further detail about the information to be sought and the safeguards that will apply, in order to clarify the proportionality and necessity of the power.

Non-EEA nationals' residence permits

The Bill raises questions over the separate regime for non-EEA nationals' residence permits. We welcome the Government's statement that it regards it as inappropriate to treat non-

EEA residence permits as ID Cards. Our predecessor Committee raised concerns that the residence permit scheme may interfere with the right to enjoy respect for private life without discrimination. The Government should provide further information on this issue, including a statement of the Government's view on its compatibility with international human rights standards on privacy and the protection of minorities from unlawful discrimination.

Bill drawn to the attention of both Houses

Identity Documents Bill

Date introduced to first House	26 May 2010
Date introduced to second House	5 October 2010
Current Bill Number	HL Bill 19

Background

1.1 The Identity Documents Bill was introduced in the House of Commons on 26 May 2010,¹ completed its final stages in the House of Commons on 15 September 2010, and was introduced in the House of Lords on 5 October 2010. It is due to receive its Second Reading on 18 October 2010.

1.2 The Home Office minister, Baroness Neville-Jones, has certified that in her view the Bill is compatible with Convention rights.

Explanatory notes

1.3 Apart from a recitation of the Home Secretary's statement of compatibility under s. 19 of the Human Rights Act, there is no information on human rights issues in the human rights section of the Explanatory Notes accompanying the Bill.² The Home Office did, however, produce a short human rights memorandum, following discussions between the Bill team and Committee staff, which we reported to both Houses on 8 September 2010.³

1.4 We welcome the engagement of Home Office officials with our scrutiny of this Bill and we are grateful for the provision of further information, in the Home Office's human rights memorandum, about the human rights issues raised by the Bill. Unfortunately, while the memorandum provides useful additional information to assist our analysis, it does not provide a full explanation of the Government's view that the Bill's provisions are compatible with the human rights obligations of the UK.

1.5 Our predecessor Committees have in the past recommended that Departments provide free-standing human rights memoranda relating to Government Bills which would (a) provide further information about the Government's view that the Bill is compatible with Convention rights; (b) outline the Government's legal analysis, including the basis for any justification for interference with individual rights; (c) provide evidence where necessary to support that justification; (d) deal with any issues relating to the international human

1 HC Bill 1

2 Bill 1-EN paras 34-35.

3 Letter from Home Office Identity and Passport Service dated 3 September 2010, Ev 1, p 18 (hereafter "Home Office Memorandum").

rights obligations of the UK not arising from the ECHR; and (e) deal with any potential human rights enhancing measures in the Bill.⁴

1.6 We agree with our predecessor Committees that the preparation by Government departments of free-standing human rights memoranda giving more detailed information about human rights aspects of Bills would reduce the need for detailed correspondence between our Committee and Ministers. Publication of such memoranda by Departments, together with the Bill and its Explanatory Notes, would increase accessibility and transparency for parliamentarians and members of the public following the progress of the Bill in question.

Purpose and effect of the Bill

1.7 The Bill is designed to implement the Government's commitment to abolish ID cards and the National Identity Register (NIR) by repealing the Identity Cards Act 2006.⁵ The Bill also re-enacts certain provisions in the 2006 Act which are unrelated to ID cards. These re-enacted provisions cover offences relating to the possession and manufacture of false identity documents such as passports and driving licences, and data-sharing provisions designed to verify information provided in connection with passport applications.

1.8 During the passage of the Identity Cards Act 2006, our predecessor Committees in both the 2001-05 Parliament⁶ and the 2005-10 Parliament⁷ raised concerns about the compatibility of compulsory or voluntary ID cards and the National Identity Register with the right to respect for private life and the right to enjoy that respect without discrimination (Articles 8 and 14 ECHR). In their reports on the Bill, the previous Committees recognised that the requirement to carry an identity card does not of itself raise human rights issues. However the provisions for retention, storage and use of information on the National Identity Register engaged the right to respect for personal information, as guaranteed by Article 8 ECHR. The JCHR also raised concerns about the potential for the ID Cards scheme to be operated in a way which disproportionately affected certain groups, engaging the right to enjoy respect for private life without unjustified discrimination (Articles 8 and 14 ECHR). Our predecessor Committees' principal concerns related to the wide provision for sharing information from the NIR between public bodies and with the private sector; the potential for compulsory registration to interfere with private life without sufficient justification or adequate safeguards; and the potential for compulsory elements of the scheme to have a disproportionate impact on minority groups.⁸

1.9 The Government argues that the scrapping of the ID card scheme would resolve a number of the concerns raised by the JCHR in earlier reports on the ID Cards Bill.⁹ It

4 See e.g. Joint Committee on Human Rights, Sixth Report of Session 2007–08, *The Work of the Committee in 2007 and the State of Human Rights in the UK*, HL Paper 38, HC 270, para 24

5 The Coalition's Programme for Government, p. 11.

6 Fifth Report of Session 2004-05, *Identity Cards Bill*, HL 35/HC 283 and Eighth Report of Session 2004-05, *Legislative Scrutiny: Fourth Progress Report*, HL 60/HC 388.

7 First Report of Session 2005-06, *Legislative Scrutiny: First Progress Report*, HL 48/HC 560, paras 4.1-4.29.

8 First Report of 2005-06, *Legislative Scrutiny: First Progress Report*, HL 48/HC 560, paras 4.1– 4.29.

9 Home Office Memorandum, above n.3.

claims that the Bill represents “a major step in reducing the ability of the state to collect voluminous personal information from the individual.”

1.10 We share the concerns of our predecessor Committees that the operation of the Identity Cards Act 2006 could lead to infringements of the right to respect for private life and the right to enjoy that right without discrimination. In so far as the Bill removes these concerns, in our view it is to be welcomed as a significant human rights-enhancing measure.

Significant human rights issues

1.11 Although the Bill has a significant human rights enhancing effect, a number of human rights issues have arisen in the course of debate on the Bill.

(1) Personal Information gathered in relation to the National Identity Register

1.12 Clause 3 of the Bill requires the Secretary of State to destroy all information recorded in the National Identity Register (NIR) within two months of Royal Assent. The Information Commissioner has argued that the Secretary of State should be obliged to destroy not only information held on the NIR but all other information collected and held in connection with the ID Cards Scheme and the NIR. This could include personal information disclosed in relation to inquiries about obtaining a card. Since the Data Protection Act 1998 requires any personal data which is no longer necessary for its purpose to be destroyed, the Secretary of State has an existing legal obligation to do this. However, there is no prescribed time within which the information should be destroyed. In his submission to the Public Bill Committee on the Bill in June 2010, the Information Commissioner argued that all personal information relating to individuals whose details were recorded on the register or expressed an interest in being on the NIR should be required to be destroyed, and that therefore the definition of information to be required to be destroyed should be clarified in clause 3.¹⁰

1.13 Amendments were tabled at Report stage which would have required the Secretary of State to report to Parliament within three months of the deadline in Clause 3, outlining the steps taken to destroy the relevant information. These amendments were not accepted by the House of Commons. The Government has confirmed, both in its human rights memorandum and at Report stage, that initial discussions have taken place with the Office of the Information Commissioner about the process and timing of destruction of the data and that more detailed proposals will soon be submitted for consideration and comment. The Minister, Damian Green, explained:

We are in contact with the Information Commissioner’s Office about the destruction process, as I have said, precisely to ensure transparency and openness about the physical destruction process...I had jokingly suggested that we might have a sort of auto-de-fe of all that unnecessary information. I was only half joking when I said that and, sadly it is not possible because the information is on various databases and

¹⁰ Information Commissioner’s evidence to Identity Documents Bill Public Bill Committee, ID 09, para 4, www.publications.parliament.uk/pa/cm201011/cmpublic/identity/memo/mid09.htm

we are going to have to delete it...That is why we are doing it in conjunction with the Information Commissioner.¹¹

1.14 The Minister explained that it had always been the Government's intention to report on the destruction of information held on the NIR to Parliament. Although the Government did not accept that a statutory requirement to report was necessary, he made a commitment to issue a Written Ministerial Statement as soon as the Government had discharged its obligations under Clause 3. This Statement will cover when information was destroyed and its manner of destruction.¹²

1.15 We share the view of the Information Commissioner that the definition in Clause 3 of the information that should be destroyed should be clarified, to ensure that all information collected in connection with the NIR is destroyed, in keeping with the requirements of the Data Protection Act 1998, and without delay. We also support the proposal put forward at Report stage in the Commons that the Government should report to Parliament on the progress towards the destruction of this information and the decommissioning of the NIR. We welcome the Government's decision to consult the Information Commissioner's Office on the destruction of the data. We recommend that the Government provide further information about the outcome of this consultation during the next stages of the Bill's passage. We also welcome the Minister's commitment to produce a Written Ministerial Statement when the Government has complied with the obligation in Clause 3 explaining the process and outcome of the destruction.

(2) Offences relating to identity documents

1.16 Clauses 4, 5 and 6 of the Bill re-enact Section 25 of the Identity Cards Act 2006, retaining offences relating to the possession of false or improperly obtained identity documents, or identity documents that belong to someone else. During the passage of the Bill, a number of concerns have been raised about the scope of these offences:

- JUSTICE and No2ID have raised the concern that the scope of these offences is over broad, that they lack legal certainty and that they have the potential to interfere with individuals' right to respect for private life. JUSTICE is concerned that these offences duplicate existing criminal offences, including in the Fraud Act 2006, and they consider that the re-enactment of these offences is unnecessary.¹³ No2ID objects in principle that these offences require an individual who has a reasonable excuse for having several identities to raise this defence to escape prosecution. No2ID is concerned that this creates the presumption that individuals who use multiple names (such as married women who use different names for professional and personal purposes, actors, writers and people undergoing gender reassignment) may be unnecessarily criminalised.¹⁴

11 HC Deb, 15 Sept 2010, Col 946

12 *Ibid.*

13 ID 01, Justice evidence to Identity Documents Bill Public Bill Committee, para 7, www.publications.parliament.uk/pa/cm201011/cmpublic/identity/memo/mid01.htm

14 No2ID, Parliamentary Briefing for Second Reading, www.no2id.net/IDSchemes/2010-06-08-identity-documents-bill-briefing.pdf

- The Information Commissioner considers that guidance is necessary to ensure that these clauses do not have unintended consequences in practice for the private lives of individuals. He argues that the clauses may be broad enough to create concerns that carrying third-party identity documents for legitimate reasons (for example, carers carrying information and documents on behalf of the people they support) will be illegal.¹⁵

1.17 The offence in Clause 4 relates to the use of false identity documents or other identity documents with an “improper intention”. An improper intention is defined in Clause 4 as the use of an identity document to establish personal information about a person other than the person to whom the documents relate, or to allow or induce another to use it for ascertaining or verifying such personal information. In our view, this definition adequately limits the offence to circumstances in which individuals use third party or fraudulent documents to illegitimately present inaccurate information about themselves or others. However, Clause 6 makes it an offence to possess or control any identity document relating to someone else, without reasonable excuse. This means that, if prosecuted, the holder of any identity document will have to establish that the document relates to them, or, where the document clearly belongs to another person, that they have a reasonable excuse for carrying it. In many circumstances, reasonable excuse will either be obvious or easily established. However, the practical implementation of this offence could engage the right to respect for private life and the additional guidance called for by the Information Commissioner could avoid arbitrary and intrusive action in response to the offence in practice.

1.18 The Home Office’s human rights memorandum does not deal with this issue in any detail, other than to commit the Government to keeping the relationship between these offences and similar offences under review and to explain that these powers are “important operational tools” which are “subject to regular and frequent use”.¹⁶

1.19 Given that this issue relates to the justification for the continued application of criminal offences, this is a far weaker justification than we would usually expect from the Government. In view of the Coalition Government’s commitment, in its Programme for Government, to prevent the proliferation of unnecessary new criminal offences, we find the weakness of the justification offered even more surprising. **We recommend that the Government provide Parliament with a more detailed justification of why these offences are necessary, including statistics on their actual use and an explanation of precisely what conduct is criminalised by these offences which is not already caught by existing offences in the Forgery and Counterfeiting Act 1981 and the Fraud Act 2006.**

(3) Information sharing and passport-related information

1.20 Clause 10 of the Bill requires certain bodies, including private sector bodies, to provide certain information to the Secretary of State for purposes connected with the issuing of passports. Credit reference agencies may be required to provide or verify information, including for example, confirming the address of an applicant. The Information Commissioner explains that this statutory obligation will override the requirements of the

¹⁵ Information Commissioner’s evidence to Identity Documents Bill Public Bill Committee, ID 09

¹⁶ Home Office memorandum, Ev 1, p 19

Data Protection Act 1998 that information must be protected by the data controller and used only for purposes for which they were gathered. The Information Commissioner's view is that compulsion of private data controllers is unnecessary, but that, if it remains in the Bill, the Secretary of State should be required to record and publish details of when and how this power is used in practice.¹⁷

1.21 The power in Clause 10 is broadly defined. It gives the Secretary of State the power to compel a range of public authorities and credit reference agencies to share any "relevant information" held. Relevant information is defined broadly to include any information for "verifying" information provided to the Secretary of State in connection with an application for a passport or for the purposes of determining whether to withdraw a passport. At Committee Stage, the Minister explained the Government's view that this power reflected existing practice in the private sector:

The use of a credit reference agency mirrors the approach in the private sector, which routinely uses such agencies for bank loans or credit applications. Whereas the focus may be on credit worthiness, it also provides organisations with some confidence in the identity of the person applying for the bank or credit facility, and enables them to check personal details such as an address and the length of time that a person has resided there. Checks with an external credit agency, in addition to the range of governmental agencies, provide a high degree of security and verification in considering applications for passports. It would be odd if the Identity and Passport Service could not check an applicant's identity with a credit reference agency, when mobile phone companies, shops, and banks and building societies that offer credit terms do so every day.

The information supplied to the Identity and Passport Service is automatically deleted 28 days after a passport has been issued. When a passport has been refused, the information is retained for possible investigative and prosecutorial purposes. We hope that that is an appropriate and proportionate approach to data retention.¹⁸

1.22 There is not an exact comparison between the power in Clause 10 and the private sector's use of the commercial services of credit reference agencies. Information obtained and retained by credit reference agencies is obtained and collated for the purposes of providing credit checks for commercial and consumer transactions. Questions may arise over whether this information is held and processed in a manner which complies with the Data Protection Act 1998, but it is held and processed subject to that statutory framework. The Clause 10 power does not relate to "credit checking", but allows the Secretary of State to compel third parties, including bodies which are not credit reference agencies, to disclose information for another purpose, despite the application of the Data Protection Act 1998. The definition of "relevant information" provided does not limit the type or kind of information gathered to the kind of information which might be gathered during a credit check, or to the information required for the purposes of verifying a passport application.

17 Information Commissioner's evidence to the Identity Documents Bill Public Bill Committee, para 9
<http://www.publications.parliament.uk/pa/cm201011/cmpublic/identity/memo/mid09.htm>

18 HL Deb, 6 July 2010, Cols 113 – 114

1.23 The Home Office’s human rights memorandum explains the Government’s view that these proposals are appropriate, as they are limited to information that “must be in connection with the passport consideration”. It explains:

“for example, a credit reference agency may provide verification of a previous address but it would not provide information about a mortgage obtained by the applicant for that property”.¹⁹

1.24 This was not immediately apparent from the text of the Bill as introduced, which potentially provides far broader information sharing powers. The Commons agreed at Report stage to Government amendments designed to introduce greater certainty. The amended text would permit the Secretary of State to retain the information gathered for no more than 28 days after a passport is granted, or long enough to inform any relevant investigation or prosecution should a passport be refused or withdrawn. The Minister explained:

The amendments before the House would place a statutory limitation in the Bill, requiring that information be obtained only in respect of the passport application. It would not be appropriate for two reasons, still less practical, to list what that information may be. First, doing so would obviously alert potential fraudsters to the categories or sources of information being used and may give them an indication of what information sources they should satisfy to ensure that a fraudulent passport application might be successful. Secondly, the format and source from which the information could be obtained is not exhaustive and it would be unnecessarily restrictive on the operational ability of the Identity and Passport Service not to be able to make use of verification sources that would support the main aim of preventing fraud. Importantly we believe that we have strengthened the legislation by clarifying in the Bill that any information required must be relevant to the passport application.²⁰

1.25 The powers in Clause 10 engage the right to respect for private information as protected by Article 8 ECHR. While the aim of verifying passports and withdrawing passports unlawfully held serves a legitimate aim, in the light of the breadth of the power proposed it is difficult for us to take a definitive view on the proportionality and necessity of the power contained in Clause 10. It is unclear what information the Minister would seek, and from whom, and what safeguards would apply for the purposes of processing that information further. **We welcome the Government’s amendment of Clause 10, which gives the Secretary of State power to compel public authorities and credit reference agencies to share “relevant information”, to ensure that information will be obtained only in respect of a passport application. We recommend, however, that the Government provide further information on the information to be sought, and the safeguards that will apply, in order to clarify the proportionality and necessity of this power.**

19 Home Office Memorandum, Ev 1, p 19

20 HC Deb, 15 Sept 2010, Cols 957-58

(4) Non-EEA nationals' residence permits

1.26 The Bill also indirectly raises questions about the human rights compatibility of the separate but analogous regime for non-EEA nationals' residence permits. Introducing this Bill, the Home Office explained that: “[t]he identity card for foreign nationals (biometric residence permit) is not being scrapped”.²¹ However, there is no separate identity card scheme for non-nationals, although the UK Borders Act 2007 introduced a power to require anyone subject to immigration control to apply for a biometric immigration document. In 2008, an EU Regulation came into force, requiring all non-EEA nationals in the EU to hold a residence permit containing certain biometric information.²² The information required includes a photograph and two fingerprints. This provision is implemented by domestic regulations under the UK Borders Act 2007,²³ since the Regulation has been voluntarily accepted by the UK.

1.27 Our predecessor Committee raised significant concerns about the proportionality of the operation of non-EEA national residence permits and the storage of information collected in connection with these residence permits and its compatibility with the right to enjoy respect for privacy without unjustified discrimination. Their concerns included:

- A lack of definition on the face of the Bill could lead to its disproportionate application in practice, including in respect of its potential application for purposes unrelated to immigration and in respect of its application to children;
- The length of time for which information could be retained; and
- The potential for the use of the permits to lead to racial profiling and racial discrimination in practice.²⁴

1.28 These and other concerns have been reflected in the debate on this Bill:

- Several NGOs and MPs have raised concerns about the non-EEA residence permit being labelled as an ID Card for non-nationals. During the second reading debate on the Bill, the Minister clarified that this language was not appropriate and that there should be a clear distinction drawn between the ID Card scheme and the biometric requirements for the residence permits for non-EEA nationals. She stated that the residence permits had been called ID cards for foreign nationals by the previous Government for “purely political purposes”.²⁵ Such use of language could give the impression that the permit could be used for purposes far wider than immigration, with the associated potential for discrimination against minority groups in connection with the residence permits.
- A number of NGOs and both the Equality and Human Rights Commission (EHRC) and the Northern Ireland Human Rights Commission²⁶ have raised the discriminatory

21 www.ips.gov.uk/cps/rde/xchg/ips_live/hs.xsl/53.htm

22 Council Regulation (EC) No. 380/2008

23 The Immigration (Biometric Registration) Regulations (SI 2008/3048)

24 Thirteenth Report of 2006-07, *Legislative Scrutiny: Sixth Progress Report*, HL 105/HC 538, paras 1.20 – 1.29. www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/105/10504.htm#a3

25 HC Deb, 9 June 2010, Col 349. See also Col 432 (Rt Hon Damian Green MP)

26 Northern Ireland Human Rights Commission, *Legislative Scrutiny Priorities: Written Evidence to the Joint Committee on Human Rights* (October 2010), Ev 2, p 22

impact of the UK Borders Act 2007 and the operation of the non-EEA residence permit during the passage of this Bill. These concerns broadly coincide with the conclusions of our predecessor Committee in its report on the UK Borders Bill, and include:

- Biometric residence permits should only be used for immigration purposes;
- Collation of biometric information by the National Biometric Identity Service is not subject to statutory regulation and the creation of a database of biometric information including personal data should be accompanied by statutory safeguards for the protection of privacy rights.
- The UK currently gathers more biometric information than is required by EU law (for example 10 sets of fingerprints rather than two).
- There is no limitation on the time for which biometric information is stored and no provision that information should be destroyed when no longer needed for information purposes.²⁷

1.29 Although not strictly within the bounds of this Bill, significant human rights issues have been raised in connection with the processing of the personal information of non-EEA nationals for the purposes of immigration. **We welcome the Government's reassurance that it is inappropriate to consider or treat non-EEA residence permits as ID cards.**

1.30 **Our predecessor Committee was concerned that the provisions in the UK Borders Act 2007 relating to non-EEA residence permits may interfere with the right to enjoy respect for private life without discrimination. We recommend that the Secretary of State provide further information on the operation of the residence permits scheme, including a statement of the Government's view on its compatibility with international human rights standards on privacy and the protection of minorities from unlawful discrimination.**

²⁷ See for example, Liberty, Committee Stage Briefing on the ID Bill, July 2010; Equality and Human Rights Commission, Parliamentary Briefing: Identity Documents Bill, 29 June 2010; No2ID, Parliamentary Briefing on Commons Second Reading of the Identity Documents Bill, June 2010.

Conclusions and recommendations

Explanatory notes

1. We agree with our predecessor Committees that the preparation by Government departments of free-standing human rights memoranda giving more detailed information about human rights aspects of Bills would reduce the need for detailed correspondence between our Committee and Ministers. Publication of such memoranda by Departments, together with the Bill and its Explanatory Notes, would increase accessibility and transparency for parliamentarians and members of the public following the progress of the Bill in question. (Paragraph 1.6)

Purpose and effect of the Bill

2. We share the concerns of our predecessor Committees that the operation of the Identity Cards Act 2006 could lead to infringements of the right to respect for private life and the right to enjoy that right without discrimination. In so far as the Bill removes these concerns, in our view it is to be welcomed as a significant human rights-enhancing measure. (Paragraph 1.10)

Significant human rights issues

3. We share the view of the Information Commissioner that the definition in Clause 3 of the information that should be destroyed should be clarified, to ensure that all information collected in connection with the NIR is destroyed, in keeping with the requirements of the Data Protection Act 1998, and without delay. We also support the proposal put forward at Report stage in the Commons that the Government should report to Parliament on the progress towards the destruction of this information and the decommissioning of the NIR. We welcome the Government's decision to consult the Information Commissioner's Office on the destruction of the data. We recommend that the Government provide further information about the outcome of this consultation during the next stages of the Bill's passage. We also welcome the Minister's commitment to produce a Written Ministerial Statement when the Government has complied with the obligation in Clause 3 explaining the process and outcome of the destruction. (Paragraph 1.15)
4. We recommend that the Government provide Parliament with a more detailed justification of why these offences are necessary, including statistics on their actual use and an explanation of precisely what conduct is criminalised by these offences which is not already caught by existing offences in the Forgery and Counterfeiting Act 1981 and the Fraud Act 2006. (Paragraph 1.19)
5. We welcome the Government's amendment of Clause 10, which gives the Secretary of State power to compel public authorities and credit reference agencies to share "relevant information", to ensure that information will be obtained only in respect of a passport application. We recommend, however, that the Government provide further information on the information to be sought, and the safeguards that will

apply, in order to clarify the proportionality and necessity of this power. (Paragraph 1.25)

6. We welcome the Government's reassurance that it is inappropriate to consider or treat non-EEA residence permits as ID cards. (Paragraph 1.29)
7. Our predecessor Committee was concerned that the provisions in the UK Borders Act 2007 relating to non-EEA residence permits may interfere with the right to enjoy respect for private life without discrimination. We recommend that the Secretary of State provide further information on the operation of the residence permits scheme, including a statement of the Government's view on its compatibility with international human rights standards on privacy and the protection of minorities from unlawful discrimination. (Paragraph 1.30)

Formal Minutes

Tuesday 12 October 2010

Members present:

Dr Hywel Francis, in the Chair

Lord Bowness	Mr Dominic Raab
Baroness Campbell of Surbiton	Mr Richard Shepherd
Lord Dubs	Mr Andy Slaughter
Lord Lester of Herne Hill	
Baroness Morris of Bolton	
Lord Morris of Handsworth	

Draft Report, *Legislative Scrutiny: Identity Documents Bill*, proposed by the Chairman, brought up and read

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

Paragraphs 1.1 to 1.30 read and agreed to.

Summary read and agreed to.

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

Ordered, That the Chairman make the Report to the House of Commons and that Lord Lester make the Report to the House of Lords.

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned till Tuesday 19 October at 2.00 pm

List of Written Evidence

- 1 Letter from Deputy Director, Policy, Identity and Passport Service, to the Commons Clerk of the Committee, dated 3 September 2010 p 18
- 2 Written Evidence from the Northern Ireland Human Rights Commission, to the Committee, dated October 2010 p 22
- 3 Written Evidence from the Equality and Human Rights Commission, to the Committee, dated 12 October 2010 p 25

Written Evidence

1. Letter from the Deputy Director Policy, Identity and Passports Service, to the Commons Clerk of the Committee, 3 September 2010

Identity Documents Bill

Following a very helpful meeting with the JCHR's Assistant Legal Adviser and Lords Clerk, I agreed to set out some of the detail of the Bill and associated areas that may be of interest to the Committee.

2. The Identity Documents Bill, due to reach Report Stage in the Commons on 15 September, will cancel the ID card scheme and require the destruction of the National Identity Register. The Bill will re-enact certain provisions around criminal offences and consular fees. The Bill meets the commitment made in the Coalition Agreement to scrap the ID card scheme.

Removal of the requirement to issue ID cards

3. The Bill would remove the requirement for the Secretary of State to issue an ID card with immediate effect of the Bill receiving Royal Assent. Currently any new applicants for an ID card are informed of the commitment of the Coalition Government to scrap the ID card scheme and that this Bill is being considered by Parliament. New cards are not being issued pending the outcome of Parliamentary consideration of the Bill. This is to minimise the cost to the taxpayer and to avoid an individual paying £30 for a card that may have a very short validity.

Cancellation of cards

4. Existing cardholders have been notified in writing of the introduction of the Bill and of the intention of the Coalition Government to scrap the ID card scheme with all cards to be cancelled within one month of Royal Assent. They will be further notified in writing after the Bill receives Royal Assent in accordance with Clause 2(3) of the Bill, assuming that this provision remains unamended. The information will also be available on the Directgov and IPS websites. Cardholders are provided with contact points for further advice or assistance.

Return of existing ID cards

5. Consideration was given to asking existing cardholders to return their card following enactment of the Bill. However, it was considered that this would be a cumbersome and potentially costly exercise and would serve little or no benefit. It would be a wasteful use of resources to retrieve all cards when the level of risk associated with cards remaining with the individual was considered negligible and any compulsion to return the cards backed up by either civil or criminal penalties was entirely inappropriate. Furthermore, seeking return of the cards would require retention of the personal data held on the National Identity Register until the cards were returned.

Destruction of data

6. The Bill requires the destruction of data recorded on the National Identity Register within two months of the Bill being enacted. The Identity and Passport Service are currently engaging with contractors and practitioners on the process and timing of destruction of the data. Initial discussions have taken place with the Office of the Information Commissioner and the more detailed proposals will be submitted shortly to that Office for comment and consideration.

Re-enactment of Criminal Offences

7. As indicated in paragraph 2 above, the Bill proposes the re-enactment of the offences currently contained in sections 25 and 26 of the Identity Cards Act 2006. The offences apply to fraudulent use or production of identification documents other than ID cards. The focus of the offences is on preventing fraud and tackling those who attempt to benefit from fraudulent identity. The powers available to investigate the offences are used on a daily basis by police and other enforcement agencies and resulted in almost 3,000 convictions last year

8. We, together with the Ministry of Justice, will continue to keep the application of the powers under review and will particularly examine the relationship with other similar-type offences contained in other fraud and counterfeiting legislation. The provisions in the Bill are important operational tools, subject to regular and frequent use. For that reason, we consider that it is important the offences are re-enacted in the Bill.

Verification of Information

9. Clause 10 of the Bill re-enacts section 38 of the Identity Cards Act 2006. It contains provisions to allow for the Secretary of State to require relevant information in order to verify information submitted by an applicant for a passport or in the determination of a decision to withdraw a passport. The Clause requires that the information requested must be in connection with the passport consideration. For example, a credit agency may provide verification of a previous address but it would not provide information about a mortgage obtained by the applicant for that property. The information must be of direct relevance to the consideration of whether to issue or withdraw a passport.

10. During debate at Committee Stage, Damian Green sought views of Members of the Committee on how we could increase transparency and public accountability by ensuring that a data retention policy is set out in the Bill. The Minister is currently looking at the contents of Clause 10 and is considering the points raised ahead of Report Stage of the Bill on 15 September to determine whether additional safeguards may be applied in this provision.

Refunds

11. There are currently fewer than 15, 000 ID cards in circulation of which almost 3, 000 were issued free of charge to airside workers. The Coalition Government has made clear that it does not intend to provide a refund to cardholders. Ministers have indicated that they intend to scrap the ID card system with the least possible cost to the taxpayer.

Ministers have also stated that they clearly voiced their objections to ID cards when in Opposition and that would-be cardholders would have known that the scheme would be scrapped shortly.

12. Comment has been raised that the absence of a refund provision in the Bill is denying cardholders access to safeguards set out in consumer protection legislation. However, an ID card would not be considered as a consumer good. That is because the issue and the holding of an ID card are not considered to be in the nature of a consumer transaction and a sale of goods.

13. The impact of the no-refund policy on cardholders is difficult to measure as the National Identity Register does not contain socio-economic data on cardholders. Therefore, the cost of undertaking such an assessment would be disproportionate to the number of cardholders involved. Additionally, the vast majority of people who paid for card are or were existing passport holders.

Transgender

14. The Identity Cards Act 2006 made provisions for citizens undergoing gender realignment to hold two ID Cards with one authorised for travel purposes (in Europe) in their chosen gender. The two ID Cards were tied to a single identity record on the National Identity Register. This option is currently not available for passports which are an individual identity document enabling travel. Currently citizens need to decide their chosen gender with which they wish to be known and have a passport issued in this name.

15. Lynne Featherstone indicated at Commons Committee Stage that IPS would consult with governmental and international agencies, including the International Civil Aviation Organisation (ICAO). Moving to issuing two passports raises significant security issues, not least in raising the potential for a person to enter or leave countries under different identities/ genders. A further aspect which will be examined is the possibility of removal of gender identification. This is a major area of work which extends beyond passports and the work will be taken forward over the coming months.

16. There are two further issues which are not provisions of the Bill or the ID card scheme but have been raised during the passage of the Bill.

Biometric Residents Permits

17. The Biometric Residence Permit provides EU states with consistency in documents for third-country nationals and contributes to preventing illegal immigration and residence. The use of biometric identifiers protects the residence permit against fraudulent use by connecting the permit to the holder.

18. The Biometric Residence Permit Card is an EU requirement. The card is issued in the UK under the UK Borders Act 2007. EC Regulations require residence permits to be in a uniform format and to include biometric data (facial recognition and fingerprints). All EU countries must comply with the biometric requirement by 2012.

19. A number of points were raised by Liberty during oral evidence at Committee Stage. These are being taken forward by UKBA in discussion with Liberty. We are happy to

provide further information to the JCHR on the outcome of that consideration in due course if that would be useful.

Second Biometric (fingerprints) in passports

20. The Coalition Agreement makes clear the commitment to halt work on the introduction of fingerprints in passports. That approach is shared by colleagues in the United States, in Canada, Australia and in New Zealand. The Coalition Government does not consider that the gathering of additional personal biometric data such as fingerprints from innocent citizens is proportionate to the level of risk. We already collect the facial biometric and that is sufficient for identification purposes.

Conclusion

The scrapping of the ID card scheme would resolve a number of concerns raised by the JCHR in earlier reports on the Identity Cards Bill. The Coalition Government introduced the Identity Documents Bill as the first Bill of the new Government and it reflects a major step in reducing the ability of the state to collect voluminous personal information from the individual.

3 September 2010

2. Written Evidence from the Northern Ireland Human Rights Commission, to the Committee, October 2010

Legislative Scrutiny Priorities: Written Evidence to the Joint Committee of Human Rights (October 2010)

Identity Documents Bill

The Commission has developed a body of work on the National Identity Register and identity card schemes set out in the Identity Cards Act 2006 and UK Borders Act 2007.¹ In addition to concerns that the schemes would unduly infringe the right to privacy, the Commission's main concern has been that the schemes will exacerbate racial discrimination and that their application in Northern Ireland carried serious risks of differential impacts on the (British) unionist and (Irish) nationalist communities.

The Commission welcomes the provisions in the Identity Documents Bill to repeal the Identity Cards Act 2006 and hence the National Identity Register and the 'National Identification Card' for British citizens and 'Identification Card' aimed at Irish and other EEA nationals. The Commission is however concerned that the Bill does not address the much renamed and rebranded third ID scheme introduced for most non-EEA nationals under the UK Borders Act 2007.²

This scheme was marketed as the 'Foreign National Identity Card' by the previous Government. Its retention has been supported by the present Government on the basis that the documents are a requirement of EU law.³ It is the case that the UK has voluntarily opted into EU regulations such as those laying down a uniform format for residence permits for 'third country' nationals.⁴ However, in implementing the measures the Home Office clearly stated that the:

...[UK Borders Act 2007] provisions go further than the EU regulation.⁵

At the time of the passage of the 2007 Act, the Commission voiced concerns that the provisions on identity documents effectively meant that "the Secretary of State will be empowered to make regulations potentially forcing any non-EEA national to provide unlimited information for unlimited purposes". This included purposes that have nothing to do with immigration.⁶

The previous Joint Committee voiced similar concerns that this part of the Act "contains extremely open-ended powers capable of being exercised in ways which interfere with

1 See: 2009 research paper, 'More than just a Card' and other materials at: http://www.nihrc.org/index.php?page=specialfocus&from=0&focus_id=8&Itemid=1.

2 UK Borders Act 2007, sections 5-15 on Biometric Registration applying to any person 'subject to immigration control' defined in section 15 as a person who under the Immigration Act 1971 requires leave to enter or remain in the UK, whether or not such leave has been given.

3 Hansard, Damien Green MP Identity Documents Bill, 2nd reading: House of Commons 9 June 2010: Column 433.

4 Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (see also amending Regulation (EC) No 380/2008 of 18 April 2008).

5 Compulsory Identity Cards for Foreign Nationals: UK Borders Act 2007 Consultation on the "Code of Practice about the Sanctions for Non-Compliance with the Biometric Registration Regulations", Home Office, February 2008, para 3.10.

6 Sections 5(1)(b)(iii) and 8(2)f.

Article 8 rights, but there is very little detail on the face of the Bill enabling us to assess the likely compatibility of the new powers with Article 8”, noting that important details were absent, including “purposes for which such information may be used, which will apparently include use for purposes which do not relate to immigration, such as access to state benefits”.⁷

The Committee therefore may wish to ask Government to explain which powers, purposes and sanctions under sections 5-15 of UK Borders Act 2007 and their associated regulations are over and above the requirements of EU law and assess how such provisions are ECHR compliant.

The widely shared concerns that the identity card schemes for British and Irish citizens unduly infringed the right to privacy (ECHR Article 8) equally apply to the scheme for non-EEA nationals. The scheme for non-EEA nationals actually went beyond a number of the provisions in the schemes for British, Irish/other EEA nationals, also engaging Article 14.⁸

Article 14 is also engaged by the continuation of an identity card scheme for non-EEA nationals in the absence of those for EEA nationals. This itself may exacerbate the risks of racial profiling (the form of racial discrimination involving the use of ethnicity rather than focusing on individual behaviour for singling out individuals) and more broadly, racial stereotyping and the development of a culture of suspicion. Employers, law enforcers and public authorities in particular circumstances will be required, or expected, to examine identity cards from persons who are non-EEA nationals but not those who are EEA nationals. The question is how such persons are going to be able to tell who is a non-EEA national and who is a British, Irish or other EEA national. Who should be required or otherwise expected to have and produce the ‘Foreign National’ identity document and from whom should it be acceptable to expect no, or another form of, identification? Any practice of singling out persons visibly perceived as being from a minority ethnic background is not acceptable in human rights terms, and measures that lead to any form of racial profiling are likely to constitute unlawful racial discrimination in contravention of international standards to which the UK is party.⁹

In the context of the commencement of the ID scheme for non-EEA nationals before those of the Identity Cards Act 2006, the preceding Joint Committee voiced similar concerns in

7 JCHR Thirteenth Report of Session 2006-07, HL Paper 105 HC 538, page 11.

8 There are a number of differences between the scheme under the 2007 Act and the schemes for British, Irish/other EEA nationals that the Identity Documents Bill would repeal. In particular, the level of compulsion for registration is absolute under the 2007 Act and children are also subjected to its provisions. It is backed by a severe sanctions regime in relation to compulsion to register, to maintain data and to use the card in particular circumstances, including civil penalties (fines) and immigration sanctions (variation/curtailment or cancellation of a person’s existing permission to enter or remain in the UK or ‘disregarding’, refusal of an application to stay in the UK, or refusal to enter the UK if a person will not sign up to the scheme). There is also the sanction of not issuing an ID card thereby preventing access to services and other matters dependent on its possession (see Code of Practice, Compulsory Identity Cards for Foreign Nationals Home Office consultation document, February 2008).

9 In relation to the sphere of law enforcement, the UN World Conference Against Racism defined racial profiling as: “...the practice of police and other law enforcement officers relying, to any degree, on race, colour, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity” (the Durban Declaration, UN Document A/CONF.189/12 paragraph 72). Other high-risk scenarios for racial profiling include entitlements to public services and immigration control. It has been established that ID checks on the basis of racial profiling breach the internationally recognised human right to non-discrimination - see Rosalind Williams Lecraft v Spain (Human Rights Committee) Communication No. 1493/2006, UN Document CCPR/C/96/D/1493/2006, 30 July 2009)

relation to ‘de facto racial profiling’, noting that even though there was no requirement that such a document be carried:

...the fact that such a document exists for non-nationals and can be requested to prove entitlement to services makes it highly likely in our view that members of black and minority ethnic communities in the UK will be disproportionately required to prove their immigration status.¹⁰

The Committee may wish to draw the attention of both Houses once more to the risks of racial profiling if the identity card system provided for in the 2007 Act is not amended.

October 2010

3. Written Evidence from the Equality and Human Rights Commission, to the Committee, 12 October 2010

Equality and Human Rights Commission submission to the Joint Committee on Human Rights

Legislative scrutiny priorities for 2010-11

Identity Documents Bill

1. The Commission welcomes the provisions of the Identity Documents Bill, in particular the repeal of the Identity Cards Act 2006 and the destruction of information recorded on the National Identity Card Register.
2. The Commission had concerns regarding the need for and operation of the National Identity Card scheme and database. In particular, the Commission was concerned that the use of identity cards had the potential to impact on race and good relations.
3. The Commission remained to be convinced that an adequate justification on the grounds of national security, the fight against crime, or other grounds had been made for the establishment of Identity Cards or a National Identity Register. The Commission therefore welcomes the fact the Government has shared this view, and now proposes to abolish this scheme.
4. While the Commission welcomes this Bill in so far it addresses ID cards of UK nationals, the Commission remains concerned more generally regarding the collection and use of personal information by the State.
5. The Commission considers the collection, retention and dissemination of personal data impacts on the right to private life under Article 8 of the Human Rights Act.
6. The National Identity Database, and identity cards, while significant, represents only a proportion of current databases that hold information on the citizen.

ID cards for foreign nationals

7. The Commission understands that the requirement for non-EU nationals to hold some form of biometric residence permit is required under EU regulations to which the UK has voluntarily adopted.¹

Commission's position

8. While the Commission understands the need to exercise effective immigration controls, the Commission is concerned that these regulations appear to have been introduced and implemented in the UK with little awareness, debate, scrutiny or detailed assessment. Nor has sufficient assessment been made of the operation of biometric identity cards for foreign

¹ Council Regulation (EC) No 1030/2002 of 13 June 2002 and Council Regulation (EC) No 380/2008 of 18 April 2008

nationals as to their proportionality and compliance with Article 8 of the Human Rights Act and data protection principles.

9. The nature and requirements of identity information for foreign nationals is extremely unclear, being contained in a number of immigration acts, rules, regulations, and delivery plans. Furthermore, the Commission understands that the information held by the UK authorities under biometric identity cards exceeds the requirements under EU law.

10. The Commission would suggest that the basis for the collection, retention, dissemination and removal of such information should be placed on a clear, accessible statutory basis, with proper scrutiny, checks and balances.

11. The Commission is unclear whether regulations to hold some form of biometric identity cards apply to all foreign nationals, for example those with long standing connections to this country, including those with indefinite leave to remain. Consideration needs to be given firstly, as to whether it is necessary and proportionate for such a system to apply to all foreign nationals, and secondly the extent to which information needs to be held and processed.

12. The Commission is concerned that the processes for retention, processing and deletion of this information are unclear. It would appear that the collection, retention and processing of information goes beyond that required by the EU directive to include detailed personal information given in passport or visa application forms and detailed biometric information.

13. The Commission is concerned that there is a lack of clarity about the information that will be held on the database, and again there appears to be little assessment as to whether it is necessary and proportionate to hold this information.

14. In addition, there appears to be a lack of assessment as to how this complies with data protection principles, including those that maintain that information should be adequate, relevant and not excessive, and not kept for longer than is necessary.

15. It is unclear as to who has access to the information, how long it will be kept, or processes for its deletion or amendment. The Commission would inquire as to whether any privacy impact assessment has been carried out, and request that such an assessment be published.

16. As stated above, the Commission is concerned that there is a risk that requiring biometric identity cards for foreign nationals will lead to direct or indirect discrimination, particularly in relation to foreign nationals, ethnic minority groups, and on the grounds of race.

17. The Commission is also concerned about the potential impact on good relations. That risk is much greater now that identity cards are only required for non-EU nationals. The Commission would inquire as to whether an Equality Impact Assessment has been carried out on the effect of the proposed legislation, and request that such an assessment be published.

Solution

18. The Commission considers there should be an urgent review of the regime for biometric identity cards for foreign nationals, including full equality and privacy impact assessments. Such mechanisms would provide an assessment on the necessity and proportionality of the measures, its compliance with data protection principles, and greater clarity regarding the legal and regulatory regime for the collection and processing of such information.

19. The Commission considers that there is also an urgent need for a wider review of the legal and regulatory schemes for the collection, processing and dissemination of information privacy.

20. The Commission is currently carrying out a research project which is considering the current regimes of the protection of information privacy, their adequacy, gaps in protections and possible routes to reform of the current protections of information privacy.

21. The Commission anticipates that the report with findings and recommendations for future actions will be published in November 2010. The Commission then hopes to work closely with relevant stakeholders, the Government and policy makers to take forward the recommendations of the research.

12 October 2010

List of Reports from the Committee during the current Parliament

First Report	Work of the Committee in 2009-10	HL Paper 32/HC 459
Second Report	Legislative Scrutiny: Identity Documents Bill	HL Paper 36/HC 515

List of Reports from the Committee during the last Session of Parliament

Session 2009-10

First Report	Any of our business? Human rights and the UK private sector	HL Paper 5/HC 64
Second Report	Work of the Committee in 2008-09	HL Paper 20/HC 185
Third Report	Legislative Scrutiny: Financial Services Bill and the Pre-Budget Report	HL Paper 184/HC 184
Fourth Report	Legislative Scrutiny: Constitutional Reform and Governance Bill; Video Recordings Bill	HL Paper 33/HC 249
Fifth Report	Legislative Scrutiny: Digital Economy Bill	HL Paper 44/HC 327
Sixth Report	Demonstrating Respect for Rights? Follow Up: Government Response to the Committee's Twenty-second Report of Session 2008-09	HL Paper 45/ HC 328
Seventh Report	Allegation of Contempt: Mr Trevor Phillips	HL Paper 56/HC 371
Eighth Report	Legislative Scrutiny: Children, Schools and Families Bill; Other Bills	HL Paper 57/HC 369
Ninth Report	Counter-Terrorism Policy and Human Rights (Sixteenth Report): Annual Renewal of Control Orders Legislation 2010	HL Paper 64/HC 395
Tenth Report	Children's Rights: Government Response to the Committee's Twenty-fifth Report of Session 2008-09	HL Paper 65/HC 400
Eleventh Report	Any of our business? Government Response to the Committee's First Report of Session 2009-10	HL Paper 66/HC 401
Twelfth Report	Legislative Scrutiny: Crime and Security Bill; Personal Care at Home Bill; Children, Schools and Families Bill	HL Paper 67/HC 402
Thirteenth Report	Equality and Human Rights Commission	HL Paper 72/HC 183
Fourteenth Report	Legislative Scrutiny: Equality Bill (second report); Digital Economy Bill	HL Paper 73/HC 425
Fifteenth Report	Enhancing Parliament's Role in Relation to Human Rights Judgments	HL Paper 85/HC 455

Sixteenth Report

Counter-Terrorism Policy and Human Rights
(Seventeenth Report): Bringing Human Rights Back
In

HL Paper 86/HC 111