

IDENTITY CARDS ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Supplemental

Section 40: Orders and regulations

214. This section provides how orders and regulations are to be made. This will be through an affirmative resolution procedure in most instances provided for in the Act.
215. *Subsection (4)* enables provisions to differ for different cases, with exemptions and exceptions. For example, regulations may allow different application procedures for groups such as the very elderly or those with mental health problems.
216. *Subsection (5)* provides that if in the future the age at which an entitlement to registration arises (section 2(2)) is modified so that individuals under the age of 16 may register, then any obligations under this Act (for example to notify changes under Section 10) will fall on the child's parents or other responsible adult.
217. *Subsection (6)* is necessary so that if amendments are made to Schedule 1, consequential changes may be made to sections 12(2) and 12(3) and to those parts of the Act which make reference to the Schedule.
218. *Subsection (7)* sets out in more detail what the power for the approval of a person or of apparatus (the accreditation system) may entail. This includes the granting of an approval subject to specific conditions (e.g. that the organisation maintains an agreed level of security) which may be modified as well as the suspension or withdrawal of an approval (e.g. where the organisation has misused the verification service).

Section 42: General interpretation

219. This section provides for interpretation of certain terms used in the Act. This includes the definition of biometric data in relation to an individual as meaning data about his external characteristics including in particular the features of an iris or other part of the eye. It also makes clear that "subject to compulsory registration" means an obligation to register and be issued with an ID card imposed by way of future primary legislation.
220. *Subsection (2)* defines what is meant by the provision of a public service. This is broadly defined and is not restricted to what might be commonly understood as "public services" such as the NHS and could include the granting of a firearms certificate or the requirement to notify changes of address imposed on certain sex offenders.

Section 43: Scotland

221. *Subsection (1)* provides that the use in relation to Scotland of the Register or an ID card is authorised only in matters which are reserved or which are in accordance with an Act of the Scottish Parliament.

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222. *Subsection (2)* ensures that regulations may not be made under section 13 which allow or require the imposition of a condition on the provision of a public service in Scotland except where it is in relation to a reserved function. Separate legislation by the Scottish Parliament would be required if, for example, it were proposed in the future to require an ID card to be produced as a condition of accessing a devolved public service in Scotland.
223. *Subsection (3)* provides that nothing in this section restricts any of the provisions of this Act authorising information from the Register to be provided. For example, provision of information to the police in Scotland under section 17 or for verification with consent under section 12. This section also does not restrict the powers under this Act to make other provision authorising such information to be provided to a person in Scotland (for example, regulations may be made under section 20(1) to permit information to be provided to the Registrar General of Births, Deaths and Marriages for Scotland).

Section 44: Short title, repeals, commencement and extent

224. This section allows the preceding provisions of the Act to be brought into force by order made by the Secretary of State. Different parts of the Act may come into force on different dates.
225. *Subsection (5)* provides that sections 36 and 38 (amendments relating to passport fees and data-sharing powers for passport applications) shall come into force two months after the Act is passed.
226. *Subsection (4)* clarifies that this includes a power to enable roll-out of the scheme to be undertaken by geographical areas; and that a trial may be undertaken in relation to particular areas or persons. This subsection includes a power to make transitional provision between the trial stage and full commencement of the scheme.
227. *Subsection (6)* provides an extension power so that sections may be applied to the Channel Islands or to the Isle of Man via Order in Council.
228. The Act extends to Northern Ireland (*subsection (8)*).

Schedule 1: Information that may be recorded in Register

229. Schedule 1 sets out information that may be recorded in the Register. This includes:
- personal information – names, date and place of birth, gender, addresses;
 - identifying information – photograph, signature, fingerprints, other biometric information;
 - residential status – nationality, entitlement to remain, terms and conditions of that entitlement;
 - personal reference numbers – for example the National Identity Registration Number and other government issued numbers, and validity periods of related documents;
 - record history – information previously recorded, audit trail of changes and date of death;
 - registration and ID card history – dates of: application, changes to information, confirmation; information regarding: other ID cards already issued, details of counter-signatures, notification under section 11(1) and requirements to surrender an ID card;
 - validation information – information provided for any application to be entered in the Register, modification, confirmation or issue of an ID card (such as the information contained in the application form); other steps taken in connection

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with an application or otherwise for identifying the applicant and verifying the information; particulars of any other steps for ensuring there is an accurate entry in the Register; and particulars of notification of changes;

- security information – personal identification numbers, password or other codes, and questions and answers that could be used to identify a person seeking provisions of information or the modification of an entry; and
- records of provision of information – the “audit log” of how and when any information from an entry was provided to any person or body.

Schedule 2: Repeals

230. Repeals can be found in Schedule 2 of the Act.