

IDENTITY CARDS ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Offences

Section 25: Possession of false identity documents

149. This section creates new criminal offences relating to the possession of false identity documents. *Subsections (1) and (2)* set out the circumstances in which a person is guilty of an offence if he is in possession of a document which he knows or believes to be false or a genuine document that has been improperly obtained or relates to someone else. To be guilty of the offence the person must have the intention that the document be used for identity fraud.
150. *Subsections (3) and (4)* create a similar offence in relation to the possession of equipment which is designed or adapted for making false identity documents. *Subsection (6)* sets out the maximum penalties for such offences as being 10 years imprisonment or a fine or both.
151. *Subsection (5)* makes it an offence for a person to have in his possession, without reasonable excuse, a false identity document or a genuine document that has been improperly obtained or relates to someone else, or equipment used for making false identity documents. Unless there is a reasonable excuse, these offences apply irrespective of any intent to use the documents or equipment. *Subsection (7)* prescribes a maximum penalty of 2 years imprisonment, a fine or both.
152. *Subsection (8)* defines ‘false’ as being false within the meaning of Part 1 of the Forgery and Counterfeiting Act 1981. It then defines an ‘improperly obtained’ document as being one in relation to which false information was provided in the course of the application procedure.
153. *Subsection (9)* states that the definition of “false” in subsection (8)(a) does not apply in the application of this section to Scotland because Part 1 of the Forgery and Counterfeiting Act 1981 does not apply in Scotland.
154. *Subsection (10)* applies the definition of “identity document” in section 26 for the purpose of these offences.

Section 26: Identity documents for the purposes of s. 25

155. *Subsection (1)* defines what is meant by an “identity document” for the purposes of this Act, and includes an ID card as well as other existing identity documents issued within or outside the UK. This list may be amended by order subject to an affirmative resolution procedure (*subsections (4) and (5)*).
156. *Subsection (2)* defines what is meant by an “immigration document” for the purposes of this Act.

157. *Subsection (3)* defines what is meant by a “UK driving licence for the purposes of this Act”.

Section 27: Unauthorised disclosure of information

158. This section creates a new criminal offence of disclosure without lawful authority of information held on the National Identity Register.
159. *Subsections (1) and (2)* set out the circumstances under which a person is guilty of such an offence and defines the persons covered by this offence as including those involved in the establishment or maintenance of the Register, the issue and manufacture etc of ID cards, or the carrying out of the Commissioner’s functions.
160. *Subsection (3)* defines what is meant by “lawful authority” for the purposes of this section. For example, there is lawful authority to disclose if the disclosure is authorised by this legislation or required by a court order.
161. *Subsection (4)* states that a person has a defence if he can show that he believed, on reasonable grounds, that he had lawful authority to disclose the information.
162. *Subsection (5)* sets out the maximum penalty for the offence as 2 years imprisonment or a fine or both.

Section 28: Providing false information

163. This section creates a new offence of providing false information for purposes connected with securing an entry or modification of an entry on the Register or obtaining for himself or another person an ID card.
164. For the purposes of this section, false is defined in section 42. False information includes information containing inaccuracies or omissions that tend to mislead. *Subsections (1) and (2)* set out the circumstances under which a person is guilty of the offence. These are that he knows or believes the information is false or is reckless as to whether or not it is false. *Subsection (3)* sets out the maximum penalty for the offence as 2 years imprisonment, a fine or both.

Section 29: Tampering with the Register etc.

165. This section creates an offence of tampering with the Register. *Subsection (1)* defines the offence as engaging in any conduct that causes an unauthorised modification of information in the Register. *Subsection (2)* defines the requisite intent for the offence as intending to cause a modification of information, or being reckless as to whether or not the conduct will cause such a modification. *Subsection (5)* defines an “unauthorised modification” as taking place if someone is not himself entitled to determine if the modification may be made and he does not have consent to the modification from a person who is so entitled. *Subsection (6)* provides a defence where the maker of the unauthorised modification reasonably, albeit mistakenly, believed he was authorised to make it. *Subsection (9)* provides that conduct includes acts and omissions, and modification includes a temporary modification.
166. *Subsection (3)* makes it clear that modification of information includes cases where someone’s conduct contributes to the modification of information, or where it makes it more difficult or impossible for such information to be retrieved in a legible form, or where the conduct contributes to making the retrieval more difficult or impossible. However, this is not intended to apply to simple withdrawal of labour, for example in the case of lawful industrial action by staff responsible for operating the Register.
167. *Subsection (4)* makes it clear that it does not matter whether any or all of the relevant conduct took place in the United Kingdom, or whether or not the person concerned was a British citizen.

*These notes refer to the Identity Cards Act 2006 (c.15)
which received Royal Assent on 30 March 2006*

168. *Subsection (7)* gives the maximum penalty for the offence as imprisonment for a term not exceeding ten years, or a fine, or both.

Section 30: Consequential amendments relating to offences

169. *Subsection (1)* extends the usual jurisdiction of the courts in England and Wales for the offences in section 25. *Subsection (5)* extends the usual jurisdiction of the courts in Northern Ireland for the offences in section 25.
170. *Subsection (2)* adds the false documents offence (section 25) to section 31(3) of the Immigration and Asylum Act 1999 giving a specific defence for refugees with false documents. This is of particular relevance as those who destroy any false documents will commit an offence under section 2 of the Asylum and Immigration (Treatment of Claimants) Act 2004.
171. *Subsection (3)* adds the false documents offence (section 25) to section 14(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. This gives immigration officers power to arrest without warrant for the offence and ancillary powers to search for and seize documents.
172. *Subsection (4)* makes the offences under sections 25 (5), 27 and 28 arrestable in Northern Ireland.