

IDENTITY CARDS ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Civil penalties

Section 31: Imposition of civil penalties

173. This section sets out the way in which civil penalties under the ID cards scheme will operate. A code of practice will be published as required under section 34 and this will set out that the civil penalty regime is not intended to be punitive or revenue raising. Rather it is intended to ensure compliance with the terms of the Act. The code of practice will make it clear that where there is good reason for a failure to comply or in cases where the requirements of the Act are belatedly complied with, then it will normally be appropriate to waive the penalty.
174. Where the Secretary of State is satisfied that the person is liable to a civil penalty as set out in the legislation, the Secretary of State may issue in the prescribed manner a notice to the defaulter, setting out why the penalty is being imposed, the amount of the penalty, the date by which the penalty must be paid, how payment should be made, setting out the steps the defaulter may take if he objects and finally explaining the powers to enforce the penalty (*subsection (3)*). The amounts of the penalties specified in the Act are maximum penalties. The actual amount imposed will be determined on a case by case basis and in accordance with the code of practice.
175. The date by which the payment is required to be made cannot be less than 14 days after the notice is issued (*subsection (4)*).
176. A penalty imposed by this section must be paid in the manner described by the notice and if it is not paid, the amount is recoverable by the Secretary of State via the civil courts. When recovering the penalty no question may be raised as to whether the defaulter was liable to the penalty, whether the imposition of the penalty was unreasonable or as to the amount of the penalty. Those matters should be raised on an objection to the Secretary of State under section 32 and/or an appeal to the civil courts under section 33.

Section 32: Objection to penalty

177. Section 32 sets out the steps to be taken if the recipient of the notice objects to the imposition of the civil penalty.
178. A recipient of a notice of a penalty may give notice to the Secretary of State that he objects to the penalty. This must include what he objects to and why. This “notice of objection” must be made in the prescribed manner and before a date to be prescribed (*subsections (1) and (2)*). The grounds on which an objection can be made are that the person was not liable to the penalty, that the circumstances of the contravention make the imposition of a penalty unreasonable, or that the amount of the penalty is too high.

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

179. The Secretary of State must consider the notice of objection and will determine whether to: cancel the penalty; reduce it; increase it or confirm it (*subsection (3)*). The Secretary of State must not enforce a penalty in respect of which he has received a notice of objection, until he has considered the objection and notified the objector of the outcome (*subsection (4)*).
180. This notification of outcome must be given in the prescribed manner, by a prescribed date or if the objector agrees by the end of a longer period (*subsection (5)*).
181. If, after consideration, the Secretary of State increases the penalty, a new notice must be issued under section 31. If the penalty is reduced, the objector must be notified accordingly.

Section 33: Appeals against penalties

182. This section sets out the process of appealing against penalties. Under *subsection (6)* a person does not have to object to a penalty under section 31 before making an appeal to the court under this section.
183. The grounds of the appeal are set out in *subsection (1)*. They are the same as the grounds for making an objection under section 32. *Subsection (2)* ensures that there will be a time limit to any appeal.
184. The appeal will be a re-hearing of the decision of the Secretary of State to impose a penalty (*subsection (4)*). Under *subsection (5)* the court may consider all matters it considers relevant.
185. The Court may decide to cancel the penalty, reduce the penalty or uphold the penalty under *subsection (3)*.
186. *Subsection (7)* specifies which courts may hear an appeal.

Section 34: Code of practice on penalties

187. This section sets out the provisions relating to the code of practice on penalties.
188. The Secretary of State is under a duty to issue a code of practice setting out the matters that will be considered when determining whether to impose a civil penalty and if so the amount to be imposed (*subsection (1)*). He must have regard to the code when imposing a penalty or considering a notice of objection (*subsection (2)*). A court must also have regard to the code when determining any appeal (*subsection (3)*).
189. Before issuing the code, a draft must be laid before Parliament and members of the public must be consulted about it. It then comes into force as specified by order (*Subsections (4),(5) and (6)*). On the first occasion on which an order is made bringing the code into force it will be subject to the affirmative resolution procedure. Any subsequent orders (for revisions to the code) will be subject to the negative resolution procedure (*subsections (9) and (10)*). An initial indicative draft of what the code might cover and referring to the Identity Cards Bill as introduced to the House of Lords in October 2005, was published in December 2005 and a copy placed on the identity cards website at www.ips.gov.uk.