

**EXPLANATORY MEMORANDUM TO  
THE IDENTITY CARDS ACT 2006 (ENTITLEMENT TO BE REGISTERED)  
REGULATIONS 2009**

**2009 No. 2572**

1. 1.1 This Explanatory Memorandum has been prepared by the Home Office and the Identity and Passport Service and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the Instrument**
  - 2.1 These Regulations establish an entitlement to be entered in the National Identity Register for an additional category of individuals to those specified on the face of the Identity Cards Act 2006 as well as introducing exclusion to such an entitlement for another category of individuals.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 The Identity Cards Act 2006 (“the Act”) received Royal Assent on 30<sup>th</sup> of March 2006. This instrument, together with a further eight, will be the first set of orders and regulations made under the Act.
  - 4.2 Five instruments subject to the affirmative resolution procedure were laid before Parliament in May and June 2009 and were affirmed in July 2009. They are as follows:
    - The Identity Cards Act 2006 (Application and Issue of ID Card and Notification of Changes) Regulations 2009, which prescribe various matters in relation to applications for entry on the National Identity Register, applications for an ID card and notification of changes and make provision in relation to place of residence.
    - The Identity Cards Act 2006 (Prescribed Information) Regulations 2009, which prescribe information that must be recorded on an ID card or an identification card and other prescribed requirements and facts.
    - The Identity Cards Act 2006 (Information and Code of Practice on Penalties) Order 2009, which prescribes organisations that may be required to provide information to verify information held on the National Identity Register or provided in an application to be entered on Register, as well as the public authorities that may be provided with information from the Register without the consent of the individual to whom the record relates. It also sets out an additional purpose for which a chief officer of the police may be provided with information from the Register and specifies when the Code of Practice on Civil Penalties comes into force.

- The Identity Cards Act 2006 (Provision of Information without Consent) Regulations 2009, which prescribes the Government departments which may be provided with information in connection with specified functions, as well as who may be provided with information on behalf of those named on the face of the Act, as well as the conditions that must be met before information is provided.
- The Identity Cards Act 2006 (Fees) Regulations 2009 which prescribe the fees to be paid in relation to an application for an ID card or to be registered in the Register.

4.3 A further instrument subject to the affirmative resolution was laid before Parliament in May 2009 but was subsequently withdrawn in line with the Home Secretary's announcement that the rollout of identity cards to British citizens should occur on an entirely voluntary basis. The Identity Cards Act 2006 (Designation) Order 2009 would have designated "a criminal conviction certificate" applied for by airside workers, which would have meant that certain airside workers would have been required to apply for an ID card when they apply for such certificates.

4.4 Three other instruments subject to the negative resolution procedure will be laid before Parliament in September 2009. They are as follows:

- The Identity Cards Act 2006 (National Identity Registration Number) Regulations 2009 prescribe requirements relating to the format of the National Identity Registration Number and the process by which that number is allocated to an entry made in the National Identity Register
- The Identity Cards Act 2006 (Civil Penalties) Regulations 2009, which prescribe the manner in which a penalty notice would be issued and the way in which any objection to a penalty may be made.
- The Identity Cards Act 2006 (Provision of Information with Consent) Regulations 2009, which prescribe the way that consent may be given and the particulars that must be provided before any organisation can be approved as suitable for the provision of information with consent, as well as the conditions that must be met before information can be provided.

4.5 These instruments will enable the first phase of the National Identity Service to be implemented, which will involve a limited initial rollout to a number of volunteers from the general public and selected airside workers, starting with those at Manchester and London City airports. Section 44(4)(a) of the Act allows for provisions to be brought into force on different days in relation to different areas or description of persons. The rollout to the relevant descriptions of persons will be implemented by means of commencement orders that will be laid as the rollout of the Service progresses. It is intended that commencement orders will be laid during 2009 to enable a short operational trialling period, followed by the launch of the Service to members of the public resident in Greater Manchester as well as to airside workers in the aforementioned airports. This rollout will then extend to other volunteers across the North West in 2010.

4.6 The instruments relate only to provisions for those who are British citizens, British subjects with right of abode in the United Kingdom or EEA nationals. Provisions to issue biometric immigration documents (commonly known as Identity Cards for Foreign Nationals) are made under the United Kingdom Borders Act 2007.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 The Parliamentary Undersecretary of State, Home Office, Lord Brett has made the following statement regarding Human Rights: “In my view the provisions of the Identity Cards Act 2006 (Entitlement to be Registered) Regulations 2009 are compatible with the Convention rights.”

## **7. Policy background**

### ***What is being done and why***

7.1 The Act establishes a statutory framework for issuing fingerprint biometric ID cards together with the creation of a secure and reliable National Identity Register to hold the identity information about individuals in the United Kingdom. This is as part of what is now termed the National Identity Service and will lead eventually to a point at which anyone who is aged 16 or over and is resident in the United Kingdom may apply for an ID card.

7.2 The Act sets out the statutory purposes for the establishment of a National Identity Register and the issue of identity cards. In summary, these are to provide a convenient method for individuals to prove their identity to anyone who reasonably requires proof and, at the same time, to provide a secure and reliable method for people to be identified wherever that is necessary in the public interest – that is:–

- in the interests of national security;
- for the prevention or detection of crime;
- for the enforcement of immigration controls or controls on illegal working;
- to secure the more efficient and effective delivery of public services.

7.3 The National Identity Scheme Delivery Plan 2008, published in March 2008 (see: <http://www.ips.gov.uk/identity/downloads/national-identity-scheme-delivery-2008.pdf>) set out the plans for introducing identity cards. This included the introduction of Identity Cards for Foreign Nationals which started from November 2008 under separate powers contained in the UK Borders Act 2007 (see: [http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga\\_20070030\\_en.pdf](http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga_20070030_en.pdf)).

7.4 The Delivery Plan also made clear that the first identity cards issued to British citizens and European Economic Area nationals would be issued by the

Home Office Identity and Passport Service under the Identity Cards Act 2006, starting in autumn 2009 after an operational trialling period. These will be initially issued to those resident in Greater Manchester as well as to airside workers in Manchester and London City airports. This rollout will then extend to other volunteers across north-west England in 2010. Finally, from 2012, identity cards will be issued in high volumes alongside passports with applicants being enrolled on the National Identity Register and being given the option of a passport or identity card or both documents. In his statement to the House of Commons on the 30<sup>th</sup> of June 2009, the Home Secretary stated that the issue of identity cards would occur on a voluntary basis for all stages of this rollout (see:

<http://services.parliament.uk/hansard/Commons/ByDate/20090630/writtenministerialstatements/part005.html>)

7.5 As previously noted, the ability to register will initially be limited through commencement orders in line with this rollout. However, in addition to such measures, these regulations introduce an extension to and an exclusion to the entitlement to register for certain groups.

7.6 It is anticipated that a very small number of those who are applying to work airside at Manchester and London City airports may not live in the United Kingdom at the time at which they apply for that position. However, the Act only entitles those who are resident in the United Kingdom to be entered in the National Identity Register.

7.7 It is intended that all airside workers in these airports should have the opportunity to register on the National Identity Register and obtain an ID card. Thus, regulation 2 extends the entitlement to register to those who are 16 or over, hold or are required to obtain an airside pass, live abroad and either previously resided in the United Kingdom or proposing to enter the United Kingdom.

7.8 These regulations also confirm that those who are residing in the United Kingdom with no entitlement to remain here are excluded from an entitlement to be registered (e.g. those who are subject to exclusion orders or have overstayed their leave to remain in the country) as was stated during the passage of the Identity Cards Act.

### **Consolidation**

7.9 This statutory instrument does not consolidate any previous orders or regulations.

## **8. Consultation Outcome**

8.1 A draft of these Regulations formed part of the 12 week consultation on draft secondary legislation under the Identity Cards Act which was contained in the document "Identity Cards Act Secondary Legislation – a Consultation", published on 21<sup>st</sup> November 2008. (see: [http://www.ips.gov.uk/identity/downloads/NIS\\_Legislation.pdf](http://www.ips.gov.uk/identity/downloads/NIS_Legislation.pdf)).

8.2 No substantive comments on these regulations were received as part of the consultation and no amendments have been made as a result of the process.

8.3 A summary of the consultation has been published and placed on the Identity and Passport Service website (at <http://www.ips.gov.uk/identity/index.asp>).

## **9. Guidance**

9.1 Guidance on who is entitled to apply for registration on the National Identity Register will be made widely available to customers in the application pack that accompanies an application form for registration and an ID card as well as being made available on the Identity and Passport Service website and in general information leaflets. Customer guidance will be subject to customer experience and “Plain English” testing prior to publication.

## **10. Impact**

10.1 An Impact Assessment has been published to cover the regulatory and other impacts of the secondary legislation currently proposed under the Identity Cards Act including this Order (at <http://www.ips.gov.uk/identity/index.asp>). This Impact Assessment examines the impact on the public, private and third sectors.

10.2 The Impact Assessment includes 3 separate sections – Costs and Benefits, Equality, and Other Reviews (including competition, small firms, legal aid, sustainable development, rural proofing and privacy).

- The Costs and Benefits assessment concludes that the introduction of identity cards and the roll out of the National Identity Service will return a net benefit of £6 billion over a 30 year period.
- The Equality assessment focuses on the impact on people who will be affected by the natal introductory phases of the National Identity Service in relation to race, gender, gender identity, religion or belief, sexual orientation and age.
- The Other Reviews concluded that there was little additional impact. The privacy review acknowledged concerns expressed and set out safeguards that are in place or will be put in place to address those concerns.

## **11. Regulating small business**

11.1 As part of the impact assessment mentioned above, an initial small firms impact assessment was conducted. It found that in the initial rollout phases of the service, the small volumes of cards in circulation means that the overall impact on the small business community will be negligible and would primarily fall on small firms employing airside workers. An assessment

conducted with employers at Manchester and London City found that there was minimal impact thanks to the fee waiver for the first 18 months for airside workers. The results underlined that small firms do not want the application process to be unduly bureaucratic or cause further delay but would welcome steps whereby the identity card was used as a means to streamline existing pre-employment checks.

## **12. Monitoring and review**

12.1 The first eighteen months of the scheme will be treated as an evaluation period. At the end of this period, Government and industry will jointly evaluate the arrangements which have been put in place for identity cards to be issued to airside workers, consider the benefits which have been achieved in terms of both security and efficiency and develop a list of actions to improve the operation as it is extended nationally. The initial aviation industry partners – in particular Manchester Airport Group and London City Airport – will be amongst the participants in this evaluation. At this point, the fee waiver will be reviewed as part of this analysis.

## **13. Contact**

13.1 Colin Foley at the Home Office, Identity and Passport Service, Tel:020 7035 8025 or email: [colin.foley@ips.gsi.gov.uk](mailto:colin.foley@ips.gsi.gov.uk) can answer any queries regarding the instrument.