



Home Office

**IDENTITY CARDS ACT
SECONDARY LEGISLATION:
A RESPONSE TO THE CONSULTATION**

CONTENTS

1. Summary	1
2. Background to the consultation	2
3. Consultation responses and the action now proposed	4
Making applications, checking identity and the issue of identity cards	4
Maintaining the accuracy of the National Identity Register	8
Provision of information from the National Identity Register with consent	11
Provision of information from the National Identity Register without consent	14
Designation of documents and the roll out of identity cards	15
4. Next steps	19
ANNEX A: Draft statutory instruments subject to consultation and those now proposed	21
ANNEX B: List of organisations which responded to the consultation	24
ANNEX C: Consultation points	25

1. SUMMARY

- 1.1. This document provides a summary of the responses to the consultation on Identity Cards Act secondary legislation. It also sets out the next steps to be taken, including the plans to lay before Parliament for scrutiny final drafts of the secondary legislation. This is required before the first identity cards can be issued to British and European Economic Area nationals, starting in autumn 2009.
- 1.2. The document “Identity Cards Act Secondary Legislation: a Consultation” was published on 21st November 2008 (see: http://www.ips.gov.uk/identity/downloads/NIS_Legislation.pdf). The consultation ran for 12 weeks and concluded on 13th February 2009. There were published for consultation 12 separate draft statutory instruments (orders and regulations) together with a draft Code of Practice on Civil Penalties under the Identity Cards Act 2006 (see: http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060015_en.pdf).
- 1.3. We invited comments on a number of specific points about the drafting of the secondary legislation, but also on the policies that the secondary legislation seeks to implement. A list of the consultation points is at Annex C. We received responses through a number of channels including by letter, by e-mail and through face to face briefing meetings. Overall there were some 169 responses including 127 from members of the public and 42 from various organisations. The names of the organisations that commented are listed at Annex B.
- 1.4. We are very grateful for all the comments we received which included challenges and concerns, as well as suggestions for amendment to the secondary legislation. The Government remains committed to the introduction of identity cards in an incremental way starting with airside workers and a limited number of volunteers. However, as a result of the comments and the opportunity for further review during the consultation period, a number of drafting improvements have been made to the statutory instruments.
- 1.5. This document provides a summary of the response to the consultation and the next steps that are to be taken. These include (as listed at Annex A) laying before Parliament and publishing: -
 - 6 separate “affirmative” statutory instruments in May 2009, with 4 separate “negative” statutory instruments in June 2009;
 - The draft Code of Practice on Civil Penalties in May 2009;
- 1.6. It is intended, subject to the Parliamentary timetable, that Parliament will be able to debate and where necessary approve Identity Cards Act secondary legislation in June 2009 so that it is in place in good time for the first identity cards to be issued starting from autumn 2009.

2. BACKGROUND TO THE CONSULTATION

- 2.1. The Identity Cards Act 2006 creates the legal framework for the introduction of identity cards, but it does not set out all the detailed arrangements such as the information on the card, the arrangements for applying for an identity card or the fee to be charged and the data sharing provisions. These arrangements now need to be put in place through secondary legislation and will include the regulations, orders and a Code of Practice that are needed before the first identity cards can be issued under the Identity Cards Act 2006.
- 2.2. Identity cards for foreign nationals started to be issued to foreign students and spouses from November 2008 by the UK Border Agency. However, they are issued under separate immigration legislation, the UK Borders Act 2007, and so were not the subject of this consultation.
- 2.3. Secondary (or delegated) legislation enables detailed changes to the law to be made under powers already established in primary legislation – in this case the Identity Cards Act 2006. Secondary legislation enables the Government to make detailed provisions and subsequent changes in law without needing a completely new Act of Parliament for each addition or subsequent change. Examples include the introduction of fees for an identity card or specifying the information that is to be shown on the face of the card.
- 2.4. The secondary legislation under the Identity Cards Act will be Statutory Instruments in the form of regulations or orders. The majority of these will be subject to Parliamentary scrutiny either of an “affirmative procedure” – where the Statutory Instrument requires approval in both Houses of Parliament, usually following a debate, or the “negative procedure” where the Statutory Instrument is formally laid before Parliament, but not actively considered and will become law on a specified date in the future unless the Statutory Instrument is formally “prayed against” because there is an objection to it. In that case there would be a Parliamentary debate.
- 2.5. The phasing in of the provisions for identity cards will be through the use of commencement orders to specify the initial scope of the scheme. Thus the first commencement orders will limit the application process only to airside workers at the first airports to be covered by the Critical Workers Identity Cards scheme (Manchester and London City airports) as well as to members of the public in the specified areas where residents may apply for the initial identity cards issued on a voluntary basis. The first area to be specified is intended to be the Greater Manchester area.
- 2.6. The consultation paper “Identity Cards Act Secondary Legislation: a Consultation” was published on 21st November 2008 (see: http://www.ips.gov.uk/identity/downloads/NIS_Legislation.pdf) and the consultation

ran for 12 weeks concluding on 13th February 2009, although a few responses were received after this date. 12 separate draft statutory instruments (orders and regulations) and a draft Code of Practice on Civil Penalties under the Identity Cards Act 2006 were published for consultation. The consultation exercise was a public one and anyone who wished to comment was invited to do so. However, those organisations that had already commented on the National Identity Scheme Delivery Plan 2008 and any organisations that were likely to be affected by the early roll out of identity cards at airports were particularly invited to comment.

- 2.7. This was the latest step in a number of public consultations relating to identity cards where there has been consultation on different aspects of the national identity scheme – now being referred to as the National Identity Service. The previous consultation was also a 12 week consultation on 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>). A summary of the response to that consultation was published in November 2008 (see: <http://www.ips.gov.uk/identity/downloads/ConsultReportv2.pdf>).
- 2.8. The latest information on the delivery of the National Identity Service was published in May 2009 in the National Identity Service Delivery Update 2009 (see: <http://www.ips.gov.uk/identity/index.asp>)

3. CONSULTATION RESPONSES AND THE ACTION NOW PROPOSED

3.1. Comments were invited on 15 specific consultation points highlighted in the consultation paper (listed at Annex C) as well as inviting wider comments on the rollout of the National Identity Service. There were some 169 responses, including 127 from members of the public and 42 from various organisations. A number of those who responded expressed general support or opposition to the principle of identity cards but did not address any of the general topics in response to the consultation paper. However, this chapter sets out the themes that were raised on each of the main areas of the consultation document and how it is now intended to respond.

Making applications, checking identity and the issue of identity cards

3.2. The consultation sought views on the general operational processes relating to applications and application checks and on the information held and validity period of the identity card as outlined in the statutory instruments (consultation points 1 to 3). In particular, views were sought on the definition of “place of residence” and the decision not to include the National Identity Registration Number on the card.

3.3. Generally, respondents on the proposed operational processes were satisfied with the robustness of the provisions. Many respondents recognised that current passport

processes are seen as the most effective and thorough in providing a common and consistent identity authentication standard today and it is sensible to use such processes as a starting point for the application processes outlined in the legislation. Furthermore, responses from organisations where the verification of identity represents an important part of their activities welcomed the additional assurance that will be delivered by the introduction of biometric “dual enrolment” check – i.e. biometric checks against the biometrics recorded on the National Identity Register at enrolment to ensure an individual had not previously been issued with an identity card in another identity.

Applications from the transgendered community

3.4. The single largest topic raised in response to the consultation was how applications from transgendered people would be handled and how their gender history would be recorded. Some of these concerns resulted from a misinterpretation of the proposals whilst others raised legitimate additional concerns (e.g. regarding the recording of previous names). During the consultation period, the Identity and Passport Service met representative groups from the transgendered community and developed a briefing document for the community to outline our policy with regard to applications from the transgendered communities which addresses these concerns. This can be

found on the Identity and Passport Service website (see: <http://www.ips.gov.uk/identity/downloads/09-03-10agenderStatementv4.pdf>)

3.5. In response to these findings, the following changes have been made to the legislation:

- Provisions have been clarified that demonstrate that those who wish to apply for an identity card in an acquired gender (i.e. a gender opposite to their birth gender) can do so once they produce either (a) a valid passport or identity card in that gender, (b) an birth or adoption certificate in that gender, (c) a gender recognition certificate or (d) evidence from a registered medical practitioner or chartered psychologist practising in the field of gender dysphoria that they have a need to live in that gender.
- Additional provisions have been introduced that mean that those who wish to apply for an identity card in an acquired gender and have provided approved supporting documentation in that gender with their application will not need to provide any previous names that relate to their birth gender. This seeks to ensure that they do not need to reveal their gender history unnecessarily.
- Provisions have been amended that demonstrate that those who have a need to live in two gender roles (i.e. to live part of their time in their birth gender

and part of their time in an acquired gender) will be given the option to applying for an identity card in each gender linked to a single unique record on the National Identity Register. This would require the production of evidence from a registered medical practitioner or chartered psychologist practising in the field of gender dysphoria that the applicant has a need to live at least part of their life in a different gender.

Checks conducted to verify identity

3.6. Responses were received from representatives of the organisations who could be required to provide obtain information for the purposes of verifying information on, or proposed to be entered on the National Identity Register. They have confirmed that they are content with their inclusion in the order. In addition, in consultation with the devolved administrations in Scotland and Northern Ireland, the Registrars General for Scotland and for Northern Ireland have now also been included in these provisions so that it is clear that these data sharing requirements fall under statutory provisions arising from UK wide legislation.

Information recorded on the card

- 3.7. Respondents were generally content with the information that was proposed to be included on the card with some acceptance of the choice of using the familiar passport standards. Some respondents commented that they were happy that address was not included on the card.
- 3.8. A majority of respondents who addressed this issue were in favour of the decision not to include the National Identity Registration Number on the card. A minority of respondents expressed concerns that this would limit the usefulness of the card and slow down any verification of identity that sought to confirm information against the National Identity Register. However, the Government feels that the product number on the card should be able to facilitate any such transactions, at least initially, and with a much reduced impact on privacy in comparison to a unique identifier. However, one respondent highlighted that it should still be possible for the individual card holder to be aware of their National Identity Registration Number. We can confirm that this will be the case.
- 3.9. Finally, a small number of respondents referred to the possibility that a previous name could be included on the card and asked whether this was necessary. After an operational review, we agree that this option is not required and may result in confusion. As a result, we have amended the draft regulations to remove this.

Welsh Language

- 3.10. There have been requests to ensure that the Welsh language is included on cards issued in Wales and that people in Wales can engage with the National Identity Service in Welsh. The Identity and Passport Service already has a Welsh language scheme and we will build on this scheme and update it to encompass the introduction of identity cards. We are working with the Welsh Language Board in doing this. This commits us to providing application materials and forms in Welsh to people in Wales as well as to communicating to those applicants from Wales who wish to communicate in Welsh.
- 3.11. Any individual will be able to fill in their application form in Welsh and they will be able to register their details on the National Identity Register in Welsh and have a Welsh name reflected on their identity card.
- 3.12. We are not able to include Welsh language on the first cards to be issued in 2009 and in any event these will start with airside workers at Manchester and London City airports and cards on a voluntary basis in Greater Manchester. However, we are working to see how the design of the next version of the identity card can be adapted to include the Welsh language. The need to meet international standards for the design of travel documents (such as the identity card) puts some constraints on the design of the card.

The National Identity Registration Number

3.13. The safeguards proposed in draft regulations regarding the format of the National Identity Registration Number were welcomed by a number of respondents. The Information Commissioner's Office proposed a further safeguard which would prohibit the number being generated from an existing reference number in order to prevent any back linkage. This is in line with our intended approach and thus, we are happy to accept this proposal and will amend the regulations to include such a prohibition.

3.14. It has also been asked whether the National Identity Registration Number will be considered a "general identifier" and accordingly an order made under the Data Protection Act 1998 to reflect this. Given the limited nature of the initial rollout of the Service and that the National Identity Registration Number will not be printed on the card, it is the Government's view that the National Identity Registration Number could not be considered a general identifier at present. However, it is still intended that it will be designated as such in due course, once identity cards have been issued in greater numbers.

Place of Residence

3.15. A wide variety of opinion was received in relation to the definition of place of residence and principal place of residence. A number of respondents were concerned that it was too narrow

to accommodate the needs of those who live transient or chaotic lifestyles or felt that a contact address was sufficient whereas others felt that it needed to be tighter to the extent that people should have one single mandated statutory address.

3.16. At this point in the rollout of the Service, it is the Government's view that the current proposal strikes the right balance between the necessary flexibility needed to reflect the diversity of lifestyles in the United Kingdom today, whilst avoiding abuse by permitting any address, such as commercial addresses or post office boxes and by differentiating between primary and secondary addresses. A number of respondents who deal with large numbers of customers agreed with this view. We believe that the current draft regulations combined with powers on the face of the Act facilitate this balance and accommodates the needs of those who move frequently or are of no fixed abode. We can provide reassurance that, for example,;

- Individuals who must move around for work for periods at a time can still regard their home as their principal place of residence and would not need to notify temporary changes required for their work;
- Students who live with their parents outside of term time would have an option of registering their parents' address instead of, or in addition to, their term time address;

- Those who are homeless and are not able to name a place of abode can be exempted from that requirement on a case-by-case basis and an alternative address can be arranged that suits their individual circumstances.

3.17. As the rollout of the Service continues, we will continue to review the definition on the basis of customer feedback, research and stakeholder engagement.

Information to accompany applications

3.18. There was a general recognition amongst the respondents who referred to application processes that the information required with an application satisfactorily reflected the current arrangements for passport applications. Other than what has already been outlined above, we do not intend to make further changes to those provisions as a result of the consultation. However, a number of respondents did seek clarification about why certain items of information were being requested:

- The requirements to provide parents details with certain applications are relevant when an application is made by those claiming British citizenship or subject status but do not hold a valid passport. The request for this information follows existing passport policy. It is required because it forms an essential part of determining whether the

applicant has a right to British citizenship or subject status under nationality law and thus to determine if they have the right to a travel document which states that nationality.

- Requesting applicants to confirm that they do not have any outstanding repatriation debts is longstanding Government policy. Those who have outstanding repatriation debts or other outstanding debts relating to consular relief may not be granted a new travel document unless those debts are paid. As the National Identity Card is a valid travel document, these regulations simply reflect that existing policy. In those cases where an individual does have outstanding debts of this nature, they could still be issued with an identity card but it will not be valid for travel.

Maintaining the accuracy of the National Identity Register

3.19. The consultation sought views on the general operational processes relating to notification of changes and reporting of lost or stolen identity cards as well as the implementation of civil penalties relating to such matters (consultation points 5 to 8). In particular, views were sought on the provisions relating to notifications for those who move abroad, on how to best assist applicants in understanding any requirements placed on them and

on how to facilitate those who require a proxy to assist them in providing a notification.

- 3.20. The key theme that emerged from the responses was the importance of ensuring that the information held on the National Identity Register is accurate and that this can be best achieved when it is customer led. Thus processes for updating information must be easy to follow and convenient for the customer so as to encourage an active interest in ensuring that the information is up-to-date. We accept this point and recognise that the National Identity Service will only be truly successful if people want to update their details because the services offered to them that depend on this data are useful in everyday life. In the booklet “Introducing the National Identity Scheme”, we outlined the kind of services we want to create in order to encourage this customer “push” for keeping a record up-to-date. The booklet also shows how we wish to offer multiple customer channels, over time, which will allow information to be updated quickly and conveniently. This booklet is available on the Identity and Passport Service website (see: http://www.ips.gov.uk/identity/downloads/introducing_the_national_identity_scheme.pdf.)

Guidance

- 3.21. Useful suggestions were made about how we can best make individuals aware of any requirements that these processes place on them. Many of these closely reflected activities that

are already conducted by the Identity and Passport Service today – providing a customer helpline and ensuring guidance is written in “plain English” for example.

- 3.22. Measures that we intend to implement to ensure guidance to customers on such requirements is clear and accessible include:

- Providing guidance with application forms which clearly outline any requirements to customers before they apply;
- Providing information which highlights ongoing requirements that accompanies the identity card when it is issued to the individual;
- Conducting customer experience testing and plain English reviews of documentation before it is published to ensure that the information is clear and accessible to our customers;
- Providing specialist material that addresses the needs of particular stakeholders (e.g. transgendered applicants);
- Providing multiple channels for ongoing support for cardholders including (a) the availability of our customer helpline, (b) the availability of documentation on our website, (c) information available at Identity and Passport Service offices and (d) offices at airports for airside workers enrolling in the Service.

Remote Authentication

- 3.23. Remote authentication means the verification of an individual's identity when they are not being dealt with face-to-face (e.g. via telephone). A number of respondents queried why security questions and answers enrolled by the individual when they apply for an identity card (which is static data) would be utilised as a means of remote authentication. This was raised in light of recent technological developments that have led to the introduction of alternative methods which are not solely reliant on such static data.
- 3.24. As the initial phase of the National Identity Service commences, security questions and answers will be used for the small numbers (relative to annual passport applications) that are enrolled. They will also have relatively limited application – they will only be used to enable a change of address or to report a lost or stolen identity card. Any changes to core identity details such as those recorded on the identity card would usually require further authentication of the individual's identity using biometric verification at an Identity and Passport Service office.
- 3.25. However, as the rollout progresses and greater numbers of people are enrolled, benefits of implementing alternative methods and technologies will become clearer. We are therefore investigating such alternatives with other partners to establish which provide the best value for money as well as responding best to our customers' needs and expectations.

Proxy

- 3.26. We received a number of helpful responses about how we can best deal with the needs of those who act as a proxy for people who lack capacity. Most suggestions surrounded the use of a form of official assurance that an individual has the right to act as a proxy – such as nominated power of attorney documentation or protection orders – which is in line with existing passport practices today.
- 3.27. For the initial launch of the Service, we will mirror such practices, taking a case by case approach for each applicant. Additionally, in line with practice for passport interviews, an assistant will be able to accompany an individual who may need help when making an application and recording biometrics at an Identity and Passport Service office.
- 3.28. The consultation has also solicited some offers of assistance from a number of organisations to investigate how such processes can be further developed in the future. This includes whether new technologies may be able to facilitate different approaches, which are more convenient yet also more robust, especially in relation to transactions that are conducted remotely. We will seek to follow up these points with those organisations in the longer term.

Civil Penalties

- 3.29. A number of responses were received that made reference to the proposed civil penalty regime. Those

responses on the whole came from two viewpoints, those who asserted that the issue of any kind of financial penalty was unfair and those who suggested that a stricter regime should be in place that would punish those who failed to notify changes.

- 3.30. Very few responses made reference to the specific regulations or to the text of the Draft Code of Practice. We have noted the concerns that were raised. We feel that the draft proposals strike a fair balance between those two viewpoints. The civil penalty regime was selected as a proportionate way of enforcing the requirement to update changes to information on the National Identity Register without criminalising those who failed to do so.

Provision of information from the National Identity Register with consent

- 3.31. The consultation paper sought views on the proposals to provide information from an individual's entry in the Register to public and private sector organisations with the consent of that individual (consultation point 9). In particular, comments were invited on how consent should be given and withdrawn, and which organisations should be approved to receive information as well as what information they should provide in order to be considered for approval. Conditions will be attached to the provision of information. Views were also sought on how those conditions should be modified.

How is consent given and withdrawn?

- 3.32. The majority of respondents, including representatives from privacy organisations, agreed that information should be able to be provided from an individual's entry on the Register, with their consent, subject to meaningful and sufficient safeguards being in place.
- 3.33. However, particular importance was stressed on ensuring that consent was fully informed and given by the card holder. In view of these concerns, we intend to limit the provision of information with consent, initially, to other government departments and London City and Manchester Airport Group aerodrome authorities with whom we will work closely to develop processes which address these issues. Consent will only be considered to have been given when the applicant has signed a declaration setting out what information they are consenting to being provided, or where they have provided the identity card for the purposes of verification of particular details against the Register. In parallel, we will continue to consider expanding the list of those who are able to be approved for the purposes of being provided with information, as well as examining other mechanisms under which consent could be given as suggested by some of the consultation responses, and may seek to lay further regulations at a later stage. In particular, we are keen to ensure that the measures adopted provide sufficient safeguards but also meet the needs of industries

that require reliable and efficient identity verification to support their operations.

3.34. A respondent from the technology sector stressed that the individual must be fully informed as to how they can withdraw their consent. We will consider whether we can impose this as a legal requirement and if it is possible do so. We will work with the other government departments and aerodrome operators to ensure that the process of withdrawing consent is clear and understood by the person providing consent before such consent is given.

3.35. Consideration has also been given to the suggestion that the individual should be informed of the implications of not giving consent. As a matter of law, the individual must be given a reasonable alternative method of proving their identity. The condition of a service cannot be dependent on the production of an identity card unless set out under an enactment, and as such, we do not consider there will be any consequences in the event of an individual not providing consent.

Records of the provision of information

3.36. A respondent from the private sector recommended that, once information had been provided, the recipient organisation should be required to maintain a record of consent and that that record should be properly audited. Consistent with these recommendations, we intend to

require the receiving organisation to keep a record as to when information was provided, who requested it and who obtained the consent from the individual. This record must be kept for 12 months to give the individual, the Identity Commissioner and the Identity and Passport Service an opportunity to properly audit the provision of information from a particular record.

Who can be provided with Information? - Prescribed Particulars and Approval Conditions

3.37. Under the proposed regulations, any organisation seeking approval to be provided with information from the Register must provide the Secretary of State with “prescribed particulars”. Recommendations from the legal sector considered some prescribed particulars should be uniform for all organisations. The purposes of the prescribed particulars are to enable the Secretary of State to determine whether to provide information to that organisation or person in principle, including addressing questions over the legal identity, and must necessarily vary depending on the type of organisation. We are not therefore in a position to apply universal “prescribed particulars”.

3.38. However, we will seek to implement standard conditions on all organisations that must be satisfied (and continue to be satisfied) before information will be provided. For

example, we commit to requiring organisations to whom information is provided to assist the Identity Commissioner in carrying out his duties in respect of the arrangements made by the receiving organisation for obtaining information, in accordance with section 12 of the Identity Cards Act 2006, or that organisation's use of identity cards.

- 3.39. The requirements imposed under the regulations, and under any agreement the Secretary of State makes with the receiving organisation, will be the subject of on-going review through the evaluation period to ensure the appropriate level of assurance as the roll-out of the National Identity Service progresses.
- 3.40. A number of organisations from the commercial and privacy sectors expressed concerns over the possible modification of conditions on the grant of approval by the Secretary of State. Particular concerns centred around the impact on commercial arrangements and possible costs of making changes to technical infrastructure. Any modification to the conditions must be compliant with the Data Protection Act 1998 in cases where that Act applies, and will normally be made with due notice being given to the recipient organisation to enable them to properly and efficiently implement the required changes.
- 3.41. An additional safeguard of approving not only the organisation, but also the person receiving the information, was mooted with the approvals process

being conditional on the person being registered on the National Identity Register. This approvals process would include the registration of that person, to help ensure accountability. However, we have no power to provide for this arrangement under the Identity Cards Act 2006. We will nevertheless require organisations to keep an audit record reflecting who has been provided with information and when, which will be capable of being cross checked with the record maintained by the Identity and Passport Service by either the Secretary of State or the Identity Commissioner who will be able to check that the provision of information was lawful, and consistent with obligations under the Human Rights Act and the Data Protection Act and report any findings he thinks fit to Parliament. The audit record held by the Identity and Passport Service will also be available to the individual to whom the record relates, subject to the existing exemptions under the Data Protection Act 1998.

Publication of a list of those who are provided with information from the Register

- 3.42. Representatives from the privacy sector suggested that a list of organisations to which information can be provided, with the consent of an individual to whom the record relates, should be published. We do not intend to publish such a list, as publication could assist those seeking to benefit from a fraudulent use of the card.

Provision of information from the National Identity Register without Consent

3.43. The consultation paper sought views on the proposals to provide information from an individual's entry in the Register without the consent of the individual (consultation point 13). In particular, comments were sought on the named government departments and public authorities to whom we propose to provide information and the purposes for which information should be given. The paper also sought views on the conditions that should be attached to the provision of information.

The provision of information to government departments and public authorities

3.44. A number of respondents were supportive of the other government departments and public authorities to whom we would be able to provide information, but requested clarity as to the functions for which information will be provided. In particular, some respondents, including the Information Commissioner's Office, were keen to ensure that the functions would not be drafted wider than necessary. In line with this view, we have prescribed functions only in so far as they are necessary for the initial introduction of the National Identity Service, with the majority of functions relating to the prevention or detection of crime, or frustrating illegal immigration and illegal working.

We have also provided for a power to provide information to the Foreign and Commonwealth Office so that they can identify those who are entitled to receive consular assistance abroad.

3.45. Some respondents considered that information should also be provided to other public sector bodies such as local government, as well as defining wider powers for some of the other government departments. These suggestions have been taken on board, and we will consider the case for any such expansion in due course as the number of entries on the Register increases. However, any changes would require approval by Parliament of further regulations under the Identity Cards Act.

3.46. Contrary to the understanding of some respondents, those who request information will not have access to the National Identity Register, but rather will be provided with information from it once the Secretary of State is satisfied that the provision of information is lawful. Any provision of information will be dependent on the recipient meeting defined conditions set out in the regulations. These will be similar to those governing the provision of information with consent set out above. We have also included the Scottish Crime and Drugs Enforcement Agency to enable information to be provided to them so that they can carry out their functions.

3.47. Conditions relating to the administration of the provision

of information, including security requirements, will be set out in an agreement between the Identity and Passport Service and the receiving organisation or person.

Persons who can receive information on behalf of those named on the face of the Act

3.48. We have clearly set out who can be provided with information on behalf of those named under section 17 of the Identity Cards Act 2006, and provided for a number of conditions that must be satisfied before information will be provided. In response to concerns over the provision of audit record data, in relation to the police and HM Revenue and Customs, we have limited the provision of that information to those holding of the rank of Superintendent or Commissioner respectively.

Designation of documents and the roll out of identity cards

3.49. The Consultation paper sought comments (consultation point 14) on the proposal to provide for the roll out of identity cards to different groups through commencement orders and on the draft designation order that would link the issue of identity cards to the issue of criminal conviction certificates for airside workers.

3.50. Apart from those opposed in principle to the introduction of identity cards, the consultation responses either made no reference to or supported in principle the phased roll out of

identity cards. A number of responses referred to the proposed designation order.

3.51. One respondent raised concerns that the designation process might impact on all applicants for criminal record checks, including not just the basic check but also the standard and enhanced criminal record check. The concern was that the requirement to obtain an identity card might therefore affect people such as teachers or volunteers who require a criminal record certificate in order to work alongside children or vulnerable adults. However, there are currently no plans to seek any extension of the very specific designation power which was the subject of the consultation. This will apply to applicants for basic criminal record checks in order to work airside but not to any other applicants for criminal record checks.

3.52. Furthermore, the Government has made clear that the designation order will apply initially only to people applying for passes at Manchester and London City airports. Separate commencement orders will bring the application provisions in section 5 of the Act into force incrementally and these will be linked to the phased introduction of identity cards, both in relation to airside workers who may be required to obtain an identity card as a result of this designation order and to people applying for an identity card on an entirely voluntary basis.

3.53. The initial requirement for airside workers to obtain an identity card will be limited to new airside workers

applying for the first time for an airside pass. Commencement of the designation power will therefore apply initially only to first time applicants for an airside pass at Manchester or London City airports.

- 3.54. Other existing airside passholders at Manchester or London City airports will be able to apply for an identity card on a voluntary basis, but there will be further consultation with the airport authorities at both Manchester and London City airports before extending the commencement of this power so that the effect of this designation order would apply to existing passholders. Until then they would not be required to apply for an identity card when they apply for a new criminal conviction certificate prior to renewal of their airside pass.
- 3.55. Several of the responses, in particular some from the aviation sector, questioned the need for the designation order and suggested that it was in effect introducing “compulsory” identity cards. There were also questions as to whether it could be justified as improving security.
- 3.56. As far as compulsion is concerned, it is important to note that there will be no penalty for anyone who chooses not to apply for an identity card as a result of the designation order, just as there is no penalty now if someone prefers not to obtain a criminal record check. However, in either circumstance the individual would not be eligible for an airside pass because the designation order will impact on those people who

are already required to obtain a criminal record check in order to work airside. The requirement for airside workers to obtain a basic criminal record check is already a legal requirement imposed by a direction under the Aviation Security Act 1982 by the Secretary of State for Transport. Thus if the criminal conviction certificate is designated through this order, the requirement to have an identity card will depend both on the Identity Cards Act designation order and also on the Aviation Security Act direction. Obtaining an identity card will be linked to this existing requirement for a criminal record check. There will also be no cost to the individual for an 18 month evaluation period.

- 3.57. The reason for starting to issue identity cards to airside workers is to facilitate improvements to the pre-employment identity checking process and also to provide additional reassurance and security as to the identity of people having access to the restricted airside area.
- 3.58. So far as improving security is concerned, by introducing fingerprint biometric identity cards for airside workers there will be a more rigorous check of identity carried out by the Identity and Passport Service compared to the current system employers to verify identity. Additionally fingerprints will be recorded for all airside employees and these could be provided, subject to the safeguards in the Identity Cards Act, should there be a need for police or security services

to verify the identity of an airside worker in relation to crime or national security. A police response to the consultation suggested that starting with airside workers would enhance the security checking of this group. Additionally the Review of Transport Personnel Security carried out by Stephen Boys Smith, stated that:- “We conclude that the introduction of the ID card for airside workers is a useful addition to identity assurance”

- 3.59. The government view is that the proposal to designate criminal conviction certificates for airside workers, initially at Manchester and London city airports, through the designation order should go ahead and so, subject to some minor drafting changes a revised version of the designation order is to be laid before Parliament.

Fees

- 3.60. We sought comments (consultation point 15) on the fee regulations that would provide for an initial fee of £30 for ID cards issued in 2009/10. This is subject to an evaluation phase at the initial airports (Manchester and London City), where the fee will be waived for airside workers who enrol on the National Identity Register and are issued with an identity card.
- 3.61. Whilst the fee level of £30 was generally welcomed, there were some respondents who were concerned about affordability of the £30 fee and that, even at that level of fee, there might be some people who

would find difficulty in affording the fee for an identity card. However, as the numbers of identity cards issued initially will be limited no one would be excluded because they have not been able to obtain an identity card and the initial fee of £30 will remain. In due course the fees for passports and identity cards will be reviewed and this will be completed before the high volume roll out of identity cards begins in 2012. The review will be on the basis that charges must be fair to customers whilst at the same time ensuring that the Identity and Passport Service is able to cover its costs from the fees charged.

- 3.62. The consultation paper suggested that the fee waiver for airside workers should be introduced by means of limiting the commencement order for these regulations to exclude such applicants. However, a number of respondents felt this was not the most transparent way of demonstrating that no fee would be payable for airside workers during the evaluation phase. Accordingly, the fee regulations will be amended so that the waiver will now be included in the fee regulations. This means that further fee regulations would need subsequent approval by Parliament to introduce any fee for airside workers in the future, following the 18 month evaluation of this part of the scheme.
- 3.63. The draft fee regulations that were published for consultation included a proviso, at regulation 5, that would have required any fee to be paid not in

cash but either by credit or debit card or by cheque. These remain the preferred methods of payment, so as to reduce the cost of handling cash. However, following representations asking if cash payment could be available, it has been decided to change our approach so that cash payment of the £30 fee would be possible. Following further consideration, it has been decided that it is not necessary to detail methods of payment within the fee regulations.

- 3.64. A revised version of the fee regulations taking account of these changes is to be laid before Parliament.

4. NEXT STEPS

- 4.1. This consultation has proved extremely valuable in helping to finalise the Identity Cards Act secondary legislation. A number of drafting changes and improvements have been made and revised versions of the secondary legislation, that will be subject to debate in Parliament under the affirmative resolution procedure, are to be laid before Parliament in May 2009. There will also be further secondary legislation subject to the negative resolution procedure laid before Parliament in June 2009 (as listed at Annex A).
- 4.2. Once laid before Parliament, details of all the final secondary legislation will be published by the Office of Public Sector Information (see: <http://www.opsi.gov.uk/stat-draft>). In addition a final draft of the Code of Practice on Civil Penalties, also to be laid before Parliament in May 2009, will be published by the Identity and Passport Service (at: <http://www.ips.gov.uk/identity/index.asp>).
- 4.3. The Identity and Passport Service has also published and made available on its website (at <http://www.ips.gov.uk/identity/index.asp>) the following documents: -
 - An Impact Assessment on the secondary legislation – setting out the costs and benefits as well as summarising the other impacts of the secondary legislation;
 - The National Identity Service Delivery Update 2009 – summarising progress made since publication of the National Identity Scheme Delivery Plan in March 2008 and the next steps in delivering the National Identity Service;
 - The National Identity Service Cost Report – the latest 6 monthly report of the likely costs of implementing the National Identity Service over the next 10 years.
- 4.4. Commencement Orders will be published to bring into force the relevant sections of the Identity Cards Act. For example sections 22 and 23 of the Act relating to the appointment of the Identity Commissioner, who will provide independent oversight of the National Identity Service, will be commenced so that the new Commissioner can be appointed before the first identity cards are issued.
- 4.5. The roll out of subsequent stages of the National Identity Service, involving the issue of identity cards to British citizens and European Economic Area nationals by the Identity and Passport Service, will require commencement of the other provisions of the Identity Cards Act 2006. The Act at section 44(4) provides that the provisions may be brought into force “on different days in relation to different areas or descriptions of persons”. This means that through a series of commencement orders, linked to the phased commencement of the application provisions in section 5 of the Act, it will be possible

for the Scheme to be introduced in a manageable way – for example to Manchester and London City airports for the start of the introduction of identity cards for airside workers in autumn 2009 and to allow for the issue of identity cards on a voluntary basis, in limited numbers and at a cost of £30, to British citizens resident in Greater Manchester so that they can take advantage of the benefits of holding an identity card. Further commencement orders will in due course specify subsequent groups who may apply for identity cards, either at other airports or on a voluntary basis – the aim being that from 2012 all British passport applicants will be able to choose between being issued with a fingerprint biometric passport or a fingerprint biometric identity card (valid for travel in Europe) or both.

ANNEX A

Draft statutory instruments subject to consultation and those now proposed

Published for consultation in November 2008

- The following 12 draft statutory instruments were published for consultation: -
 - The Identity Cards Act 2006 (Entitlement to be Registered) Regulations 2009
 - The Identity Cards Act 2006 (Applications and Issue of ID Cards) Regulations 2009
 - The Identity Cards Act 2006 (Verification of Information in Register Etc.) (Specified Persons) Order 2009
 - The National Identity Registration Number Regulations 2009
 - The Identity Cards Act 2006 (Prescribed Information and Period of Validity of Card Regulations 2009
 - The Identity Cards Act 2006 (Notification of Changes and Loss, Theft etc. of ID Cards Regulations 2009
 - The Identity Cards Act 2006 (Civil Penalties) Regulations 2009
 - The Identity Cards Act 2006 (Code of Practice on Civil Penalties) Order 2009
 - The Identity Cards Act 2006 (Provision of Information with Consent) Regulations 2009
 - The Identity Cards Act 2006 (Provision of Information without Consent) Regulations 2009
 - The Identity Cards Act 2006 (Designation) Order 2009
 - The Identity Cards Act 2006 (Fees) Regulations 2009
 - A Draft Code of Practice was also published for consultation: - The Identity Cards Act 2006, Code of Practice on Civil Penalties 2009 (Setting out the matters to be considered when determining whether to impose a civil penalty and the amount of any penalty)

List of statutory instruments now proposed following the consultation

- 6 Statutory Instruments subject to the affirmative resolution procedure are now proposed, to be laid before Parliament and published in May 2009: -
 - The Identity Cards Act 2006 (Application and Issue of ID Card and Notification of Changes) Regulations 2009
 - The Identity Cards Act 2006 (Prescribed Information) Regulations 2009
 - The Identity Cards Act 2006 (Information and Code of Practice on Penalties) Order 2009
 - The Identity Cards Act 2006 (Provision of Information without Consent) Regulations 2009
 - The Identity Cards Act 2006 (Designation) Order 2009
 - The Identity Cards Act 2006 (Fees) Regulations 2009
- A final version of the code of practice is also now proposed, to be laid before Parliament and published in May 2009: -
 - The Identity Cards Act 2006, Code of Practice on Civil Penalties 2009
- 4 Statutory Instruments subject to the negative resolution procedure are also now proposed, to be laid before Parliament and published in June 2009: -
 - The Identity Cards Act 2006 (Entitlement to be Registered) Regulations 2009
 - The National Identity Registration Number Regulations 2009
 - The Identity Cards Act 2006 (Civil Penalties) Regulations 2009
 - The Identity Cards Act 2006 (Provision of Information with Consent) Regulations 2009

Note

Some of the draft Statutory Instruments have been merged, so there are now 10 Statutory Instruments proposed, rather than the 12 separate Statutory Instruments published for consultation in November 2008.

The final versions of all of the Statutory Instruments will be published, once they are laid before Parliament, by the Office of Public Sector Information (see: <http://www.opsi.gov.uk/stat-draft>) and the final draft of the Code of Practice, once laid before Parliament, will be published by the Identity and Passport Service (see: <http://www.ips.gov.uk/identity/index.asp>).

ANNEX B

List of organisations which responded to the consultation

169 separate responses were received to the Consultation including 127 written responses received from members of the public. Written submissions were received from 42 organisations as follows: -

TRAVEL/AVIATION SECTOR

1. British Airways
2. Virgin Atlantic
3. British Air Transport Association (BATA)
4. Board of Airline Representatives in the UK (BAR UK)

TRADE UNIONS

5. British Airline Pilots' Association (BALPA)
6. National Union of Students (NUS) Women's Committee
7. Trades Union Congress (TUC)
8. UNISON, East Midland Airport Branch
9. Prospect
10. GMB

LOCAL AUTHORITY

11. Birmingham County Council

EDUCATIONAL

12. London School of Economics – Identity Project
13. University of Southampton

GOVERNMENTAL/ POLITICAL

14. Information Commissioner's Office
15. Isle of Man Government

16. The Scottish Government
17. Welsh Language Board
18. General Register Office for Scotland

PROFESSIONAL BODIES

19. British Bankers Association
20. BSI British Standards
21. Reform Committee, General Council of the Bar
22. Intellect
23. Association of Chief Police Officers in England Wales and Northern Ireland
24. Association of Chief Police Officers in Scotland
25. Police Superintendent's Association of England & Wales

PRIVATE SECTOR

26. Callcredit Limited
27. Equifax
28. Fujitsu
29. Royal Mail Group
30. tScheme

OTHER

31. a:gender
32. APACS and the Payments Council
33. Changeling Aspects
34. Children's Rights Alliance for England (CRAE)
35. Gender Trust UK
36. Gender Spectrum UK
37. Gender Identity Research and Education Society (GIRES)
38. Liberty
39. Mencap
40. Mermaids
41. Press For Change
42. School Support

ANNEX C

Consultation Points

The specific consultation points included in the consultation paper (Identity Cards Act Secondary Legislation: a Consultation) with a reference to the relevant paragraphs in that paper are listed below: -

1. We welcome comments on the content of the statutory instruments and related operational processes outlined for the processing of application and application checks (paragraph 2.60).
2. We welcome comments on how we have defined “place of residence” and “principal place of residence” and in particular, how to ensure that the legislative provisions can accommodate those living transient lifestyles (paragraph 2.61).
3. We welcome comments on the content of the statutory instrument relating to the information to be held on the card and its validity period, including the decision not to include the National Identity Registration Number on the card. However, the layout and information held on the card will need to meet international travel document standards established by the International Civil Aviation Organisation (paragraph 2.62).
4. We welcome comments on the requirements to notify changes outlined in this statutory instrument as well as the related operational processes described in this chapter (paragraph 3.32).
5. We welcome comments on the provisions outlined for those who have moved abroad from the United Kingdom to report a change to the details on their identity card (paragraph 3.33).
6. We welcome comments on how we might best facilitate those who may need to act as a proxy for people who lack capacity, due to mental or physical impairment, to provide a notification (paragraph 3.34).
7. We welcome comments on how the Government can assist applicants understand and fulfil their requirements to notify the Secretary of State of changes and/or errors to their card or to report a card that has been lost, stolen, damaged, tampered with or destroyed (paragraph 3.35).
8. We welcome comments on the proposed code of practice on civil penalties at Annex B and the accompanying secondary legislation, the Identity Cards Act 2006 (Civil Penalties) Regulations and the Identity Cards Act 2006 (Code of Practice on Civil Penalties) Order (paragraph 3.36).
9. We welcome comments on the methods by which consent can be given for the provision of information from the Register and how consent can be withdrawn (paragraph 4.56)
10. We welcome comments on which organisations would benefit from being able to use the provision of information with consent service and therefore the types of persons we should consider approving. We would also welcome comments on what information we should require them to provide in order to determine whether they should be approved (paragraph 4.57).

11. We welcome comments on whether modification of approval conditions for provision of information from the Register should be as indicated in regulation 11, namely by written notice given to the person to whom we are considering providing information (paragraph 4.58).

where the fee may be waived for airside workers who are required to enrol on the National Identity Register and are issued with an identity card. (paragraph 6.4).
12. We welcome comments on the proposals for the grant, withdrawal and suspension of approval for provision of information from the Register, including whether any conditions are unnecessary, whether there should be additional conditions, and on what grounds a grant of approval should be withdrawn (paragraph 4.59).
13. We welcome comments on the regulations on the provision of information without the consent of the individual to named government departments and the SIA, with particular reference to (a) the conditions attached to the grant of approval and (b) the purposes for which information should be given (paragraph 4.60).
14. We welcome comments on the proposal to provide for the roll out of identity cards to different groups through commencement orders and on the draft designation order that would link the issue of identity cards to the issue of criminal conviction certificates for airside workers (paragraph 5.14).
15. We welcome comments on the fee regulations that support the proposal for an initial fee of £30 for ID cards issued in 2009/10, subject to an evaluation phase at the Wave 1 airports,

