



Memorandum to the Home Affairs Committee

Post-Legislative Scrutiny of the Identity Documents Act 2010

Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

February 2018

Cm 9561



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MEMORANDUM TO THE HOME AFFAIRS COMMITTEE
POST-LEGISLATIVE SCRUTINY OF THE IDENTITY DOCUMENTS ACT 2010

INTRODUCTION

1. This memorandum provides a preliminary assessment of the Identity Documents Act 2010 and has been prepared by the Home Office for submission to the Home Affairs Committee. It is published as part of the process set out in the documents *Post Legislative Scrutiny – The Government’s Approach (Cm 7320)*.

OBJECTIVES OF THE IDENTITY DOCUMENTS ACT 2010

2. The Identity Documents Act 2010 (“the Act”) introduced a range of measures which provided for:
 - the repeal of the Identity Cards Act 2006;
 - the cancellation of all existing ID cards and prohibition on issuing any further ID cards on or after the date on which the Act was passed; and
 - the destruction of information contained within the National Identity Register within 2 months of the date on which the Act was passed.
3. Further provisions at sections 4-6 re-enacted certain offences that had been included in the Identity Cards Act 2006 relating to the possession of:
 - false identity documents with improper intention;
 - any apparatus or material which is or has been designed or adopted for the making of false identity documents, with prohibited intention;
 - false identity documents without reasonable excuse.
4. Section 10 re-enacted and widened powers for the Secretary of State to compel certain persons to provide or verify information in connection with an application for a passport or to request information to determine whether to withdraw an individual’s passport.
5. The assessment section of this memorandum sets out in greater detail the policy objectives behind the specific provisions of the Act.

IMPLEMENTATION

6. All of the provisions of the Act have now been commenced in full (see Annex A).

SECONDARY LEGISLATION

7. There is no secondary legislation enacted under the Act.

PRELIMINARY ASSESSMENT OF THE ACT (INCLUDING ANY LEGAL ISSUES)

PART 1 – REPEAL OF IDENTITY CARDS ACT 2006

SECTIONS 2 AND 3

8. The purpose of these sections was to repeal the Identity Cards Act 2006; to provide for the cancellation of identity cards that had been issued; and to provide for the destruction of information recorded in the National Identity Register within two months of enactment. The National Identity Register was the database which contained the biographic and biometric fingerprint data of card holders. The Identity Cards Act 2006 was repealed to reduce the information held on individuals by the state as well as providing considerable financial savings. A written ministerial statement was laid in the House of Commons on 16 March 2011 to confirm the implementation of these measures.

<https://www.gov.uk/government/speeches/cancellation-of-the-id-card-scheme-and-destruction-of-the-national-identity-register>

PART 2 – RE-ENACTMENT OF CERTAIN CRIMINAL OFFENCES

SECTIONS 4, 5 AND 6

9. Sections 25 and 26 of the Identity Cards Act 2006 ('the 2006 Act') created offences relating to the possession of false documents or apparatus allowing the creation of false documents and have been re-enacted in sections 4, 5 and 6 of the Act with minor changes in consequence of the repeal of the 2006 Act.

PART 2 - DATA ASSESSMENT SECTIONS 4, 5 AND 6

10. The table below shows the number of individuals prosecuted for offences under sections 4 to 6 of the Identity Documents Act.

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Defendants proceeded against at magistrates courts for offences under the Identity Documents Act 2010⁽¹⁾, England and Wales, 2011 to 2014⁽²⁾⁽³⁾

Offence	2011	2012	2013	2014
Possession of false identity documents etc with improper intention	892	1,122	1,017	933
Apparatus designed or adapted for the making of false identity documents etc	8	16	22	8
Possession of false identity documents etc without reasonable excuse	139	178	178	165

Source: Justice Statistic Analytical services – Ministry of Justice.
 Ref: 527-15

11. The table below shows the number of offenders found guilty under IDA offences and the average custodial sentence in months.

¹ The offences in sections 4-6 of the Identity Documents Act 2010 came into effect on 21 January 2011

² The figures given in the table relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.

³ Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

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Offenders found guilty and sentenced at all courts for offences under the Identity Documents Act 2010 ⁽⁴⁾, England and Wales, 2011 to 2014 ⁽⁵⁾⁽⁶⁾⁽⁷⁾⁽⁸⁾

Offence	Outcome	2011	2012	2013	2014
Possession of false identity documents etc with improper intention	Found guilty	614	876	861	725
	Sentenced	613	875	861	725
	<i>of which</i> Immediate custody	509	720	693	559
	Average custodial sentence length	9.0	9.3	8.6	8.7
Apparatus designed or adapted for the making of false identity documents etc	Found guilty	13	8	7	11
	Sentenced	13	8	7	11
	<i>of which</i> Immediate custody	11	7	5	8
	Average custodial sentence length	18.4	25.1	30.0	27.9
Possession of false identity documents etc without reasonable excuse	Found guilty	248	245	215	193
	Sentenced	246	241	222	193
	<i>of which</i> Immediate custody	164	130	115	86
	Average custodial sentence length	8.1	6.5	6.7	6.1

Source: Justice Statistics Analytical Services - Ministry of Justice. Ref: Adhoc 551-15

12. The data shows that offenders found guilty of designing or adapting apparatus for the making of false documents carried a heavier custodial sentence than possession for improper intention or without reasonable excuse.

⁴ Most of the Identity Documents Act 2010 came into effect on 21 January 2011

⁵ The figures given in the table relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.

⁶ Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

⁷ The number of offenders sentenced can differ from those found guilty as it may be the case that a defendant found guilty in a particular year, and committed for sentence at the Crown Court, may be sentenced in the following year.

⁸ Average custodial sentence length is displayed in months, and excludes life and indeterminate sentences.

PART 3 –VERIFICATION OF INFORMATION

SECTION 10 IDA 2010

13. Section 10 also re-enacts Section 38 of the 2006 Act. Her Majesty's Passport Office may require specified persons to provide information to verify information provided in connection with an application for a passport, or for determining whether a passport should be withdrawn. Section 10 provides a clear power to require a response by the data owner to whom the information request is made. Prior to the 2006 Act, a request could have been refused by any data owner as there was no power to compel production of the information. The persons from whom information may be required under section 10 include Ministers, government departments, and qualifying credit reference agencies (an agency is 'qualifying' if it is acting for the purposes of a contract for the provision of information to the Secretary of State). The Act also set down new requirements to ensure that information acquired under section 10 is deleted once the decision has been made to either issue a passport or not to withdraw passport facilities (unless it appears to the Secretary of State to be desirable to retain the information for the purposes of preventing and detecting crime).

USE OF SECTION 10

14. Her Majesty's Passport Office operational areas use verification checks to help detect and prevent fraud, verify a social footprint of an identity and link the individual submitting the application to the claimed identity.
15. Operational Fraud Investigation Units (FIUs) and Operational Fraud team (Fraud Op) use section 10 verification requests as part of business as usual when investigating suspected fraudulent passport applications and fraudulently obtained genuine passports (FOGs).
16. In addition, the interview network has relied on credit agency data to help verify a person's identity before issuing a first passport.
17. The use of section 10 supports the Home office public protection and counter fraud strategy where we aim to achieve these key objectives through a four 'P' approach:
- **Protect** HMPO Passport Office products, processes and systems making them more difficult and more costly to attack.
 - **Prevent** the issue of passports to those not eligible or entitled to them and the consequent harm to society.
 - **Pursue** those applicants suspected of submitting fraudulent applications or receiving FOG passports.
 - **Prepare** HM Passport Office to be able to respond effectively to the dynamic fraud threat and to incidents that occur.

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CONCLUSION

18. In summary, the above assessment concludes that the policy objective of repealing the Identity Cards Act 2006 and de-commissioning identity cards has been completed.
19. Other provisions brought in under the Act have strengthened powers to identify identity fraud as well as restating useful offences in relation to forgery and the possession of false identity documents.

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Annex A:

Commencement of the Act by Section

<i>Provision</i>	<i>Date of Commencement</i>
Section 1 Repeal of Identity Cards Act 2006	21 st January 2011
Section 2 Cancellation Of ID cards etc	21 st December 2010
Section 3 Destruction of Information recorded in National Identity Register	21 st December 2010
Section 4 Possession of False identity Documents etc with improper intention	21 st January 2011
Section 5 Apparatus designed Or adapted for the making of False identity documents	21 st January 2011
Section 6 Possession of false Identity documents without Reasonable excuse	21 st January 2011
Section 7 Meaning of "identity document"	21 st January 2011
Section 8 Meaning of "personal information"	21 st January 2011
Section 9 Other definitions	21 st January 2011
Section 10 Verifying information Provided with passport Applications etc	21 st January 2011
Section 11 Orders	21 st January 2011
Section 12 Consequential amendments	21 st January 2011
Section 13 Transitional Provision	21 st January 2011
Section 14 Commencement, Extent and short title	21 st December 2010

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