

**EXPLANATORY MEMORANDUM TO
THE IDENTITY CARDS ACT 2006 (PROVISION OF INFORMATION WITH
CONSENT) REGULATIONS 2009 (AMENDMENT) REGULATIONS 2010**

2010 No. 1180

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 correct a few minor errors in Regulation 1(2) of the Identity Cards Act 2006 (Provision of Information with Consent) Regulations 2009 (“the Regulations”) and make some other small amendments to Regulations 3 and 4 of the Regulations.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Committee requested information from the Home Office in a letter dated 4 November 2009 to on the following points:

(1) What is the meaning of “restricted zone” in the definition of “airside pass” in regulation 1(2), and why is “restricted zone” not defined itself?

(2) Why do –

(a) the definition of “Passport validation service” in regulation 1(2), and

(b) regulation 4(1),

appear to identify the Identity and Passport Service (which does not appear to have legal capacity separate from that of the Secretary of State) as the party to an agreement in the first case and the party responsible for accreditation in the second case?

3.2 The Home Office agreed in a Memorandum to the Committee to correct these errors in amending regulations and is now doing so.

3.3 On further reflection, the Home Office has decided to omit the definition of “airside pass” as this term is not used in the Regulations. This omission means that no definition of “restricted zone” is required as that term will no longer appear in the Regulations.

3.4 The Home Office has, however, included a definition for “manager” so that the term “an aerodrome manager” that appears in Regulation 3(b) of the Regulations will have the same meaning as that in the Aviation Security Act 1982 (1982 c. 36).

3.5 The Home Office has included a new definition of “the Identity and Passport Service” and is also correcting a small typographic error found in the definition of “aerodrome” in Regulation 1(2) of the Regulations.

3.6 The Home Office has made some other small amendments to Regulations 3 and 4 of the Regulations to clarify the provisions relating to applications made under section 12 of the Identity Cards Act 2006.

3.7 This Statutory Instrument has been made because of defects in SI 2009/2575 and is being issued free of charge to all known recipients of that Statutory Instrument.

4. Legislative Context

4.1 The Identity Cards Act 2006 (“the Act”) received Royal Assent on 30th of March 2006. The Regulations were one of eight statutory instruments that implemented the detailed provisions required to bring the Act into force.

4.2 These instruments enabled the first phase of the National Identity Service to be implemented, which involved 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 is being implemented by means of commencement orders that are being laid as the rollout of the Service progresses.

4.3 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 Under-Secretary of State, Home Office, Lord West of Spithead has made the following statement regarding Human Rights: “In my view the provisions of the Identity Cards Act 2006 (Provision of Information with Consent) Regulations 2009 (Amendment) Regulations 2010 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).

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 30th 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 These Regulations make some small amendments to the definitions used in The Identity Cards Act 2006 (Provision of Information with Consent) Regulations 2009 which were made on 23 September 2009. They also make some minor amendments which are necessary to clarify that a person who is accredited by the Identity and Passport Service to be provided with information from passport records under the Passport Validation Service to the list of persons who may make an application under section 12(1)(a) and (b) and 12(6). Regulation 5 makes it clear that applications made by such persons are made under those sections only.

Consolidation

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

8. Consultation Outcome

8.1 No consultation was required for the small amendments made by these amending regulations.

9. Guidance

9.1 New guidance will not be required as a result of these small amendments.

10. Impact

10.1 An Impact Assessment has been published to cover the regulatory and other impacts of the secondary legislation made under the Identity Cards Act (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 These Regulations do not apply directly to businesses.

12. Monitoring and review

12.1 During the first eighteen months following commencement the Government will evaluate the arrangements that have been put in place to provide information form an individual's entry on the National Identity Register with the consent of that individual. The Identity Commissioner will have responsibility for oversight of the arrangements maintained to carry out the functions under the Identity Cards Act more generally.

13. Contact

13.1 James Fogg at the Home Office, Identity and Passport Service, Tel:020 7035 8020 or email: james.fogg@ips.gsi.gov.uk can answer any queries regarding the instrument.