

EXPLANATORY MEMORANDUM TO
THE IDENTITY CARDS ACT 2006 (PRESCRIBED INFORMATION)
REGULATIONS 2009

2009 No. 2794

1. This Explanatory Memorandum has been prepared by the Home Office and the Identity and Passport Service (“IPS”) and is laid before Parliament by command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 These Regulations outline the information which must be recorded on an ID card as well as the information which must be held on the ID card in an encrypted form. They also establish that “designated document” authorities must ensure that an ID card meeting certain requirements is being issued before they can issue a “designated” document where an applicant does not already hold an ID card.
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 30th of March 2006. This instrument, together with a further nine, will be the first set of orders and regulations made under the Act.
 - 4.2 Alongside this instrument, a further five instruments subject to the affirmative resolution procedure are being laid before Parliament in May 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 (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 prescribe 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 charged for applications relating to the National Identity Register and ID cards and exemptions to those fees.
- The Identity Cards Act 2006 (Designation) Order 2009, which designates “a criminal conviction certificate” that is applied for by airside workers meaning that certain airside workers will be required to apply for an ID card when they apply for such certificates.

4.3 In addition, four instruments subject to the negative resolution procedure will be laid before Parliament in June 2009 They are as follows:

- The Identity Cards Act 2006 (Entitlement to be Registered) Regulations 2009, which prescribe, in addition to those specified in section 2 of the Identity Cards Act, those people who are entitled to be registered on the National Identity Register.
- The National Identity Registration Number Regulations 2009, which specify the format with which the number must comply.
- 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.

4.4 These instruments will enable the first phase of the National Identity Service to be implemented, which will involve a limited initial rollout to a numbers 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 the commencement orders will be laid during 2009 that will enable a short operational trialling period, the launch of the Service to airside workers in the aforementioned airports as well as to members of the public resident in Greater Manchester.

4.5 The instruments relate only to provisions for those who are British citizens, British subjects with right of abode in the United Kingdom, EEA nationals or family members of EEA nationals from outside the EEA. There will be additional secondary legislation laid before Parliament in due course to extend the issue of biometric immigration documents (commonly known as identity cards for foreign nationals) under the UK Borders Act 2007. This will make similar provisions for airside workers who are subject to immigration control, also starting with those at Manchester and London City airports.

4.6 These provisions have been grouped together as they relate to the information recorded on the ID card and are always subject to the affirmative resolution procedures. Other provisions relating to the making of applications for ID cards that are only subject to the affirmative resolution procedure for the first time they are laid have been included in The Identity Cards Act 2006 (Application and Issue of ID Card and Notification of Changes) Regulations 2009, as these regulations will be subsequently subject to the negative resolution procedure.

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 Minister of State, Home Office, Phil Woolas MP has made the following statement regarding Human Rights: “In my view the provisions of the Identity Cards Act 2006 (Prescribed Information) Regulations 2009 are compatible with the Convention rights.”

7. Policy background

7.1 The Identity Cards Act 2006, establishes a statutory framework for issuing fingerprint biometric identity cards together with the creation of a secure and reliable National Identity Register to hold the identity information of everyone issued with an identity card. 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 identity card.

7.2 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).

7.3 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.

7.4 The Delivery Plan also made clear that the first identity cards issued to British citizens and European Economic Area nationals would be issued by IPS under the Identity Cards Act 2006, starting in autumn 2009. These will be issued to critical

workers at airports from 2009 and also to a limited number of volunteers with a focus on young people from 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.

7.5 These regulations introduce the ability for one of two kinds of ID card to be issued to those whose application for an ID card is successful. The first of these will be the “National Identity Card”. This will be issued to British citizens and British subjects with the right of abode and will be valid as a travel document within the European Economic Area (EEA). The second of these will be the “Identification Card”. This kind of ID card will not be valid as a travel document. As outlined in Regulation 1(2), it will be issued to:

- Irish and other European Economic Area (EEA) nationals and non EEA nationals who are a family member of an EEA national who are resident in the United Kingdom. Thus, these individuals can be issued with an ID card that can be used as proof of identity but it would only be appropriate for them to be issued with a travel document by their own national governments.
- British citizens and subject with right of abode who are not entitled to be issued with a travel document. This may be because their right to travel has been restricted in a court order or they have been refused passport facilities (e.g. they have outstanding repatriation debts or where a person’s past or proposed activities are so demonstrably undesirable that the grant or continued enjoyment of passport activities would be contrary to the public interest.)
- those who have a proven need to live part of their lives in a different gender to that on their birth certificate as a potential second card.

7.6 The information that must be recorded on an ID card is outlined in Regulation 2 and further information that may be recorded on the card is outlined in Regulation 3.

7.7 The information to be recorded on an ID card is very similar to that on the personal page of the passport, which reflects the fact that the National Identity Card will be a valid travel document within the EEA. In line with the passport today, biographical information recorded on the face of the card will also be recorded in a machine readable zone. This will consist of three lines on the reverse of the card which can be read by special reading equipment. The information recorded within the machine readable zone can also be read by the human eye. There is no hidden information and no means of adding to the card after it has been issued.

7.8 The ID card will also feature a chip, which will store a digitised image of the holder along with two fingerprint images and the biographical details printed on the card. It will also include additional security features in the chip, in line with Regulation 2(s) and (t), such as cryptographic keys and certificates which will provide protection for the information on the card as well as facilitate protections that prevent the fingerprints recorded being read by those unauthorised to do so. The inclusion of a chip, the card design and format of the information on the card and the relevant security features will be in line with specifications for the biometric travel documents recommended by the International Civil Aviation Organisation (ICAO) which is responsible for facilitating the interoperability of travel documents.

7.9 Regulation 4 outlines any exceptions to the list of information provided in Regulations 2 and 3 that relate to the Identification Card. As a result of these regulations, that card will feature an additional observation that will highlight that it cannot be used for travel purposes and it will not record a reference to the holder's nationality. This that will highlight to both the holder of that card and to border control staff that the card is not a valid travel document. This will be supplemented by a number of other measures. For example, while both cards will have similar design features, it is intended that the appearance of the Identification Card (e.g. the colour of the card) will differ from that of the National Identity Card to help distinguish between them.

7.10 These regulations must also list the information that must be encrypted (i.e. put into a coded form) on the ID card. Regulation 5 lists the information that will be cryptographically protected on the ID card in accordance with International Civil Aviation Organisation standards, as outlined during the passage of the Identity Cards Act (e.g. by Baroness Scotland of Asthal at Col.1260 of Lords Hansard on the 14th of December 2005 – http://www.publications.parliament.uk/pa/ld200506/ldhansrd/vo051214/text/51214-04.htm#51214-04_head1)

7.11 Regulation 6 outlines the minimum information that needs to be recorded about an individual on the National Identity Register before an ID card is required to be issued to that individual after a successful application for registration. The information included reflects the personal information that is recorded on the National Identity Card itself by virtue of Regulations 2 and 3. While nationality is not recorded on an Identification Card, the nationality of that individual would be recorded on the National Identity Register before the card is issued.

7.12 Where an applicant for a designated document does not hold an ID card, the issuer of that document will be required to ensure that the ID card that is to be issued to that applicant meets the requirements outlined in Regulation 8. This establishes that the ID card must meet the requirements relating to information to be recorded on the ID card as outlined in Regulations 2 to 5.

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 21st November 2008. (see: http://www.ips.gov.uk/identity/downloads/NIS_Legislation.pdf).

8.2 The consultation outcome did not result in detailed changes to the draft provisions that had been published. However, the findings showed that the majority of respondents who addressed the issue of information on the card approved of the proposal not to record an individual's address or their National Identity Registration Number, the unique reference number of an individual's record on the National Identity Register, on the card.

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

9. **Guidance**

9.1 Guidance brochures on the first generation UK ID cards will be made available to UK and EU/EEA border authorities, police, banks and other institutions, both in the United Kingdom and abroad, that may be presented with the card and the public so they are familiar with the designs and security features of the card variants. There will also be a wide spectrum of information available on the IPS website.

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 these Regulations (at <http://www.ips.gov.uk/identity/index.asp>).

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 businesses**

11.1 These Regulations do not have an impact on small business. A small business impact assessment relating to the overall launch of the initial rollout phases of the National Identity Service is included in the Impact Assessment.

12. **Monitoring and review**

12.1 These regulations will enable the first versions of the ID card to be introduced. However, IPS will conduct market research with our customers and the wider public to judge their perception of the card's design and functionality and seek to include this feedback into future design iterations. IPS will continue to liaise with public and private sector service providers who will use the National Identity Service in order to verify the identity of their customers or employees and we will seek to develop additional card functionality on the basis of such engagement. IPS will lay amended regulations before

Parliament to seek approval to any necessary changes to these provisions that result from such findings.

12. **Contact**

13.1 Joy Oyesanya at the Home Office, Identity and Passport Service, Tel:020 7035 8022 or email: joy.oyesanya@ips.gsi.gov.uk can answer any queries regarding the instrument.