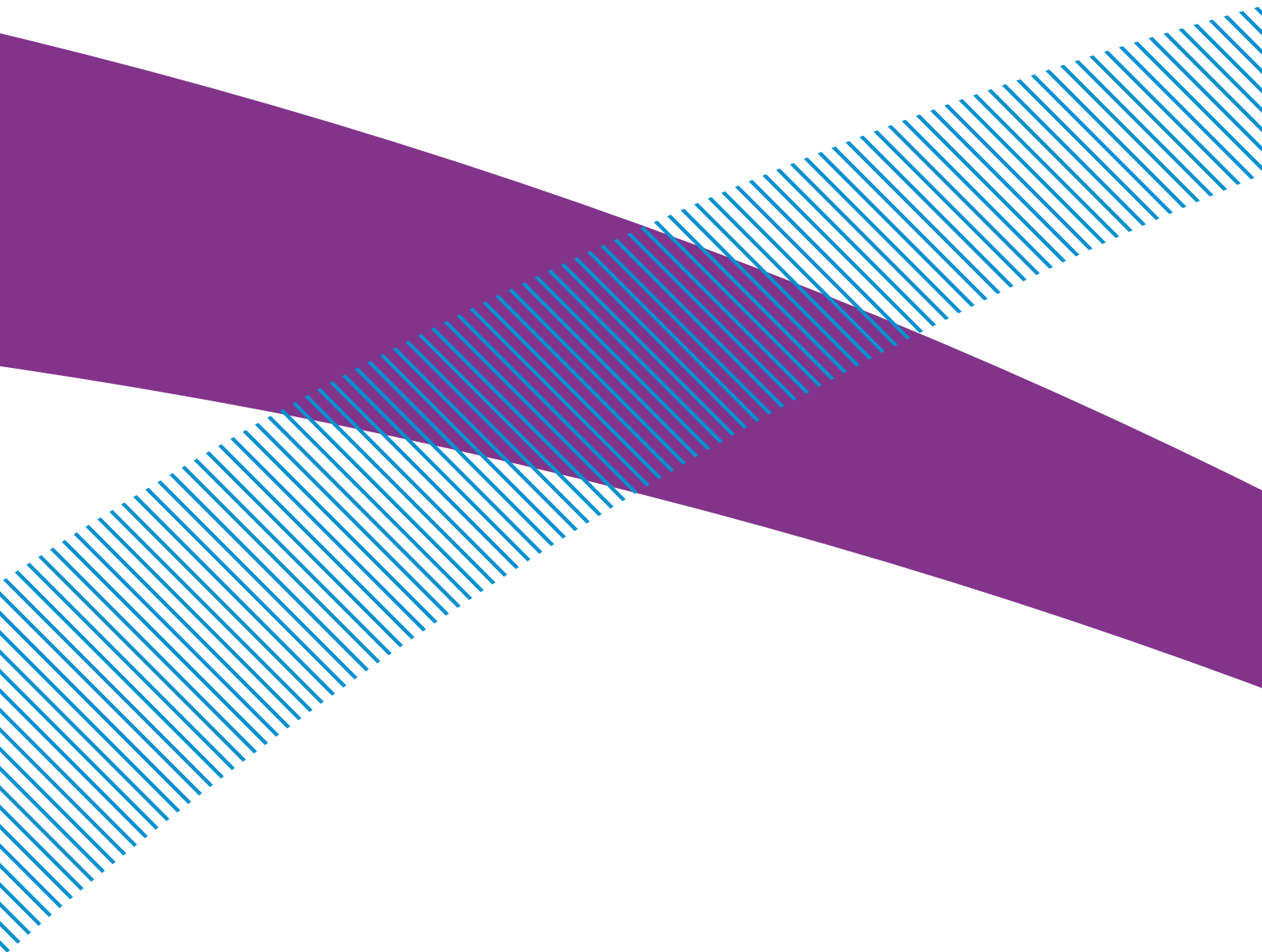




Home Office

# IDENTITY CARDS ACT SECONDARY LEGISLATION: **A CONSULTATION**



# Contents

<b>Summary of information about this consultation</b>	<b>5</b>
<b>1 Introduction and background to legislation on identity cards</b>	<b>6</b>
<b>2 Making applications, checking identity and the issue of identity cards</b>	<b>12</b>
<b>3 Maintaining the accuracy of the National Identity Register</b>	<b>20</b>
<b>4 Provision of information from the National Identity Register</b>	<b>24</b>
<b>5 Designation of documents and the roll out of identity cards</b>	<b>31</b>
<b>6 Fees</b>	<b>33</b>
<b>7 Consultation and how to submit comments</b>	<b>34</b>
<b>Annex A Draft Statutory Instruments</b>	<b>39</b>
The Identity Cards Act 2006 (Entitlement to be Registered) Regulations 2009	43
The Identity Cards Act 2006 (Applications and Issue of ID Cards) Regulations 2009	45
The Identity Cards Act 2006 (Verification of Information in Register Etc.) (Specified Persons) Order 2009	59
The National Identity Registration Number Regulations 2009	61
The Identity Cards Act 2006 (Prescribed Information and Period of Validity of Card) Regulations 2009	63
The Identity Cards Act 2006 (Notification of Changes and Loss, Theft etc. of ID Cards) Regulations 2009	69
The Identity Cards Act 2006 (Civil Penalties) Regulations 2009	73
The Identity Cards Act 2006 (Code of Practice on Civil Penalties) Order 2009	77
The Identity Cards Act 2006 (Provision of Information with Consent) Regulations 2009	79
The Identity Cards Act 2006 (Provision of Information without Consent) Regulations 2009	83
The Identity Cards Act 2006 (Designation) Order 2009	87
The Identity Cards Act 2006 (Fees) Regulations 2009	89
<b>Annex B Draft Code of Practice on Civil Penalties</b>	<b>91</b>
Draft Code of Practice setting out the matters to be considered when determining whether to impose a civil penalty and the amount of any penalty	91

# Summary of information about this consultation

## SCOPE OF THE CONSULTATION

<b>Topic of this consultation:</b>	Secondary legislation proposed under the Identity Cards Act 2006, including a draft Code of Practice on Civil Penalties.
<b>Scope of this consultation:</b>	The regulations, orders and a code of practice that will need to be put in place before the first ID cards can be issued under the Identity Cards Act, starting in the second half of 2009.
<b>Geographical scope:</b>	United Kingdom wide.
<b>Impact Assessment:</b>	An impact assessment will be published in early 2009, before secondary legislation is introduced to Parliament.

## BASIC INFORMATION

<b>To:</b>	This is a public consultation and anyone who wishes to do so may comment. However, those organisations that commented on the National Identity Scheme Delivery Plan 2008 and any organisations that may be involved in the early roll out of ID cards at airports are in particular invited to comment.
<b>Duration:</b>	This is a 12 week consultation starting on Friday 21st November 2008 and closing on Friday 13th February 2009.
<b>Enquiries:</b>	A copy of this consultation document and further background information on the National Identity Scheme is available on the Identity and Passport Service website at: <a href="http://www.ips.gov.uk/identity">http://www.ips.gov.uk/identity</a>
<b>How to respond:</b>	Any comments should be sent to: Robin Woodland Identity Cards Act Secondary Legislation Consultation Home Office Identity and Passport Service Allington Towers 19 Allington Street London SW1E 5EB  Comments may also be sent by email to: <a href="mailto:identitycards@ips.gsi.gov.uk">identitycards@ips.gsi.gov.uk</a> . If commenting by email please include the words "consultation response" in the subject title.
<b>Additional ways to become involved:</b>	This is a consultation on draft secondary legislation and so is largely concerned with the preparation of statutory instruments, including those that will be subject to future Parliamentary scrutiny. It is therefore intended that the consultation should be largely a written exercise.
<b>After the consultation:</b>	A document summarising the response to the consultation will be published prior to the secondary legislation being finalised.

## BACKGROUND

<b>Getting to this stage:</b>	This is the latest in a number of consultations on identity cards and the National Identity Scheme – details of which are set out at paragraph 1.4
<b>Previous engagement:</b>	The most recent consultation was on the National Identity Scheme Delivery Plan 2008 which involved a number of consultation events and the response to which was published on 6th November 2008. (see: <a href="http://www.ips.gov.uk/identity/downloads/ConsultReportv2.pdf">http://www.ips.gov.uk/identity/downloads/ConsultReportv2.pdf</a> )

# 1 Introduction and background to legislation on Identity Cards

## INTRODUCTION

1.1 This paper sets out for consultation proposals for secondary legislation under the Identity Cards Act 2006 and covers the regulations, orders and a code of practice that will need to be put in place before the first ID cards<sup>1</sup> can be issued under the Identity Cards Act, starting in the second half of 2009.

**Comments are invited over a 12 week period ending on 13th February 2009.**

1.2 Following this consultation and subject to any changes made to the drafts, final versions of the secondary legislation will be tabled for any necessary Parliamentary scrutiny. The timetable for this will depend on the wider Parliamentary timetable, but it is intended to be in the period between March and May 2009 so that all the provisions can be in place by the end of June 2009.

1.3 These provisions relate to the legislation necessary to introduce the National Identity Scheme for British citizens and European Economic Area<sup>2</sup> (EEA) nationals, starting in 2009 with a limited number of people who may apply for ID cards on a voluntary basis and to people employed airside at specified airports. This paper does **not** cover any amendments that may be necessary to existing regulations under the UK Borders Act 2007 in order to extend the issue of foreign national identity cards to foreign (non EEA) nationals employed airside.

Information on the roll out of foreign national identity cards was set out on 6th March 2008 in *Introducing Compulsory Identity Cards for Foreign Nationals* (see: <http://ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/compulsoryidcards/IDcards/foreignnationalsforidcards.pdf>).

## BACKGROUND

1.4 This consultation paper is the latest in a series of documents that have set out for consultation different aspects of the proposals for a National Identity Scheme – the generic term for the Government's plans to improve the way that identity is verified so as to provide greater convenience for individuals as well as improved protection for the public. The options for creating a universal card scheme linked by biometrics to a national register were raised in **July 2002** in the "Entitlement Cards and Identity Fraud" consultation paper. This was followed in **April 2004** with the consultation on the draft Identity Cards Bill which was subject to pre-legislative scrutiny by the House of Commons Select Committee on Home Affairs. Most recently in **March 2008** the National Identity Scheme Delivery Plan was published for consultation. A document summarising the responses to the consultation on the delivery plan was published on **6th November 2008**.

1.5 Parliament has already approved in primary legislation, the Identity Cards Act 2006, which establishes the statutory framework for issuing biometric ID cards, together with the establishment of a secure National Identity Register to hold the identity information of everyone issued with an ID card. Accordingly, what we are consulting on now is the **secondary legislation** under the Identity Cards Act. Secondary legislation will establish the detailed procedures required to introduce ID cards and the drafts attached to this paper are designed in particular for the critical workers Identity Cards scheme that is due to start in autumn 2009.

<sup>1</sup> "ID card" is the formal name for a card issued under section 6 of the Identity Cards Act 2006.

<sup>2</sup> The European Economic Area (EEA) comprises the 28 member states of the European Union together with Norway, Iceland and Liechtenstein. EEA nationals have rights of free movement throughout the EEA and in addition, although not a member of the EEA, similar rights of free movement apply to nationals of Switzerland.

## THE IDENTITY CARDS ACT

1.6 The Identity Cards Act 2006, which received Royal Assent on 30th March 2006, is enabling legislation which will allow an identity cards scheme to be established in the United Kingdom. A copy of the Act is available at: <http://www.ips.gov.uk/identity/downloads/ukpga-20060015-en.pdf>. Its provisions cover:–

- The procedure for registration on a **National Identity Register** that would have the capacity to hold the core identity details of all United Kingdom residents who have registered together with their photograph and fingerprints (or other biometric information);
- The issue of **ID cards** either as a separate standalone identity card or as a separate identity card issued together with a designated document (e.g. an ID card for airside workers issued together with a criminal conviction certificate) or an existing card which can be designated and then issued as an ID card (e.g. a Biometric Immigration Document<sup>3</sup> issued to a foreign national which could also be designated and then issued as an ID card under the Identity Cards Act);
- Maintaining **an accurate Register** by requiring any changes to be notified (e.g. changes of name or address);
- Provision of information from the Register for **identity verification with consent** of the individual (e.g. to an employer or to a bank or building society);
- Provision of information from the Register for **identity verification without consent** (e.g. to the police, security and intelligence services or a specified government department);
- Establishing a **National Identity Scheme Commissioner** to oversee the operation of the scheme including the way ID cards are used, the arrangements for securing the

confidentiality and integrity of the information recorded in the register and the way any complaints are handled;

- Creating new **criminal offences** relating to possession of false identity documents and providing false information or tampering with the Register. In addition the provision of information from the Register will be strictly controlled and it will be a criminal offence for anyone in the Identity and Passport Service to make an unauthorised disclosure of information from the Register;
- Providing a system of **civil financial penalties** that may be applied to people who fail to notify changes or to surrender an ID card when required;
- Establishing **fees** and charges for ID cards and related services.

1.7 The Act establishes the statutory purposes for the establishment of a National Identity Register and the issue of ID cards. In summary these show that the intention of the Scheme is 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**. The public interest here means where identification 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.

1.8 It was made clear in the National Identity Scheme Delivery Plan 2008 that it is intended, in due course, that the provisions of the Identity Cards Act should be amended through further primary legislation. This will mean that once passports are designated under the Act, it will be possible to record each individual's identity

<sup>3</sup> A Biometric Immigration Document is the formal name for a card issued to foreign nationals subject to immigration control under Sections 5 and 6 of the UK Borders Act 2007 and known informally as a “foreign national identity card”.

details, including fingerprint biometrics, on the National Identity Register but for British citizens to be offered the choice of having a fingerprint biometric passport or ID card or both. The timing of this amending legislation has yet to be decided, but until then it will only be information relating to people issued with identity cards and not passports that will be held on the National Identity Register.

1.9 The Identity Cards Act 2006 creates the legal framework for the Scheme, but it does not specify the design of cards nor the precise timetable for their introduction. It also does not spell out the detailed arrangements for issuing ID cards or other such details required for the scheme. These arrangements now need to be set out in secondary legislation

## SECONDARY LEGISLATION

1.10 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 an identity card.

1.11 The secondary legislation under the Identity Cards Act will be **Statutory Instruments** (SI's) in the form of regulations or orders. The majority of these will be subject to Parliamentary scrutiny either of an **“affirmative procedure”** – where the SI requires approval in both Houses of Parliament, usually following a debate, or the **“negative procedure”** where the SI is formally laid before Parliament but not actively considered and will become law on a specified date in the future unless the SI is formally “prayed against” because there is an objection to it. In that case there would be a Parliamentary debate.

1.12 There will also need to be a number of **commencement orders** to bring the different parts of the Act into force on specified days. These will not require Parliamentary scrutiny and are not included with this consultation. The Act provides that the commencement orders can bring provisions into force on different days in different areas or for different descriptions of persons and these provisions will be used as a way of enabling the National Identity Scheme and the introduction of ID cards to be phased in a manageable way. In addition to the SIs there will also be a **“Code of Practice”** on civil penalties (see Chapter 3). The Code of Practice is a form of statutory guidance which sets out matters that must be considered relating to the imposition of civil penalties.

1.13 A joint Committee of the House of Commons and House of Lords, the **Joint Committee on Statutory Instruments**, is responsible for scrutinising all statutory instruments made under any Act of Parliament. The Joint Committee is empowered to draw the special attention of both Houses to an instrument on any one of a number of grounds specified in the Standing Order under which it operates or on any other ground which does not impinge upon the merits of the instrument or the policy behind it.

1.14 In addition the **House of Lords Merits of Statutory Instruments Committee** considers every negative and affirmative SI (or draft SI) laid before Parliament to determine whether the special attention of the House should be drawn to it on a number of grounds, including whether it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House.

1.15 Both the Committees will have an opportunity to comment on the Identity Cards Act secondary legislation, as amended following this consultation and prior to its scrutiny by Parliament. Further information about the legislative process may be found on the Parliament website: <http://www.parliament.uk>

## THE INTRODUCTION OF THE NATIONAL IDENTITY SCHEME

1.16 The National Identity Scheme is the term used to describe the Government's plans to improve the way that identity can be verified so as to provide greater convenience for individuals as well as improved protection for the public. It will provide a new way to do this – more securely, and more conveniently. It has three key elements that improve on current systems:

- a single National Identity Register,
- the recording of fingerprint biometrics,
- the issue of biometric identity cards.

The Scheme will soon start, and eventually everyone will have the opportunity to have an identity card if they choose. The Scheme (encompassing both identity cards and more secure passports) will bring real and recognisable benefits for each of us, individually and collectively. In time it will:

- make life easier by providing an easy and convenient means of proving identity;
- help protect people from identity theft and fraud by providing a simple, universal means of proving identity;
- reassure us all that workers in positions of trust, such as people working airside at airports, are who they say they are;
- help protect the country from illegal immigration and reduce illegal employment; and,
- make it harder for criminals to use false or multiple identities and thus provide better protection from crime and terrorism.

1.17 It is a long-term programme and some of the major benefits for the country as a whole will come when significant numbers of people are enrolled. The National Identity Scheme will help United Kingdom residents to prove who they are, quickly, easily, and securely in a wide range of situations – for example, when travelling, when opening a bank account or applying for a new job. At the same time, it will also protect the

public against identity theft and fraud, protect the community against crime, illegal immigration, and terrorism, and reassure us that workers in positions of trust, such as those working airside at airports are who they say they are.

1.18 The National Identity Scheme will provide a comprehensive and secure way of recording basic personal identity information – the same sort of basic identity information that is currently required for the issue of a passport. That information will be held on a new **National Identity Register**. The Register will have the capacity to hold the identity details of people aged 16 or over who legally reside in the United Kingdom. In due course this will include the identity information of British citizens issued with identity cards or passports (whose details will already be held by the Home Office Identity and Passport Service if the person has been issued with a passport), as well as foreign nationals issued with foreign national identity cards (whose identity details would currently be held by the Home Office UK Border Agency) and European Economic Area nationals issued with identification cards by the Identity and Passport Service.

1.19 Whilst it is the eventual aim to have a single comprehensive identity register, it will take a number of years for the scheme to be fully rolled out and so initially there will remain a separate system for issuing identity cards to foreign nationals by the UK Border Agency (using powers in the UK Borders Act 2007). At a later date the identity cards issued to foreign nationals will be designated as ID cards under the Identity Cards Act. From that point onwards identity details of foreign nationals will also be held on the National Identity Register together with the identity details of British and EEA nationals issued with identity cards.

1.20 The second key element of the National Identity Scheme is the recording of **fingerprint biometrics** (a digital image of ten fingerprints) for everyone issued with an identity card on the National Identity Register. In addition it is intended that two fingerprint images would be

held on the chip of the identity card. This will provide a much more secure and reliable way of linking an individual to his or her true identity and enabling that person's true identity to be verified (for example when a card is replaced or when an individual uses the card as a travel document at the border and it is checked by an immigration officer) rather than using a signature or photograph as a means of identity verification. The recording of fingerprint biometrics for general identification purposes is becoming more commonplace internationally. For example visitors to the United States now have their fingerprints checked routinely under the US-VISIT scheme. Also the new standard for passports issued by European Union Member States (which the United Kingdom is choosing to follow) will also include the recording of fingerprints in passports. Thus it is already intended that, in due course, fingerprints will be recorded when making an application for a British passport. This will be done in exactly the same way as when applying for an identity card and both will be in accordance with International Civil Aviation Organisation standards.

1.21 In a very similar way to the personal data page on a passport, a subset of the identity information held on the National Identity Register will be printed on an **identity card** – a polycarbonate photocard with an electronic chip. The chip will hold the same identity information as printed visibly on the card including a digital photograph together with two fingerprints. This follows the current British e-passport that already incorporates a chip that includes the holder's personal data and a facial image biometric, but not yet fingerprints.

1.22 In future it is intended that passports will also hold fingerprints and both identity cards and passports for British citizens will be issued by the Identity and Passport Service. There will therefore be a similar procedure to apply for a passport or an identity card for a British citizen. However, because of the need to roll out the National Identity Scheme in an incremental and

manageable way it will not be until 2011/12 that it will be possible to start the issuance of high volumes of fingerprint biometric identity cards or passports to British citizens.

1.23 The steps proposed in the roll out of the National Identity Scheme are as follows:

- **25th November 2008** – the first foreign nationals (excluding European Economic Area nationals), will start to be issued with identity cards by the Home Office UK Border Agency under UK Borders Act 2007 powers. This includes secondary legislation under the UK Borders Act that has already been already approved by Parliament and is in place. The identity card for foreign nationals will be phased in over the next three years for all those coming to the UK for more than six months, or extending their stay in the UK. From 25th November 2008, identity cards will start to be issued to foreign nationals who apply for an extension of their stay in the United Kingdom as students or as the husbands, wives or partners of permanent residents.
- **Autumn 2009** – the first identity cards start to be issued to airside workers and a limited number of volunteers from the general public. These first identity cards issued to British citizens and EEA nationals will be issued by the Home Office Identity and Passport Service under the Identity Cards Act 2006 **including the secondary legislation that is the subject of this consultation;**
- **2010** – Identity Cards will continue to be offered on a voluntary basis but in particular will be made available to young people who choose to have one. The precise details of this stage of the roll out have yet to be decided but it is expected to involve introducing identity cards in a particular area to assist young people in proving their identity.



- **2012** – The commencement of the issue of identity cards in high volumes to British citizens. Further legislation will be proposed to provide that anyone applying for a British passport will be enrolled on the National Identity Register, will record their fingerprint biometrics and facial image and will be offered the choice of being issued with a separate identity card or passport or both. Precise numbers have yet to be determined but will build on the issue of some 5-6 million passports each year.

1.24 Starting from 2012 onwards the roll out of the scheme will continue with British citizens being enrolled on the National Identity Register when they apply for a separate identity card or when they apply for or renew a passport. European Economic Area nationals (including Irish nationals) will also be able to apply for the separate “identification card”. The roll out of foreign national identity cards by the UK Border Agency will continue and it is intended that these identity cards should then be designated under section 4 of the Identity Cards Act. As a result the point will then be reached when the identity details, including biometric information, for all British citizens, EEA nationals and foreign nationals issued with the different types of identity card (or passport) will be held on the same National Identity Register.

1.25 Further details of the plans for the National Identity Scheme are in the *National Identity Scheme Delivery Plan* published on 6th March 2008 (see: <http://www.ips.gov.uk/identity/downloads/national-identity-scheme-delivery-2008.pdf>) and in two documents published on 6th November 2008. The first the *National Identity Scheme Delivery Plan 2008: a Response to the Consultation* reports on the outcome of this latest consultation. (see: <http://www.ips.gov.uk/identity/downloads/ConsultReportv2.pdf>). The second *Introducing the National Identity Scheme* explains how the scheme will work and the benefits that it will bring (see: [http://www.ips.gov.uk/identity/downloads/introducing\\_the\\_national\\_identity\\_scheme.pdf](http://www.ips.gov.uk/identity/downloads/introducing_the_national_identity_scheme.pdf))

## 2 Making applications, checking identity and the issue of identity cards

2.1 Secondary legislation under the Identity Cards Act will set out who is eligible to apply for an ID card, the procedure for making an application for an ID card, the sources of information against which a person's identity will be checked and the information that will be included on the card. Many of these procedures will build on or mirror the procedures already in place for the issue of passports.

2.2 These provisions will facilitate the processes necessary for the operation of the Scheme in 2009. However, such processes will need to change over time as increasing numbers enrol into the Scheme. Additional regulations will be laid before Parliament in the coming years to obtain approval for such changes where required.

### THE IDENTITY CARDS ACT 2006 (ENTITLEMENT TO BE REGISTERED) REGULATIONS 2009

2.3 The National Identity Scheme will be rolled out over time so that eventually all those who legally reside and selected groups who are not resident in the United Kingdom would be entitled to apply for an ID card. Section 2 of the Identity Cards Act has already established the basis for who is entitled to be entered on the National Identity Register.

2.4 Because it will not be possible to start issuing ID cards immediately to everyone who will eventually become entitled to one, the commencement of the application provisions in section 5 of the Act will be phased in gradually, in line with our approach to the rollout of the Scheme as outlined in paragraph 1.23.

2.5 The Act also permits for the variation of eligibility conditions through secondary legislation in certain circumstances. The Identity Cards Act 2006 (Entitlement to be Registered)

Regulations 2009 (draft at Annex A) introduces two variations:

- (a) It confirms that those who are residing in the United Kingdom with no entitlement to remain here are excluded from an entitlement to be registered;
- (b) It extends eligibility to be registered to those who live abroad, are proposing to enter the United Kingdom and are applying for a permanent airside pass in connection with a job, or an application for a job, that requires such a pass.

2.6 It is our intention that those British citizens and EEA nationals who live abroad but still require a permanent airside pass should be eligible for enrolment in line with the rollout agreed for relevant airports. We will review these proposals in conjunction with such airports to ensure that this group is covered.

### THE IDENTITY CARDS ACT 2006 (APPLICATIONS AND ISSUE OF ID CARDS) REGULATIONS 2009

2.7 Sections 5 and 6 of the Identity Cards Act make separate provisions to detail in secondary legislation the process for:

- (a) making applications for initial registration on the National Identity Register;
- (b) making applications for ID cards;
- (c) confirming the contents of an entry on the National Identity Register.

2.8 In practice, these regulations will provide for a combined process for an application for initial registration on the National Identity Register and a first ID card as well as a combined process for subsequent applications for renewals and replacement cards which will enable the contents of the individual's entry on the National Identity Register to be confirmed.

### Initial Applications

2.9 When a person wishes to make an application for initial registration on the National Identity Register and for the issue of a first ID card in 2009, these regulations provide that they should submit their application at a specified Identity and

Passport Service office where they should also submit an application form, which will be made available by the Identity and Passport Service (regulations 3, 4, 11 and 12). The location of the relevant offices will be made widely known to the public through guidance notes for applicants and information made available through the internet and public information material. Paragraphs 2.19 to 2.21 describe how these processes may change over time.

2.10 Where an individual is making an application for a “designated document” (see Chapter 5), the Identity Cards Act requires them to include an application for registration and for an ID card with that application. In practice, this will be achieved by including an application number from the application for registration and an ID card with the application for an designated document and vice versa (regulations 3 and 11). This will enable both applications to be linked so that a designated document is not issued before the individual is registered on the Register and their card is issued. This approach will allow the Home Office and the designated document authority to process the applications individually so that information from one application does not need to be exposed to the other organisation unnecessarily.

2.11 These regulations also outline what information and supporting documentation the individual is required to provide as they submit their application, either in person at the relevant enrolment office or on the application form itself (regulations 6 and 13). These provisions seek to build on our experience from issuing passports today. Indeed, the information required as part of the application follows the information that is currently required to apply for a passport very closely.

2.12 The requirement to provide information varies depending on the particular circumstances of the individual making the application (e.g. a British citizen, a British subject with right of abode and a citizen of another EEA State). In

particular, additional information and supporting documentation is required from those who do not already have a valid passport in order to verify their claim to British citizenship or British subject status. The information required in this case mirrors existing passport practice for making a determination of a person’s claim to these statuses when applying for their first passport or for renewing a passport.

2.13 The vast majority of applicants should not experience any difficulty in providing this information easily. However, the regulations also provide that, where it is not reasonably practical for the required information or documentation to be provided by the applicant, the application can still be submitted. Identity and Passport Service staff will then work with the applicant to propose alternative information and documentation that the individual must provide instead to enable their identity and nationality to be verified.

2.14 In addition, those making an application for initial registration on the National Identity Register will be asked to provide details of a referee who may be asked to verify the identity of the individual making the application upon request. However, at this point, it is not expected that we would require the referee to countersign the individual’s application form. In the future, this would also allow for on-line applications without the need for the form to be countersigned as is currently needed for a passport application.

2.15 This change would require a minor change to the content of paragraph 6(g) of Schedule 1 of the Identity Cards Act to allow for the information relating to a **referee** as well as a **countersignatory** to be recorded on the National Identity Register in relation to a particular application<sup>4</sup>. We also intend to consider whether a change is necessary to paragraph 1 of Schedule 1 to ensure that a relevant airside worker who does not live in the United Kingdom can include their address. It is

<sup>4</sup> The current wording of this section of the Act states that the Register may record “particulars of every person who has countersigned an application by him for an ID card or a designated document, so far as those particulars were included on the application”

intended that we should make such changes by means of an order under Section 3(6) of the Identity Cards Act that would be subject to the affirmative procedure in Parliament. However, a draft of this order is **not** presented in the Annex as we will need to consult with Parliamentary Counsel on its precise formulation.

2.16 Once a person's application has been submitted, we will record their biometrics and check them against those already registered on the National Identity Register in order to prevent the same person making multiple enrolments in different identities. For the purpose of the 2009 launch of the Scheme, biometric enrolment will be conducted by the Identity and Passport Service. The legal provisions relating to the recording of biometrics are already included under Sections 5(4) and 5(5) of the Act which state that an applicant may be required to allow their fingerprints to be recorded and allow themselves to be photographed. Thus, they do not need to be specified in secondary legislation.

2.17 During the examination of the application, we may also contact applicants in order to request further supporting evidence to progress the application and some may be called to attend a short interview in order to authenticate their identity in more detail. This is not a test but allows us to check that the details provided in the application are those of the applicant. This would happen in a similar way to how first time adult passport applicants are required to attend an interview today. The legal provisions relating to these procedures are also already included under Section 5(4) and 5(5) of the Identity Cards Act. These provide that an applicant may be required to attend at an agreed place and time or (in the absence of agreement) at a specified place and time or otherwise to provide such information as may be required by the Secretary of State.

2.18 In line with what we provide for our passport customers today, the Identity and Passport Service will make guidance notes widely available for customers so that they are clear about how to fill in the application form, how to make an appointment how to submit their application and what relevant supporting documentation they will need to provide when they come to the enrolment office.

2.19 The processes described above outline those required for the operation of the Scheme in 2009. However, these will change over time. Published on 6th November 2008, the document "Introducing the National Identity Scheme" outlines that, as the Scheme seeks to enrol larger numbers of people from 2011/12, we plan for the majority of applications to be submitted on-line, or via an "assisted applications" route delivered by high street partners. Updated regulations will be laid before Parliament to reflect these plans in due course.

2.20 The "National Identity Scheme Delivery Plan 2008", published in March 2008, announced the Government's intention that fingerprint and facial image biometric enrolment for the Scheme should be provided by an open market. Progress is being made in developing a marketplace in such services for 2011/12. A Market Prospectus was published on 6th November 2008 detailing the next steps in that process.

2.21 However, regardless of how we seek to deliver parts of our application processes, **the decision making functions will be retained within the Home Office.**

### **Applications for Replacement Identity Cards**

2.22 Once an individual is registered on the National Identity Register, the process of applying for a **replacement card** (e.g. following expiry, loss or theft of a card or a change of circumstances) is similar to the initial registration process, although there are some changes.

2.23 The manner in which the individual applies will remain the same – the individual will submit the application at an appointment at a specified Identity and Passport Service office, where they will submit an application form (regulations 5 and 12). In line with passport applications today, the same application form will be used whether an individual is making an application for a first ID card or for a replacement card, although those applying for a replacement will have to fill in fewer sections of the form. We will keep this approach under review and adjust on the basis of customer feedback if necessary.

2.24 The information required for a replacement card application is slightly different. As required by Section 6 of the Act, we will ask for information so that the applicant can confirm the contents of his or her entry on the National Identity Register as part of this process. Where changes have occurred, an applicant may need to bring supporting documentation to allow this change to be verified as listed in the regulations. In addition, at the enrolment centre, we intend to ask the old card to be surrendered, unless it has been lost or stolen. Once more, to handle exception cases, we will accept an application where it has not proved reasonably practical for the individual to provide the required information and will seek to work with them to assess what alternative information must be provided to progress the application (regulations 7 and 13).

2.25 During this process, we will verify the applicant's fingerprints against the National Identity Register to match them securely to their existing record. As noted before, the legal powers to conduct this check are covered under Section 5(4) and 5(5) of the Act and thus does not need to be specified in secondary legislation

#### **Applying for a Designated Document once Registered on the National Identity Register**

2.26 If an applicant applies for a designated document after they are registered on the National Identity Register, he or she will be required to confirm the contents of their details on the National Identity Register and obtain a replacement ID card if their last card has expired. Regulation 7 outlines how this can be done:

- (a) If the individual already has a valid ID card, he or she will provide the core personal details and details of his or her identity card to the issuer of the designated document and they will verify these with the Identity and Passport Service. The individual will normally not be required to contact the Identity and Passport Service directly.
- (b) If the individual does not have a valid ID card or their details on the Register are out-of-date, they will also be required to provide the issuer of the designated

document with the number of their application to either obtain a new card or update their entry on the Register. The designated document will then not be issued before the information on the Register is updated and/or a new card has been issued.

2.27 Regulation 14 specifies requirements on the issuers of a designated document which must be fulfilled before a designated document is issued in these circumstances. It is our intention to consult further with such organisations (e.g. criminal record checking agencies in England and Wales, Scotland and Northern Ireland) on the content of these regulations in order to assess their impact and refine them where necessary.

#### **Issue of an ID Card once Certain Information is Registered**

2.28 Section 6(4) and 6(5) of the Act outlines when a card can be issued after a person's record on the Register has been created or verified. It provides that, once a person's entitlement to an ID card has been confirmed, they should be issued with one as long as the following minimum information is recorded on the Register (regulations 8 and 10):

- (a) the individual's full name
- (b) the address of a place of residence of the individual
- (c) the individual's gender
- (d) the individual's date of birth
- (e) the individual's place of birth
- (f) the individual's nationality
- (g) a photograph of the individual's head and shoulders (showing features of the face).

2.29 It should be noted that these provisions do not mean that this is the only information that you must provide in order to obtain an ID card – that is outlined under regulations 7 and 13. However, this does mean that where a person's application has been accepted and approved, a card must be issued to the individual when these pieces of information have been recorded on the Register.

## Defining a Place of Residence

2.30 As part of the application process, an individual will be required to provide a principal place of residence and will also be able to register other places of residence if they wish. Regulations 15 and 16 provide clarity about what addresses can be registered by providing a definition for these terms.

2.31 A place of residence must be “a place of abode” of the individual. Hence this precludes the registration of commercial addresses or post office boxes. A principal place of residence is regarded as the place of abode at which you reside most frequently.

2.32 Combining powers on the face of the Act and these definitions, we have made provision to accommodate many of those who move frequently or are of no fixed abode. For example:

- (a) Individuals who must move around for work for periods at a time can still regard their home as their principal place of residence. For example, a worker who moves temporarily to work on various projects for months at a time could continue to regard the home to which they will return as their principal place of residence without needing to make a change to their record on the National Identity Register.
- (b) Students who live with parents outside of term time would have an option of registering their parent’s address instead of, or in addition to, their term time address on the Register
- (c) It will be possible to agree with those who are homeless a suitable place of abode to be recorded as their place of residence, depending on their individual circumstances.

## Applications from those living a Dual Gendered Life

2.33 The representation of identity is a particularly complex and difficult issue for those who are moving from living in their birth gender to an acquired gender. In particular, those who are seeking to obtain a Gender Recognition Certificate need to be able to demonstrate that they are taking steps to live in their acquired

gender as part of that process. The Identity and Passport Service has engaged with a number of groups representing the transgender community before and after the passage of the Identity Cards Act. This has been helpful in understanding how we can best meet that community’s needs whilst ensuring the integrity of the National Identity Register

2.34 Regulations 6,7,9,11,12 and 13 provide that those who are living a dual gendered life will, if they so choose, be able to apply for two identity cards relating to their unique entry in the National Identity Register. They can hold a National Identity Card which can be used for travel in one gender as well as an Identification Card which is not valid for travel but can be used to prove their identity in a second gender reliably and securely and reflects a different name, signature and photograph. This will be dependent on the provision of a recognised report from a registered medical practitioner or chartered psychologist confirming that the individual experiences gender dysphoria.

## THE IDENTITY CARDS ACT 2006 (VERIFICATION OF INFORMATION IN REGISTER ETC) (SPECIFIED PERSONS) ORDER 2009

2.35 Once an application is submitted, checks will be conducted to ensure the veracity of the information provided. This will include an examination of supporting documentation, a check against biometrics already held on the Register and immigration systems as well as checks against information held by other public and private sector organisations. Checking against third party sources is already a part of the current passport application process.

2.36 Section 9 of the Identity Cards Act allows a requirement to be imposed on another organisation, which has been specified in secondary legislation, to provide the Secretary of State with information where it could be used for the following specific purposes:

- (a) For verifying something recorded in the Register about an individual

- (b) For verifying something provided to the Secretary of State or a designated documents authority for the purpose of being recorded in an individual's entry in the Register or;
- (c) For verifying something otherwise available to the Secretary of State to be recorded about an individual in the Register.

2.37 This order provides a list of organisations on which this requirement will be imposed. They are:

- (a) Any credit reference agency which, at the relevant time, is a party to a contract for the supply of information for the purposes of the carrying out by the Secretary of State of functions under the Identity Cards Act 2006
- (b) The Department for Work and Pensions
- (c) Her Majesty's Revenue and Customs
- (d) The Registrar General for England and Wales
- (e) The Department for Transport
- (f) The Foreign and Commonwealth Office.

2.38 These sources will be either used to verify information on all applicants when they register on the National Identity Register or, in some cases, may provide information as a second line process when further information is required about any application. They can also be used to verify any information that is already recorded on the Register.

2.39 It is important to note that the provision of information under these powers can only occur for the purposes specified in paragraph 2.36. Any information irrelevant to the verifying of information recorded on, or proposed to be recorded on, the Register, cannot be provided under these provisions.

2.40 For example, while we will seek to verify identity information against credit reference agencies records, we will not be obtaining information to ascertain an individual's credit worthiness. In addition, we will take care to ensure that provisions in place to protect

information regarding adoption or gender recognition are adhered to, especially when checks are made against the records of General Registrar's Offices. We will take steps to ensure that the Identity and Passport Service will protect the gender history of an individual in accordance with the requirements of the Gender Recognition Act 2004.

2.41 While this order will put legal powers in place to allow the Secretary of State to require information to be provided by these organisations, other organisations may already have powers to provide information to the Secretary of State that could also be used for verifying information. All such activity must still take place in a lawful manner and thus, for example, the Data Protection Act will apply to the way any such information is held by the Identity and Passport Service.

2.42 Where a passport application is referred to our fraud investigation unit, we may also conduct checks against additional sources of information held by other government departments in order to ascertain the veracity of the information included in an application. We are currently conducting analysis to understand whether additional departments need to be named in this order to ensure that the same standard of investigation can take place if an identity card application were to be referred in the same way.

2.43 We will also seek to consult with bodies in Scotland and Northern Ireland to investigate how checks conducted today to verify information provided by passport applicants against information held by the Registrars General for Scotland and Northern Ireland or other departments could be handled for similar application for registration in the Register.

#### THE NATIONAL IDENTITY REGISTRATION NUMBER REGULATIONS 2009

2.44 Once an individual is registered on the National Identity Register, they will be allocated a National Identity Registration Number. This will be a unique number allocated to each individual's record.

2.45 The regulations outline that the format of the number must comply with the following conditions:

- (a) By reading the number alone without other information, it will not be possible to deduce any other personal information about the individual – for example, this means that the number cannot be designed in such a way as to impart information about an individual's age, gender or nationality.
- (b) If reading any such number along with another such number and no other information, it will not be possible to deduce any connection between the individuals to whom they have been allocated, other than that they both are registered on the National Identity Register.

**THE IDENTITY CARDS ACT 2006  
(PRESCRIBED INFORMATION AND  
PERIOD OF VALIDITY OF CARD)  
REGULATIONS 2009**

2.46 These regulations make provision about two types of ID cards to be issued as a result of registering, or confirming the individual's entry, on the National Identity Register. These are:

- (a) **The National Identity Card:** This variant will be issued to British citizens and British subjects with the right of abode and will be valid as a travel document.
- (b) **The Identification Card:** This variant will be issued to EEA nationals (including Irish nationals) resident in the UK as well as to British citizens who are not entitled to be issued with a travel document. It may also be issued as a potential second card in the second gender of those who are dual gendered.

2.47 The information that must be listed on the card is outlined (regulation 3) as well as the potential observations that may be recorded on the card (regulation 4). The Identification Card will not feature any reference to an individual's nationality (regulation 5). As a result, it will not be a valid travel document.

2.48 We are not able yet to publish the detailed image of these cards which would include



security features and colouring. This will not be ready for publication until much nearer the launch of the scheme. However, for clarity, we include an illustrative diagram of the National Identity Card.

2.49 The information on the card is very similar to that on the personal details page of the passport, as the National Identity Card will be valid as a travel document within the EEA. The inclusion of a chip, the card design and format of the card will be in line with specifications for biometric travel documents recommended by the International Civil Aviation Organisation (ICAO) which is responsible for facilitating the interoperability of travel documents internationally.

2.50 Biographical information recorded on the face of the card will also be recorded in the Machine Readable Zone (MRZ). This will consist of three lines on the reverse of the card in machine readable code 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.

2.51 The chip within the card will store a digitised image of the holder along with two fingerprint images and the biographical



information printed on the card. Once information has been placed on the chip, security features will be implemented to ensure it cannot be amended. These security features comply with International Civil Aviation Organisation standards. This includes a document signing certificate and other technical measures such as ‘public and private keys’ which are held in the chip (regulation 3(q) and (r)).

2.52 We have consulted the Royal National Institute for the Blind which has been very helpful in designing the card. For example, for those who are partially sighted, the font used for the name and date of birth is larger than that for other data elements and for the blind, there will be a feature on the card that will enable them to distinguish it from other cards.

2.53 Reflecting the results of consultation exercises during the preparation of the Identity Cards Act, we have already announced in Parliament that an individual’s address will not be included on the card.

2.54 Furthermore, in response to concerns over privacy during the recent public consultation on the National Identity Scheme Delivery Plan, the National Identity Registration Number will also not appear on the card. This will help ensure that the number cannot be inappropriately used.

2.55 The kind of additional observations that could be recorded on the card are also outlined in these regulations (regulation 4). Space on the back of the card can be used for such remarks, although there is limited character space so observations will only relate to specific and necessary clarification about the individual to aid in establishing their identity. For example – to clarify that the individual is unable to provide a signature.

2.56 The regulations make provision for titles of nobility that will be shown on the card (regulation 1(2) and 4). Other titles, such as professional titles or manorial titles will not be shown. At present such titles may be shown in UK passports as observations, today but it is intended to review this practice so that passports in future would also only reflect the titles listed in this regulation.

2.57 The regulations also specify the information that needs to be encrypted. Regulation 6 lists the information that will be cryptographically protected on the card in accordance with International Civil Aviation Organisation standards.

2.58 Both the National Identity Card and the Identification Card will have a validity period of 10 years (regulation 7).

2.59 Where an applicant for a designated document does not have an ID card, Section 8(2) of the Identity Cards Act requires designated document authorities to check that an identity card meeting “prescribed” requirements has been issued before they issue the designated document. Regulation 8 outlines that the requirements in that case are that the card complies with the provisions under regulations 3 to 7. In practice, this means that designated document authorities will check with the Identity and Passport Service that the card it issues meets the prescribed requirements.

#### CONSULTATION QUESTIONS:

**2.60 We welcome comments on the content of the statutory instruments and related operational processes outlined for the processing of applications and application checks in this chapter.**

**2.61 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.**

**2.62 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 comply with international travel document standards established by the International Civil Aviation Organisation.**

## 3 Maintaining the accuracy of the National Identity Register

3.1 The National Identity Scheme aims to deliver a secure and reliable means of proving identity and the maintenance of a secure and reliable record of registrable facts is required under Section 1 of the Identity Cards Act.

3.2 As a result, implementing measures to ensure the accuracy of the National Identity Register are central to delivering this goal. We recognise the importance of making it easy for people to review the information on their record and to make changes as well as ensuring that clear advice about how to do this is easily accessible to all.

3.3 The following secondary legislation will outline provisions relating to requirements to update a record once changes occur or reporting that a card has been lost, stolen, damaged, tampered with or destroyed. It will also outline what will happen if such requirements are not met and the measures that will regulate the imposition of any civil penalties that could result.

### THE IDENTITY CARDS ACT 2006 (NOTIFICATION OF CHANGES AND LOSS, THEFT ETC. OF ID CARDS) REGULATIONS 2009

3.4 Section 10 of the Identity Cards Act introduces a requirement to notify the Secretary of State within a certain time period if there is an error in an individual's Register record of which they are aware and if certain changes of circumstances occur which affect the information recorded. These regulations specify what changes of circumstances must be reported, by when they must be reported and how that can be done.

3.5 The changes of circumstances which must be reported are listed under regulation 2. They are:

(a) Change of any place of residence recorded on the Register as well as where an individual

will no longer have a residence in the United Kingdom

- (b) Change of an individual's name(s) that they are commonly known by for official purposes – including any additional names
- (c) Change of an individual's nationality
- (d) Change of an individual's gender where the individual has obtained a Gender Recognition Certificate from the Gender Recognition Panel
- (e) Permanent and significant changes to the individual's signature as recorded on the ID card
- (f) Permanent and significant changes to the individual's face such that they cannot be identified from the photograph on their card
- (g) Permanent and significant changes to the individual's fingerprints as recorded on the ID card.

3.6 The provisions require that changes in a place of residence recorded on the National Identity Register are reported. However, as noted in paragraph 2.32, we have drafted these provisions so that any temporary changes in residence do not need to be reported – an extended holiday or temporary trip from home for work, for example. An individual would only be required to report a change of address when it represented a permanent change to their place of abode.

3.7 The other information included in this requirement mirrors the information which is recorded on the individual's card. This requirement is in place because of the importance of ensuring that an individual's ID card is accurate so that they can verify their identity or travel through borders securely and conveniently.

3.8 The provisions outline that it will not be necessary to notify us of trivial or temporary changes to fingerprints, signature or appearance – for example, if your signature temporarily changed owing to a broken wrist. We appreciate that people will not be used to recording their

biometrics and will require assistance in working out if they must report a change. We will ensure that there is assistance available to help individuals to ascertain whether a permanent and significant change in their biometrics has occurred – for example, if the fingerprint becomes permanently damaged.

3.9 Where an individual has received a Gender Recognition Certificate, these provisions require this to be notified. Those individuals who had been issued with two cards as they were living a dual gendered life will be then be entitled to just one card in their acquired gender. This notification will also ensure that the Identity and Passport Service can take appropriate steps to protect the gender history of the individual in accordance with the requirements of the Gender Recognition Act 2004.

3.10 These changes or any known errors should be notified by the individual within a period of 3 months from the day on which the change of circumstance occurred or the individual became aware of the error (regulation 5).

3.11 The way in which the changes or known errors should be reported by the individual is by notifying the Identity and Passport Service by telephone or in person at a specified Identity and Passport Service office and submission of an application form (regulation 4).

3.12 For a notification made over the telephone, we would seek to verify the identity of the individual by asking questions based on the security questions and answers they provided at enrolment.

3.13 For changes made in person, we will seek to verify the individual's identity by checking their fingerprints against the National Identity Register to match them securely to their existing record.

3.14 Once the individual's identity has been verified, they will be able to provide the updated information. Depending on the change in question, further steps may need to be taken in order to verify the new details provided. If the change relates to the individual's address, a notification by telephone will usually be

sufficient. If the change relates to information that is recorded on the card, we may seek additional supporting documentation and, if the notification was made by telephone, the individual would ordinarily be asked to attend an appointment at an Identity and Passport Service office in order to verify their identity by matching their fingerprints against those on their existing record. The legal provisions relating to these procedures are also already included under Section 10(3) and 10(4) of the Identity Cards Act and are not listed in these regulations.

3.15 In the case of those who have moved abroad and no longer have a place of residence in the United Kingdom, they would not be expected to notify us of changes of address in a foreign country as the Scheme is primarily targeted at residents of the United Kingdom (although they could do so if they wish). However, for airside workers who obtained an ID card while continuing to live abroad with no place of residence in the United Kingdom, these provisions still require them to update their address (regulation 3(2)). We will review these provisions with relevant airports to ensure these provisions are being applied effectively.

3.16 However, in both these circumstances, there will be a continuing requirement to notify other changes when the change would mean that information on an individual's ID card was rendered inaccurate. This could be made by telephone and would result in the cancellation of the card.

3.17 Where the notification of changes will also involve an application to replace the card, the information that the individual will be required to provide with that application is listed in *The Identity Cards Act 2006 (Applications and Issue of ID Cards) Regulations 2009*, as discussed in paragraph 2.24. Checks of the information provided in notifications under these regulations can also be verified against information held by third parties organisations listed in *The Identity Cards Act 2006 (Verification of Information in Register Etc). (Specified Persons) Order 2009*.

3.18 Finally, these regulations also introduce a requirement under Section 11 of the Identity Cards Act to notify the Secretary of State if an individual's card has been lost, stolen, damaged, tampered with or destroyed (regulation 6). The regulation lists three possible ways to do this:

- (a) It can be reported to the Identity and Passport Service by telephone,
- (b) It can be reported by making a prior appointment at a specified office of an Identity and Passport Service and completing an application form.
- (c) If the individual is abroad, it can also be reported to an embassy or consulate of the United Kingdom, once a prior appointment is made.

In each case, for the notification to be effective we would need to be able to verify the individual's identity adequately.

3.19 The Identity and Passport Service will distribute a comprehensive set of guidance notes widely so that individuals are made aware of their obligations under these regulations, such as how to make notifications, what documentation may be necessary and how to fill in any relevant application forms. While channels will be available to contact the Identity and Passport Service from abroad to report any difficulties with a card, we will continue to provide guidance to embassies and consulates to enable them to assist those abroad who may have experienced the loss or theft of an identity card.

#### THE IDENTITY CARDS ACT 2006 (CIVIL PENALTIES) REGULATIONS 2009

3.20 A civil penalty regime will be in place to encourage individuals' compliance with the requirements to notify changes that would affect the accuracy of the Register, to surrender an ID card or to report a card lost, stolen, damaged, tampered with or destroyed.

3.21 The civil penalty scheme is not intended to be punitive or revenue-raising. If there is good reason for failure to comply or, in cases where the requirements of the Act have been complied with at the time when an objection or appeal is

considered, the usual procedure will be for any penalty to be waived. The code of practice makes this clear. In practical terms we will not expect to need to apply the civil penalty regime to any great extent. However, without civil penalties, there would be a serious gap in our ability to require individuals to keep their Register entries up to date or to surrender an ID card if that is required. They are intended as a mechanism which delivers a proportionate means of ensuring compliance with the terms of the Act.

3.22 The imposition of civil penalties would not lead to any sort of criminal procedure – so a person on whom a penalty was imposed would not receive any criminal record and there would be no possibility of imprisonment as a result.

3.23 The Identity Cards Act 2006 (Civil Penalties) Regulations 2009 prescribe the manner in which a penalty notice would be imposed on an individual, the date and manner in which an objection to a penalty must be given and the time period and manner in which the Secretary of State must notify the objector of the outcome of her consideration of his objection. A description of the process of issuing civil penalties, as well as the relevant timescales for each stage, can be found in the Code of Practice at Annex B.

#### THE IDENTITY CARDS ACT 2006 (CODE OF PRACTICE ON CIVIL PENALTIES) ORDER 2009

3.24 The Identity Cards Act 2006 (Code of Practice on Civil Penalties) Order 2009 will specify the time when the Code of Practice on Civil Penalties comes into force.

3.25 Section 34 of the Act requires the issue of a Code of Practice on Civil Penalties which sets out the following:

- When a civil penalty should be issued;
- How the amount of the civil penalty should be calculated;

3.26 The code of practice explains the processes behind the regime in an accessible format and is the one document for which there is a legal requirement in the Act to consult. A draft of this code is set out at Annex B to this paper.

## CRIMINAL PENALTIES TO PROTECT THE NATIONAL IDENTITY REGISTER

3.27 The Identity Cards Act also includes provisions for criminal penalties, though no additional secondary legislation is required to enact them. The criminal penalties may be applied in cases of:

- provision of false information,
- tampering with the Register,
- unauthorised disclosure of information and
- possession of false identity documents.

3.28 If a person is found guilty of the unauthorised disclosure of information from the National Identity Register or contained in an application for an ID card, they may be liable to up to two years imprisonment, a fine or both.

3.29 Someone found guilty of providing false information in order to obtain an ID card, or to change a record on the Register may be liable to up to two years in prison, a fine or both.

3.30 In the case of a person found guilty of tampering with the National Identity Register – which includes attempting to ‘hack’ into the system or physically attack the hardware – they would be liable to a prison sentence of up to 10 years, a fine or both.

3.31 There are no penalties, criminal or civil, for not applying for an identity card.

## CONSULTATION QUESTIONS:

**3.32 We welcome comments on the requirements to notify changes outlined in these statutory instruments as well as the related operational processes described in this chapter.**

**3.33 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.**

**3.34 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.**

**3.35 We welcome comments on how the Government might 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.**

**3.36 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 2009 and the Identity Cards Act 2006 (Code of Practice on Civil Penalties) Order 2009.**

## 4 Provision of information from the National Identity Register

4.1 This chapter sets out the principles for the provision of information from an individual's entry in the Register, both with and without the consent of the individual.

4.2 There are two types of powers to provide information to help verify an individual's identity. The first is where the individual has consented to the provision of the information to the relevant person. The second is where we are able to provide the information without the individual's consent, where there is a wider public interest in verifying identity.

4.3 The Identity Cards Act does not enable us to provide information from an individual's entry in the Register to private sector organisations or members of the public, unless the individual has consented to that disclosure. Where consent has been given, information from the individual's entry in the Register may be provided **only** where the requestor for information has undergone a rigorous accreditation process. The accreditation process will be based in part on the existing system of accreditation for organisations such as financial institutions that check passport validity using the Passport Validation Service.

4.4 The ID card may also, with the consent of the individual, be used to verify identity without reference to data held on the Register. At least in the early days of the National Identity Scheme, the vast majority of identity checks on ID cards will be visual checks that will not entail checks against the Register at all. Those using the card to verify identity in these circumstances will not be obliged to go through the accreditation process.

4.5 Section 16 of the Act states that those persons seeking to verify identity using an ID card (either with or without access to data on the Register) must offer the individual a reasonable alternative means of proving their identity unless

a person is authorised under an enactment to impose a requirement on the individual to produce his ID card. These regulations cannot, and do not, impose a requirement on the individual to either carry or produce an ID card.

4.6 As indicated above, there is also provision for the Secretary of State to share data in an individual's entry in the Register without the individual's consent. Section 17 establishes the power to provide information without the individual's consent to the Police, security and intelligence services and Her Majesty's Revenue and Customs for purposes set out in the Act.

4.7 It also establishes the power to provide information without the individual's consent to those government departments which have been prescribed by regulations for the purpose of carrying out functions which have also been prescribed in respect of those departments. Government departments will be subjected to a similar accreditation process to that in place for 'with consent' data sharing.

4.8 We will also consider what additional requirements these organisations should have to satisfy in order that we are able to provide information to them.

### THE IDENTITY CARDS ACT 2006 (PROVISION OF INFORMATION WITH CONSENT) REGULATIONS 2009

4.9 Sections 12(1) gives the Secretary of State power to provide a person with certain information recorded in an entry about an individual, provided that the individual concerned consents. Where information is to be provided to someone other than the individual, that person must also register prescribed particulars with, and be approved by, the Secretary of State. In such circumstances, the provision of information under this power is strictly limited to the information which the individual has consented to being provided. Consent to provide part of the Register does not equate to consent to provide **any** data held within that individual's record on the Register.

### How is Consent Given?

4.10 We recognise that it is important that consent can be given securely but easily to

support the effective provision of identity card services to both the public and private sector.

4.11 The vast majority of transactions under the initial phase of the Identity Card roll-out will be on the basis of visual verification only, and will not require the person to retrieve any details from the Register.

4.12 Where the Register is interrogated, consent can only be given for a one off check. The individual will be able to withdraw consent prior to the check being carried out. There are currently no plans for the individual to be able to provide consent once for multiple checks.

4.13 Regulation 2 provides that an individual may give consent, provided it is freely given, in any of the ways set out in regulations 3 to 5. These are by:

- (i) ticking a box on an application made under section 5(1) of the Identity Cards Act, namely for applications for registration which may be included in applications for a designated document (for example, for airside workers when applying for a criminal records check); or
- (ii) signing a document which indicates that consent has been given; or
- (iii) handing over the identity card to the person who is seeking to use the verification service.

4.14 The application, document or person will be required to explain to the individual what they are consenting to, including the information which they are agreeing to be released from the Register, the person to whom it is being provided, the purpose for which that person requires the information and how the individual can withdraw consent. If the information is to be provided immediately after the individual has consented, the relevant document or person will not need to explain how the individual can withdraw the consent.

4.15 We are considering extending the methods by which consent can be provided to include consent given on-line and over the telephone, subject to the necessary security safeguards being met. This consideration extends to how

individuals will be able to review information recorded in their entry on the Register so that they can easily and securely check the accuracy of the information and inform us if it is out of date.

#### **Disclosure Conditions**

4.16 Regulation 7 imposes conditions which the person will have to satisfy in order that we can (with the individual's consent) provide information to that person.

4.17 The conditions are that the person:–

- (i) has registered the prescribed particulars about himself with the Secretary of State; and
- (ii) is approved by the Secretary of State in the manner set out in regulation 7(2).

#### **Prescribed Particulars**

4.18 The person will be required to provide certain information about himself so we can undertake checks to ascertain whether it is appropriate to approve that person.

4.19 We anticipate that the information that the person will have to provide will include such facts as the person's name, address and if the person is a data controller, details relating to their registration under section 18 of the Data Protection Act 1998. However much of the information that the person will have to register with us will largely depend on who the person is. For example, a company may be requested to provide:

- (a) the company's name (including trading name where different);
- (b) the company's registration number;
- (c) the registered address of the company (and trading address where different);
- (d) the name of the directors of the company or principals/owner of the company;
- (e) the name of the company secretary;
- (f) the nature of its business or trade.

4.20 We expect that persons such as companies, partnerships, sole traders, charities, non-governmental organisations, banks, financial institutions and educational establishments as

well as other third parties (including other government departments and public authorities) might wish to use this service as a convenient means of verifying the individual's identity.

### **Grant of Approval Conditions**

4.21 In addition to having to register information with us, regulation 7(1)(b) provides that the person will have to have been approved by the Secretary of State in the manner set out in regulation 7(2). Regulation 7(2)(a) provides that the approval will be a written notice of approval given to the person who might later be provided with information held on the Register. The grant of approval will be subject to the person complying with the prescribed conditions. The type of conditions we are considering prescribing are outlined in regulation 10.

4.22 The conditions outlined in regulation 10 impose a requirement to comply with particular security standards, (which are currently under review) as well as requirements relating to how the person is to verify that the individual has consented to the disclosure of the relevant information, how and when the person is to acknowledge that consent has been withdrawn, and the purposes for which the data may be used. Further conditions relate to assisting the Secretary of State with any investigation of potentially fraudulent activity concerning information held on the Register (or maintenance thereof) and/or identity documents as well as the monitoring of compliance by the person with the conditions.

4.23 We have previously highlighted the importance of the National Identity Scheme Commissioner, who will provide independent scrutiny of the National Identity Scheme. It will be also be an approval condition that the person provides the Commissioner or his staff with information that they require to carry out their functions under the Act, as per regulation 10(a). This will enable the Commissioner to properly monitor the arrangements for the provision of information from the Register and the arrangements for how such information is recorded and used.

4.24 The conditions set out under regulation 10 remain under review and are subject to change. We may determine that some of those types of conditions are more appropriately imposed under a Memorandum of Understanding or a contract (see "Additional Requirements" below).

### **Modification of Grant of Approval Conditions**

4.25 Regulation 11(1) provides us with the power to modify the conditions set out in regulation 10 in the manner prescribed (as set out in regulation 11(2)).

### **Additional Requirements**

4.26 The conditions prescribed under regulation 10 are the minimum requirements which the person will have to comply with in order to be able to use this service. Further conditions on the provision of information may be set out in a contract (or Memorandum of Understanding (MOU) where the person is a public authority or other government department) between the Secretary of State and the person. The contents of these will vary from person to person, and will enable additional safeguards to be put in place where necessary.

### **Suspension or Withdrawal of a Grant of Approval**

4.27 Under regulation 9(2) if the person does not satisfy the conditions prescribed, the grant of approval will cease to have effect. This means that we will not be able to provide information to that person even if we have the individual's consent to do so, unless that person is approved again following a rigorous accreditation process.

4.28 Moreover, if subsequent to approving the person we have reason to believe that the person is not going to satisfy these conditions, we may withdraw or suspend approval before they breach them (regulation 12(1)(a)(i)).

4.29 If the person breaches the terms of any additional requirement imposed by way of a MOU or contract, or where it is considered that they might breach such a requirement subsequent to approval, this may result in the suspension or withdrawal of the grant of approval (regulations 12(1)(a)(i) and 12(1)(b)).



4.30 We may also withdraw a grant of approval if we provide the person with 28 days notice of our intention to do so, or if new information has come to light as a result of which we deem such action is appropriate (regulation 12(3)).

4.31 Our intention is to grant approval for a specified period of time. We will conduct a rigorous re-accreditation process to decide whether it is appropriate to approve the person, subject to the relevant conditions, for another period of time.

### THE IDENTITY CARDS ACT 2006 (PROVISION OF INFORMATION WITHOUT CONSENT) REGULATIONS 2009

4.32 This regulation relates to section 17 which provides the Secretary of State with the power to provide certain information held in an individual's entry in the Register to persons authorised by that section without the individual's consent.

4.33 Information may be provided to the security and intelligence services, Police and Her Majesty's Revenue and Customs, for purposes prescribed in that section without the consent of the individual. These include where the disclosure is in the wider public interest including in the interests of national security, or for the prevention and detection of crime.

4.34 Section 17 also allows for the provision of information from an individual's entry in the Register without that individual's consent to prescribed government departments, for the purposes connected with the carrying out any of the prescribed functions of those departments. However we can only exercise this power if it is considered to be necessary in the public interest to do so, as defined in section 1(4) of the Act. We intend initially to prescribe the following government departments to mirror the existing provision of passport information and to prescribe the functions so that they relate to public protection. Those departments are:

- (i) The Home Office (including the United Kingdom Border Agency, the Identity and Passport Service and the Criminal Records Bureau)

- (ii) The Foreign and Commonwealth Office
- (iii) The Department for Work and Pensions
- (iv) The Department for Transport
- (v) The Ministry of Justice

We will also seek to discuss with any counterpart bodies in Scotland and Northern Ireland to see if they would wish for these powers to be extended to cover their activities. (However, where a public service is devolved in Northern Ireland, Scotland or Wales, it will be a matter for the devolved administration to decide whether to request information from an individual's entry on the Register, either with or without consent, or whether to require an individual to produce their ID card as proof of identity before that service can be accessed.)

4.35 The Home Office needs to be prescribed under this regulation so that it can use information recorded in an individual's entry in the Register for its functions unconnected with the Identity Cards Act 2006, including passport, immigration and nationality related functions. In addition we may need to consider introducing an order under section 20 to allow for the provision of information to the Security Industry Authority (SIA) for the purposes detailed in section 1(2) and (3) of the Private Security Industry Act 2001. This would allow us to mirror the current arrangements for the provision of data from passport records.

4.36 The FCO may require information for functions relating to passports and other consular services, but otherwise it is intended that functions of the prescribed government departments should be limited to identity verification where that is necessary to protect the public including for reasons of national security, for the prevention and detection of crime including terrorism, and to help combat illegal immigration and illegal working.

4.37 As the National Identity Register will become the key repository of identity information about United Kingdom residents aged 16 and over, there may, as the Scheme is rolled out, be a case for further legislation under sections 17-20 of the Act, but only when it can

be shown to be in the public interest. Whenever there is a power to provide information to other government departments or public authorities, the Identity and Passport Service will ensure transparency so that it is made clear to people applying for identity cards how their information may be used to verify their identity.

### **Grant of Approval Conditions for other Government Departments**

4.38 In order to be provided with information from the Register, the government department must be approved by the Secretary of State in the manner set out in regulation 3(1). Regulation 3(2) provides that the approval will be a written notice of approval. This grant of approval will be subject to the department meeting the prescribed conditions. The type of conditions we are considering prescribing are outlined in regulation 5.

4.39 The conditions prescribed in regulation 5 are the same as those listed for under the Identity Card Act 2006 (Provision of Information with Consent) Regulations 2009 in so far as is appropriate, and include a requirement to comply with particular security standards (currently under review), as well as assisting the Secretary of State with any investigation of potentially fraudulent activity concerning information held on the Register (or maintenance thereof) and identity documents as well as the monitoring of compliance by the person with the conditions.

4.40 In line with the Provision of Information with Consent Regulations, it is an approval condition that the prescribed government department provides the scheme Commissioner or his staff with information that they require to carry out their functions under the Act, as per regulation 5(a). This will enable the Commissioner to properly monitor the arrangements for providing information from the Register and the arrangements for how such information is recorded and used by other government departments.

4.41 These conditions remain under review, and may be determined to be more appropriately applied in a Memorandum of Understanding (See “Additional Requirements for other Government Departments” below).

### **Modification of Grant of Approval Conditions**

4.42 Regulation 6(1) provides us with the power to modify the conditions set out in regulation 5 in the manner prescribed in regulation 6(2).

### **Additional Requirements for other Government Departments**

4.43 The Secretary of State may choose to impose additional obligations as per the with “with consent” arrangements. These conditions would be imposed through a MOU between the Secretary of State and the prescribed government department.

### **Suspension or Withdrawal of a Grant of Approval**

4.44 Under Regulation 4(2), if the government department fails to satisfy the prescribed conditions, the grant of approval would cease to have effect. This means that the Secretary of State would not be able to disclose the information to that government department unless they are approved again following another rigorous accreditation process.

4.45 If there were reason to believe that the government department will not be able to meet those conditions, we may withdraw or suspend approval under regulation 7(1).

4.46 If a government department were to breach any of the additional requirements imposed by way of a MOU, or where it is considered that they will breach a condition in the MOU, again, approval may be suspended or withdrawn (regulation 7(b)).

4.47 We may also withdraw a grant of approval if we provide the government department with 28 days notice of our intention to do so, or if new information has come to light as a result of which we think it appropriate to withdraw the grant of approval (regulation 7(3)).

### **Requirements imposed on the Home Office, Security and Intelligence Services, Police and HMRC**

4.48 The Home Office will be required to comply with the relevant security standards when using information from the Register under section 17 of the Act. It will also be required to monitor its compliance with these security standards. It would not, in our view, make sense to impose other types of conditions on the Home Office as they relate to how the relevant government department is to co-operate or inform the Secretary of State for the Home Department about certain matters. The effect of imposing such conditions on the Home Office would be to require it to co-operate or inform itself about certain matters.

4.49 The provision of information to those organisations named on the face of the Act (the Security and Intelligence Services, the Police, and HMRC) will be subject to those organisations meeting requirements which we intend to provide under section 21(2)(a). These may include assurances over how the data is transmitted, who receives that data, how long the data is kept for and how it is stored and will reflect, as closely as possible, the conditions to which the grant of approval (in respect of prescribed departments or persons seeking to obtain information with the individual's consent) is subject.

4.50 As a condition of the provision of information to the Police and HMRC, they will be required to assist the Scheme Commissioner in reviewing the arrangements for processing, recording and using the information provided to them. The provision of information to the security and intelligence services will have a similar condition imposed to ensure co-operation with the Intelligence Services Commissioner and Tribunal (sections 22 and 24 Identity Cards Act 2006). The Home Office is already required under section 22(5) of the Identity Cards Act to provide the Scheme Commissioner with all such information (including information held on the Register) as may be required for the purposes of carrying out his functions under the Act, and hence, no such condition needs to be imposed by other means.

### **Additional Safeguards**

4.51 All identity related data released from the Register will be encrypted prior to transmission to the requesting organisation. Data security controls during collation, transmission and on receipt will be applied at a level appropriate to the type and volume of data contained within the extract in accordance with relevant Government policy. The level of provision to officers in the receiving organisation will be restricted to the appropriate grade or rank, or to those with appropriate security clearance, depending on the nature and quantity of information requested. For example, a request for information on a large number of records held on the Register may require additional authorisation compared to a request for information to confirm identity of a single individual.

4.52 As an additional safeguard over the use of the data, section 21(1) provides that we may only provide biometric data, including photographs and fingerprint records, to persons under sections 17 to 20 of the Act without the individual's consent (i.e. police, security and intelligence services, HMRC and prescribed departments) when it cannot be reasonably obtained by other means.

4.53 Records of the provision of information, including every occasion on which information from the individual's records on the Register has been provided, and who that information has been provided to, will not be provided save for where that disclosure is required by the security and intelligence services, or where that information is required for the prevention or detection of serious crime.

### **Access to the Register by the Individual**

4.54 Although there is no need for any secondary legislation to allow for this, everyone will have the right to be provided with a copy of the information held about them on the Register under existing subject access provisions. Subject access rights are the rights conferred by section 7 of the Data Protection Act 1998 allowing a person to be provided with information about personal data held about them, including a

copy of the personal data held but subject to any general exclusions under the Data Protection Act.

4.55 The individual may also access their own data recorded on the Register under section 12(1) of the Act. However, we do not intend to require them to register prescribed particulars with the Secretary of State. However, we do intend to regulate their method of requesting information in their entry on the Register.

#### CONSULTATION QUESTIONS:

**4.56 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.**

**4.57 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.**

**4.58 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.**

**4.59 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.**

**4.60 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.**

## 5 Designation of documents and the roll out of identity cards

5.1 The different stages planned for the roll out of the National Identity Scheme are summarised at paragraph 1.23 above. The first stage will involve the issue of foreign national identity cards by the UK Border Agency starting in November 2008. These cards will be issued under immigration powers in the UK Borders Act 2007 and so are not the subject of this consultation.

### COMMENCEMENT ORDERS

5.2 The roll out of subsequent stages of the National Identity Scheme, involving the issue of ID cards to British citizens and European Economic Area nationals by the Identity and Passport Service will require commencement of the relevant provisions of the Identity Cards Act 2006.

5.3 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 specific airports as the airside workers phase is implemented.

5.4 Commencement Orders would also allow for the issue of ID cards on a voluntary basis, in limited numbers, to a small group of persons who would be able to apply for an identity card as part of the initial trialling of the scheme. Further commencement orders will specify subsequent groups who may apply for identity cards, either at further airports or on a voluntary basis – including issuing identity cards to young

people in specified locations from 2010. Finally there will be commencement orders needed to provide for the start of the high volume roll out of ID cards from 2012 onwards. This will lead eventually to a point at which anyone who is aged 16 or over and is resident in the UK (unless they are in the UK despite having no entitlement to remain) may apply for an ID card. It is intended that eventually everyone, other than short term visitors, will be able to register on the National Identity Register and be issued with a biometric identity card or passport.

5.5 It is intended that initially identity cards will be issued to airside workers at a small number of airports (the Wave One airports) to facilitate improvements to the pre-employment identity checking process and so provide additional reassurance and security as to the identity of people having access to the restricted airside area. On 6th November 2008, it was confirmed that **Manchester Airport and London City Airport** will join the Wave One process.

5.6 It is intended that we phase in identity cards at these first airports, which will start introducing the requirement for employees requiring airside access to have or obtain an Identity Card, from autumn 2009. We will be working with each airport to agree exactly which employees would initially be subject to this requirement and how it would best be integrated into the pre-employment checking and pass issuing arrangements at that airport.

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

## DESIGNATION OF DOCUMENTS

5.8 The Identity Cards Act provides a power at section 4 to designate existing documents – thus making it a requirement for persons applying for such a document to register and be issued with an ID card. Designation is not the same as “compulsion” as there is no penalty if someone chooses not to apply for a designated document, they simply would not obtain the designated document without also applying for and being issued with an ID card.

5.9 Only official government issued documents can be designated. So for example it would not be possible to designate airside passes as they are issued by the airport operator at an airport not a government department.

5.10 During the passage of the Identity Cards Act through Parliament it was made clear that designated documents would in due course (and subject to approval of secondary legislation) include passports and biometric immigration documents, but it was also made clear that they might also include criminal conviction certificates.

### THE IDENTITY CARDS ACT 2006 (DESIGNATION) ORDER 2009

5.11 A draft of a designation order is attached. This proposes the designation of **criminal conviction certificates** issued under section 112 of the Police Act 1997, but **only** insofar as those criminal conviction certificates have been applied for by airside workers who would be expected to produce the criminal conviction certificate before they were issued with an airside pass. A criminal conviction certificate is also known as a **basic disclosure certificate**. Separate commencement orders linked to the phased commencement of the application provisions in section 5 of the Act would limit the effect of this provision to **only** those airports where the initial roll out of ID cards had commenced – that is Manchester and London City or any other wave one airports in the first instance. It is currently expected that this would begin in autumn 2009.

5.12 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 Identity Cards Act order, the requirement to have an ID card will depend both on the Identity Cards Act designation order and also on the Aviation Security Act direction. If an airside worker in the category specified refused to apply for an ID card then they should not be issued with the criminal conviction certificate necessary to obtain an airside pass. The Identity and Passport Service will be working with the 3 criminal record checking agencies (Criminal Records Bureau for England and Wales, Disclosure Scotland and Access Northern Ireland) to ensure that the designation process will fit with the way that they either currently, or in the future, could provide criminal conviction certificates for people who are required to obtain one to work airside at an airport.

5.13 The designation order would **not** have any impact on other employees who may require a criminal record check, including all applicants for standard and enhanced checks.

### CONSULTATION QUESTIONS:

**5.14 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.**

## 6 Fees

6.1 The National Identity Scheme Delivery Plan, published in March 2008, stated the intention that during 2009 and 2010 the fee for an Identity Card should be no more than £30. In due course we will be seeking views on the price of an identity card or passport as part of a further consultation on fees and charges for the National Identity Scheme. The overall strategy will present a set of fair and reasonable fees for identity card and passports. It will also take account of the commitment that will require an amendment to the Identity Cards Act, to offer a choice of identity card or passport when the National Identity Scheme is fully up and running.

### THE IDENTITY CARDS ACT 2006 (FEES) REGULATIONS 2009

6.2 The **Identity Cards Act 2006 (Fees) Regulations 2009** specify a fee of £30 for an initial application to be entered in the Register and be issued with an ID card. The regulations also provide for a fee of £30 for any application for a subsequent replacement ID card, for example if the initial card is lost or stolen. However, Regulation 4 provides that no fee is payable to replace an ID card which the Secretary of State has cancelled on the grounds that it was damaged prior to issue or one of a batch of cards that the Secretary of State has decided should be re-issued because they were faulty.

6.3 Once the fee regulations are in place, the £30 fee stated would apply for the 2009/10 roll out of the scheme. In future years this could, be modified once amending regulations were approved by Parliament. In addition whilst it is proposed that the initial fee for people enrolling on a voluntary basis would be £30, it is also intended that the commencement of the fee regulations will make clear that the fee would not apply, during an evaluation period, to those airside workers who may be required to have an ID card in the first wave.

### CONSULTATION QUESTIONS:

**6.4 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, 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.**

## 7 Consultation and how to submit comments

### SUMMARY OF CONSULTATION POINTS

7.1 The purpose of this consultation is to inform the Government in proceeding with the implementation of the National Identity Scheme including the introduction of identity cards linked to a National Identity Register. The passage of the Identity Cards Act 2006 means that Parliament has already approved in principle the introduction of identity cards. So this consultation covers the draft statutory instruments that will prescribe some of the detailed arrangements and seeks views prior to any further scrutiny of the secondary legislation by Parliament. We are therefore ready to listen to comments both about how the statutory instruments are drafted as well as the policies that they implement, bearing in mind that some of these policies (such as the information shown on the card) follow standards for international travel documents or existing passport practice.

7.2 There are a number of specific consultation points that we have highlighted in this paper and these are summarised here for convenience. We are consulting on draft regulations and in some instances, where draft statutory instruments are not yet complete, on the policy that will underlie them. The draft secondary legislation we have published will be amended as necessary following the consultation and then laid before Parliament (probably in March 2009).

7.3 There may also need to be an additional order that is not included at Annex A which will entail making a small amendment to the list of information held in the Register and set out at Schedule 1 to the Identity Cards Act 2006. This possible change is to include a reference to a “referee” as well as to a “countersignatory” as it is intended that applicants may be asked to give details of a person who is prepared to act as a referee rather than someone who actually signs an application form as a countersignatory. We may also need to include in this order a

clarification to paragraph 1 of the Schedule to the effect that a person may register an address overseas if they do not have a principal place of residence in the United Kingdom.

7.4 The specific consultation points 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).
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, 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).

## IMPACT ASSESSMENT

7.5 We will also publish an impact assessment for the introduction of identity cards in early 2009 before the secondary legislation is brought to Parliament in 2009. The impact assessment will include a review of regulatory, equality and privacy issues. Information on the estimate of the public expenditure likely to be incurred on the Scheme over the following ten years is already published every 6 months, in accordance with Section 37 of the Identity Cards Act. The fifth such report was laid before Parliament and published on 6th November 2008 (see: <http://www.ips.gov.uk/identity/downloads/IPS-Cost-report-Nov2008.pdf>). This estimated the overall cost at some £4,785 million over the next 10 years including the costs of issuing biometric passports and ID cards, with an additional £326 million for identity cards for foreign nationals. These estimates are gross costs and do not reflect income from fees.

## HOW TO SUBMIT COMMENTS AND CLOSING DATE

7.6 Comments need not be limited just to these points and we invite any wider comments on our proposals for the implementation of the National Identity Scheme.

7.7 We will take full account of all comments received on these proposals. Once we have taken stock of the comments received following this consultation, a summary of the responses received will be published. This will be within three months of the closing date for this consultation and will be made available on the Identity and Passport Service website ([www.ips.gov.uk](http://www.ips.gov.uk)). Copies of this consultation paper and previous documents on identity cards are also available on the same website. You should contact the Identity and Passport Service at the address below, should you require a copy of this consultation paper in any other format. For example Braille, Large Print, or Audio. As specified above, all comments received may be published unless the person or organisation making them asks specifically that they should not be published.

7.8 Any comments should be sent to:  
Robin Woodland  
Identity Cards Act Secondary Legislation  
Consultation  
Home Office  
Identity and Passport Service  
Allington Towers  
19 Allington Street  
London SW1E 5EB

7.9 Comments may also be sent by e-mail to: [identitycards@ips.gsi.gov.uk](mailto:identitycards@ips.gsi.gov.uk). If commenting by e-mail please include the words “consultation response” in the subject title.

7.10 All comments should be submitted to arrive no later than closing date for the consultation **Friday 13th February 2009**.

## GOVERNMENT CODE OF PRACTICE ON CONSULTATION

7.11 This consultation follows the Government’s Code of Practice on Consultation – the criteria for which are set out below:

### 1 **When to consult**

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

### 2 **Duration of consultation exercises**

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

### 3 **Clarity of scope and impact**

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

### 4 **Accessibility of consultation exercises**

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

### 5 **The burden of consultation**

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees’ buy-in to the process is to be obtained.

### 6 **Responsiveness of consultation exercises**

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

### 7 **Capacity to consult**

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

7.12 The full code of practice is available at: <http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html>

## CONSULTATION CO-ORDINATOR

7.13 If you have a complaint or comment about the Home Office's approach to consultation you should contact the Home Office Consultation Co-ordinator, Nigel Lawrence. The Co-ordinator works to promote best practice standards set by the Cabinet Office, advises policy teams on how to conduct consultations and investigates complaints made against the Home Office. He does not process your response to this consultation.

7.14 The Co-ordinator can be e-mailed at [Nigel.Lawrence@homeoffice.gsi.gov.uk](mailto:Nigel.Lawrence@homeoffice.gsi.gov.uk) or written to at:

Nigel Lawrence  
Consultation Co-ordinator  
Home Office Performance and  
Delivery Unit  
3rd Floor, Seacole Building  
2 Marsham Street  
London  
SW1P 4DF

7.15 Please **do not** send your response to this consultation to Nigel Lawrence.

## RESPONSES: CONFIDENTIALITY AND DISCLAIMER

7.16 The information you send us may be passed to colleagues within the Home Office, the Government or related agencies. Furthermore, information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 and the Data Protection Act 1998).

7.17 If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your

explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will **not**, of itself, be regarded as binding on the Department.

7.13 Please ensure that your response is marked clearly if you wish your response and name to be kept confidential. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed. The Department will process your personal data in accordance with the Data Protection Act – in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## Identity and Passport Service November 2008

# **ANNEX A**

## **DRAFT STATUTORY INSTRUMENTS**

## Contents

<b>The Identity Cards Act 2006 (Entitlement to be Registered) Regulations 2009</b>	<b>43</b>
<b>The Identity Cards Act 2006 (Applications and Issue of ID Cards) Regulations 2009</b>	<b>45</b>
<b>The Identity Cards Act 2006 (Verification of Information in Register Etc.) (Specified Persons) Order 2009</b>	<b>59</b>
<b>The National Identity Registration Number Regulations 2009</b>	<b>61</b>
<b>The Identity Cards Act 2006 (Prescribed Information and Period of Validity of Card Regulations 2009</b>	<b>63</b>
<b>The Identity Cards Act 2006 (Notification of Changes and Loss, Theft etc. of ID Cards Regulations 2009</b>	<b>69</b>
<b>The Identity Cards Act 2006 (Civil Penalties) Regulations 2009</b>	<b>73</b>
<b>The Identity Cards Act 2006 (Code of Practice on Civil Penalties) Order 2009</b>	<b>77</b>
<b>The Identity Cards Act 2006 (Provision of Information with Consent) Regulations 2009</b>	<b>79</b>
<b>The Identity Cards Act 2006 (Provision of Information without Consent) Regulations 2009</b>	<b>83</b>
<b>The Identity Cards Act 2006 (Designation) Order 2009</b>	<b>87</b>
<b>The Identity Cards Act 2006 (Fees) Regulations 2009</b>	<b>89</b>

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STATUTORY INSTRUMENTS

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**2009 No.**

**IDENTITY CARDS**

**The Identity Cards Act 2006 (Entitlement to be Registered)  
Regulations 2009**

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - - -	***

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 2(2)(b) and (3)(c) and 42(1) of the Identity Cards Act 2006(a).

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Identity Cards Act 2006 (Entitlement to be Registered) Regulations 2009 and shall come into force on [...].

(2) In these Regulations—

“the 2006 Act” means the Identity Cards Act 2006

“airside pass” means a pass allowing the person to whom it has been issued unaccompanied access to a restricted zone or to part of a restricted zone; and

“restricted zone” means an area designated by the Secretary of State under section 11A of the Aviation Security Act 1982(b).

**Prescribed description**

2. An individual who—

- (a) does not come within section 2(2)(a) of the 2006 Act;
- (b) has attained the age of 16;
- (c) has applied [or intends to apply] for an airside pass in relation to that individual’s employment, or proposed employment, in the United Kingdom, being employment for which such a pass is required; and
- (d) is proposing to enter the United Kingdom in connection with such employment or proposed employment,

is an individual of a description prescribed for the purposes of section 2(2)(b) of the 2006 Act.

**Exclusion from entitlement to be registered**

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(a) 2006 c.15.

(b) 1982 c. 36; section 11A was inserted by section 8(1) of, and paragraph 3 of Schedule 1 to, the Aviation and Maritime Security Act 1990 (c. 31).

3. An individual who is residing in the United Kingdom despite having no entitlement to remain there is excluded from an entitlement to be registered.

Home Office  
2009

Minister of State

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Section 2(2) of the Identity Cards Act 2006 (“the 2006 Act”) makes provision in respect of who is entitled to be registered. Section 2(2)(b) provides a power for the Secretary of State to prescribe a description of individuals who have resided in or are proposing to enter the United Kingdom who will be entitled to be registered.

The effect of regulation 2 is that an individual who is not residing at a place in the United Kingdom, is 16 or over and has applied [or intends to apply] for an airside pass in relation to that individual’s employment or proposed employment, being employment for which such a pass is required, is entitled to be registered if that individual is proposing to enter the United Kingdom in connection with such employment or proposed employment.

The Secretary of State may by regulations made under section 2(3)(c) of the 2006 Act provide that an individual is to be excluded from an entitlement to be registered if the individual is residing in the United Kingdom despite having no entitlement to remain there. Regulation 3 makes provision to that effect.

**DRAFT**

*Draft Regulations laid before Parliament under sections 5(7) and 6(9) of the Identity Cards Act 2006, for approval by resolution of each House of Parliament.*

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D R A F T   S T A T U T O R Y   I N S T R U M E N T S

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**2009 No.**

**IDENTITY CARDS**

**The Identity Cards Act 2006 (Applications and Issue of  
ID Cards) Regulations 2009**

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

The Secretary of State, in exercise of the powers conferred by sections 5(1), 5(3), 6(4)(b), 6(5), 6(6)(b), 6(7), 6(8)(a) and (c), 8(3), 40(4), 42(1) and 42(10) of the Identity Cards Act 2006(a), makes the following Regulations.

In accordance with sections 5(7) and 6(9) of that Act, a draft of this instrument was laid before and approved by a resolution of each House of Parliament.

**Citation, commencement and interpretation**

1. These Regulations may be cited as the Identity Cards (Applications and issue of ID Cards) Regulations 2009 and shall come into force on [ ].

2. In these Regulations –

“2006 Act” means the Identity Cards Act 2006;

“airside pass” means a pass allowing the person to whom it has been issued unaccompanied access to a restricted zone or to part of a restricted zone;

“an appropriate office of the Identity and Passport Service” means one of the offices listed in Guidance IDCG-01, issued by the Identity and Passport Service (b), as being an office which handles ID cards applications;

“certificate of naturalisation” means a certificate of naturalisation as a British citizen, issued by the Secretary of State;

“certificate of registration” means a certificate of registration as a British citizen, issued by the Secretary of State;

“EEA national” means a national of an EEA State ;

“EEA State” means –

(a) a Member State other than the United Kingdom;

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(a) 2006 c. 15.

(b) Guidance IDCG-01 is dated DD/MM/YY and is available from [ ].



(b) Norway, Iceland or Liechtenstein; or

(c) Switzerland;

“gender recognition certificate”, “Gender Recognition Panel” and “chartered psychologist” have the same meanings as in section 25 of the Gender Recognition Act 2004(a);

“identity card” means an identity card that is valid as a travel document for travel to the United Kingdom;

“individual who is dual gendered” means an individual who has been diagnosed with gender dysphoria, but who has not yet obtained a gender recognition certificate from the Gender Recognition Panel; and for the purposes of this definition “gender dysphoria”, has the same meaning as in section 25 of the Gender Recognition Act 2004;

“relevant airside worker” means a person who makes an application under section 5(2) of the 2006 Act (Applications relating to entry in Register) in connection with an application for an airside pass; and

“restricted zone” means an area designated by the Secretary of State under section 11A of the Aviation Security Act 1982(b).

### **Manner of application for entry in the Register**

**3.**—(1) The manner in which an application by an individual to be entered in the Register is to be included in an application for a designated document is prescribed for the purposes of section 5(1)(a) of the 2006 Act (Applications relating to entries in Register) as set out in paragraph (2).

(2) The prescribed manner is—

- (a) by including in the application for the designated document the reference number of the application to be entered in the Register;
- (b) by making the application to be entered in the Register in person by prior appointment at an appropriate office of the Identity and Passport Service;
- (c) subject to paragraph (3), by submitting the application on form IPS IDE-01, published by the Identity and Passport Service (c); and
- (d) by including in the application the reference number of the application for a designated document.

(3) In the case of an individual who is dual-gendered and who is applying for details of both genders to be entered in the Register, form IPS IDE-01 must be completed in relation to each of the genders.

**4.**—(1) The manner in which an application by an individual to be entered in the Register is to be submitted directly to the Secretary of State is prescribed for the purposes of section 5(1)(b) of the 2006 Act (Applications relating to entries in Register) as set out in paragraph (2).

(2) The prescribed manner is —

- (a) by making the application to be entered in the Register in person by prior appointment at an appropriate office of the Identity and Passport Service; and
- (b) subject to paragraph (3), by submitting the application on form IPS IDE-01, published by the Identity and Passport Service.

(3) In the case of an individual who is dual-gendered and who is applying for details of both genders to be recorded in the Register, form IPS IDE-01 must be completed in relation to each of the genders.

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(a) 2004 c.7.  
(b) 1982 c. 36.  
(c) Form IPS IDE-01 is available from [ ].

### **Manner of confirming contents of entry already made in the Register**

**5.—**(1) The manner of confirming (with or without changes) the contents of an entry in the Register is prescribed for the purposes of section 6(6)(b) of the 2006 Act (Issue etc. of ID cards) as set out in paragraph (2).

(2) The prescribed manner is –

- (a) by attending in person by prior appointment at an appropriate office of the Identity and Passport Service; and
- (b) subject to paragraph (3), by completing form IPS IDE-01, published by the Identity and Passport Service.

(3) In the case of an individual who is dual-gendered and who wishes details of the second gender to be recorded in the Register, form IPS IDE-01 must be completed in relation to each of the genders.

### **Prescribed information to accompany application relating to entry in Register**

**6.—**(1) Subject to paragraph (2), the information prescribed for the purposes of section 5(3)(a) of the 2006 Act (Prescribed information to accompany application to be entered in the Register) is –

- (a) in relation to all applicants, the information specified in Schedule 1 to these Regulations as applying in the case of all applicants, together with the information so specified in relation to such an applicant;
- (b) in the case of a relevant airside worker, the name of the employer with whom the applicant holds or has applied for a job that requires the job-holder to obtain an airside pass; and
- (c) in the case of an individual who is dual-gendered and who is applying for details of both genders to be entered in the Register –
  - (i) the individual's second gender;
  - (ii) the individual's name in that second gender; and
  - (iii) the individual's signature in that name.

(2) Any information set out in Schedule 1 is not prescribed information in relation to an applicant where, in the circumstances of the particular case (including any urgency in relation to the application), it is not reasonably practicable for the applicant to provide the information.

**7.—**(1) Subject to paragraph (4), the information prescribed for the purposes of section 5(3)(b) of the 2006 Act (Prescribed information to accompany an application which confirms, with or without changes, an entry in the Register) is as set out in paragraphs (2) and (3).

(2) In the case of an application to which section 6(6)(b) of the 2006 Act applies, the prescribed information is –

- (a) in relation to all applicants, the information specified in Schedule 2 as applying in the case of all applicants, together with the information so specified in relation to such an applicant;
- (b) in the case of an individual who is dual-gendered and who is confirming with changes an entry in the Register in connection with an application for a second ID card in a different gender –
  - (i) the individual's second gender;
  - (ii) the individual's name in that second gender; and
  - (iii) the individual's signature in that name.

(3) In the case of an application to which section 5(2)(b) or (c) of the 2006 Act applies, the prescribed information is, in relation to all applicants, the information specified in Schedule 3 as applying in the case of all applicants, together with the information so specified in relation to such an applicant.

(4) Any information referred to in paragraph (1) above is not prescribed information in relation to an applicant where, in the circumstances of the particular case (including any urgency in relation to the application) it is not reasonably practicable for the applicant to provide the information.

### **Issue of ID card**

**8.** The following registrable facts about an individual are prescribed for the purposes of section 6(4)(b) of the 2006 Act (Issue etc. of ID cards) –

- (a) the individual's full name;
- (b) the address of a place of residence of the individual;
- (c) the individual's gender;
- (d) the individual's place of birth;
- (e) the individual's date of birth;
- (f) the individual's nationality; and
- (g) a photograph of the individual's head and shoulders (showing the features of the face).

**9.—**(1) The case specified in paragraph (2) is a prescribed case for the purposes of section 6(5) of the 2006 Act (Issue etc. of ID cards).

(2) The case referred to in paragraph (1) is where an individual who is dual gendered and who has been issued with an ID card applies for a second ID card in a different gender.

**10.—**(1) The following registrable facts about an individual are prescribed for the purposes of section 6(5)(b) of the 2006 Act (Issue etc. of ID cards) –

- (a) the individual's full name;
- (b) the address of a place of residence of the individual;
- (c) the individual's birth gender and acquired gender;
- (d) the individual's place of birth;
- (e) the individual's date of birth;
- (f) the individual's nationality; and
- (g) a photograph of the individual's head and shoulders (showing the features of the face).

(2) In this regulation, "acquired gender" has the same meaning as in section 1(2) of the Gender Recognition Act 2004.

### **Manner of application for an ID card**

**11.—**(1) The manner in which an application by an individual to be issued with an ID card is to be included in an application to be issued with a designated document is prescribed for the purposes of section 6(7) of the 2006 Act (Applications for the issue of an ID card) as set out in paragraph (2).

(2) The prescribed manner is –

- (a) by including in the application to be issued with the designated document the reference number of the application for an ID card;
- (b) by making the application for the issue of an ID card in person by prior appointment to an appropriate office of the Identity and Passport Service ;
- (c) subject to paragraph (3), by submitting the application on form IPS IDE-01, published by the Identity and Passport Service; and
- (d) by including in the application the reference number of the application for a designated document.

(3) In the case of an individual who is dual-gendered and who is applying to be issued with an ID card in each gender, form IPS IDE-01 must be completed in relation to each of the genders.

**12.**—(1) The manner in which other applications for the issue of an ID card are to be made is prescribed for the purposes of section 6(8) of the 2006 Act (Applications for the issue of an ID card) as set out in paragraph (2).

(2) The prescribed manner is –

- (a) by making the application for the issue of an ID card in person by prior appointment to an appropriate office of the Identity and Passport Service; and
- (b) subject to paragraph (3), by submitting the application on form IPS IDE-01, published by the Identity and Passport Service.

(3) In the case of an individual who is dual-gendered and who is applying to be issued with an ID card in each gender, form IPS IDE-01 must be completed in relation to each of the genders.

### **Prescribed information to accompany application for issue of an ID card**

**13.**—(1) Subject to paragraph (3), where an application by an individual for the issue of an ID card accompanies an application made by the individual to be entered in the Register, the information prescribed for the purposes of section 6(8)(c) of the 2006 Act (prescribed information to accompany application for an ID card) is the information prescribed by regulation 6 in so far as it is relevant to that application.

(2) Subject to paragraph (3), where an application by an individual for the issue of an ID card confirms (with or without changes) the contents of an entry already made in the Register for that individual, the information prescribed for the purposes of section 6(8)(c) of the 2006 Act (Prescribed information to accompany application for an ID card) is the information set out in regulation 7, in so far as it is relevant to that application.

(3) Any information prescribed by paragraphs (1) or (2) is not prescribed information in relation to an applicant where it is not reasonably practicable in all the circumstances, including taking into account any urgency in relation to the application, for the applicant to provide the relevant information.

### **Requirements on designated documents authorities**

**14.**—(1) A designated documents authority must comply with the requirements specified in paragraph (2) when handling an application made to it that confirms (with or without changes) the contents of an individual's entry in the Register.

(2) The requirements referred to in paragraph (1) are that the designated documents authority must, before issuing a designated document to the applicant –

- (a) ask the applicant to confirm whether the information provided by the applicant to it under regulation 7 –
  - (i) is, or
  - (ii) when the entry has been amended in accordance with an application or notification already made to the Identity and Passport Service, will be the same as that recorded in the applicant's entry in the Register in relation to those matters;
- (b) if in response to the question posed under sub-paragraph (a) the applicant indicates that the information has changed in any respect, provide to the Identity and Passport Service details of the changed information;
- (c) verify with the Identity and Passport Service that the information provided to it by the applicant under regulation 7 is the same as that recorded in the applicant's entry in the Register in relation to those matters; and

- (d) immediately prior to issue of the designated document, obtain confirmation from the Identity and Passport Service that there is no outstanding –
- (i) application by the applicant under section 6 of the 2006 Act for the issue of an ID card; or
  - (ii) notification by the applicant under section 10 of the 2006 Act of a change of circumstances or an error affecting or, as the case may be, in, the information recorded about the applicant in the Register.

### **Place of residence and principal place of residence**

**15.** A place is only to be regarded as a place of residence of an individual in circumstances where it is a place of abode of that person.

**16.—(1)** Subject to paragraph (2), a place is to be regarded as the principal place of residence in the United Kingdom of an individual in circumstances where it is the place of residence of the individual in the United Kingdom where the individual resides most frequently.

(2) In applying the test set out in paragraph (1), no regard is to be had to a temporary change in the place where a person most frequently resides.

Home Office

2009

Minister of State

**DRAFT**

## **SCHEDULE 1**

**regulation 6**

### **Part 1**

#### **Information, other than documents to accompany application for entry in the Register and accompanying application for issue of an ID card**

- 1.** In the case of all applicants –
- (a) full name by which the applicant is commonly known for official purposes,
  - (b) any other names by which the applicant is or has been known for official purposes and details of the period during which the applicant is or has been so known ,
  - (c) subject to sub-paragraph (e), address of the applicant's principal place of residence in the United Kingdom,
  - (d) address of any other place of residence, in the United Kingdom or elsewhere, which the applicant wishes to be entered in the Register,
  - (e) address of any other principal place of residence of the applicant during the period of five years immediately preceding the date of signature of the application form,
  - (f) gender of the applicant,
  - (g) date of birth of the applicant,
  - (h) place of birth of the applicant (including town and country of birth),

- (i) nationality of the applicant,
- (j) any previous nationality of the applicant,
- (k) any national insurance number allocated to the applicant,
- (l) a contact telephone number for the applicant,
- (m) signature of the applicant,
- (n) date of signature of the application,
- (o) the information relating to a referee specified in paragraph 2,
- (p) the answers to questions for the purposes of paragraph 8(c) of Schedule 1 to the 2006 Act.,
- (q) whether the applicant owes any money to the United Kingdom for repatriation or any other form of consular relief, and
- (r) whether the applicant is subject to a court order that would prevent the applicant from applying for, being issued with or using a travel document, including details of the period when the prohibition will be in force.

**2. Information relating to a referee –**

- (a) full name,
- (b) number of years the referee has known the applicant,
- (c) address of principal place of residence,
- (d) date of birth,
- (e) profession, and
- (f) contact telephone number.

**3. In the case of an applicant who is a British citizen and who holds a valid United Kingdom passport describing the applicant as a British citizen, the number and date and place of issue, of that passport.**

**4. In the case of an applicant who is a British subject with the right of abode in the United Kingdom and who holds a valid United Kingdom passport describing the applicant as a British subject with the right of abode in the United Kingdom, the number and date and place of issue of that passport.**

**5. In the case of an applicant who claims to be an EEA national, either –**

- (a) the number and date and place of issue of a valid identity card, or
- (b) the number and date and place of issue of a valid passport.

**6. In the case of an applicant who claims to be a British citizen and who does not hold a valid United Kingdom passport describing the applicant as a British citizen –**

- (a) full name of the applicant's mother,
- (b) place of birth of the applicant's mother (including town and country),
- (c) date of birth of the applicant's mother,
- (d) nationality of the applicant's mother at the time of the applicant's birth,
- (e) where the applicant's mother held a valid United Kingdom passport describing her as a British citizen at the time of the applicant's birth, number and date of issue of that passport,
- (f) date of any marriage between the applicant's mother and the applicant's father,
- (g) full name of the applicant's father,
- (h) place of birth of the applicant's father (including town and country),
- (i) date of birth of the applicant's father,
- (j) nationality of the applicant's father at the time of the applicant's birth,

- (k) where the applicant's father held a valid United Kingdom passport describing him as a British citizen at the time of the applicant's birth, number and date of issue of that passport, and
- (l) where the applicant has been issued with a naturalisation certificate, the number and date and place of issue of that certificate.

7. In the case of an applicant who claims to be a British subject with right of abode in the United Kingdom who does not hold a valid United Kingdom passport describing the applicant as a British subject with right of abode in the United Kingdom –

- (a) full name of the applicant's mother,
- (b) place of birth of the applicant's mother (including town and country),
- (c) date of birth of the applicant's mother,
- (d) nationality of the applicant's mother at the time of the applicant's birth,
- (e) date of any marriage between the applicant's mother and the applicant's father,
- (f) full name of the applicant's father,
- (g) place of birth of the applicant's father (including town and country),
- (h) date of birth of the applicant's father, and
- (i) nationality of the applicant's father at the time of the applicant's birth.

8. In the case of an applicant who has dual nationality, the number and date and place of issue of any valid identity card or passport of the applicant, details of which are not required to be supplied by virtue of any of the preceding paragraphs of this Part of this Schedule.

## Part 2

### **Documents to accompany application for entry in the Register and accompanying application for issue of an ID card**

9. In the case of an applicant who is a British citizen and who holds a valid United Kingdom passport describing the applicant as a British citizen, that passport.

10. In the case of an applicant who is a British subject with right of abode in the United Kingdom and who holds a valid United Kingdom passport describing the applicant as a British subject with right of abode, that passport.

11. In the case of an applicant who claims to be a British citizen, who does not hold a valid United Kingdom passport describing the applicant as a British citizen and who was born or adopted in the United Kingdom before 1<sup>st</sup> January 1983, the applicant's birth certificate or adoption certificate in a form which contains details of the parents, or, as the case may be, adoptive parents of the applicant, in so far as they are included on the relevant register.

12.—(1) In the case of an applicant who claims to be a British citizen, who does not currently hold a valid United Kingdom passport describing the applicant as a British citizen and who was born or adopted in the United Kingdom on or after 1<sup>st</sup> January 1983 –

- (a) the document specified in sub-paragraph (2), and
- (b) either –
  - (i) one of the documents specified in sub-paragraph (3), or
  - (ii) one of the documents specified in sub-paragraph (4), together with the document specified in sub-paragraph (5).

(2) The document specified for the purposes of sub-paragraph (1) is the applicant's birth certificate or adoption certificate in a form which contains details of the parents, or, as the case may be, adoptive parents of the applicant, in so far as they are included on the relevant register.

(3) The documents specified for the purposes of sub-paragraph (1) are -

- (a) the applicant's mother's United Kingdom birth certificate;
- (b) the applicant's mother's certificate of registration or naturalisation;
- (c) the applicant's mother's passport valid at the time of the applicant's birth.

(4) The documents specified for the purposes of sub-paragraph (1) are -

- (a) the applicant's father's United Kingdom birth certificate;
- (b) the applicant's father's certificate of registration or naturalisation;
- (c) the applicant's father's passport valid at the time of the applicant's birth.

(5) The document specified for the purposes of sub-paragraph (1) is the applicant's parents' marriage certificate.

**13.** In the case of an applicant who claims to be a British citizen, who does not hold a valid United Kingdom passport describing the applicant as a British citizen, who was not born or adopted in the United Kingdom, but who has been issued with a certificate of registration or naturalisation -

- (a) the applicant's passport on which the applicant first entered the United Kingdom; and
- (b) the applicant's valid certificate of registration or naturalisation.

**14.** In the case of an applicant who claims to be a British citizen, who does not currently hold a valid United Kingdom passport describing the applicant as a British citizen, who was not born or adopted in the United Kingdom, who has not been issued with a certificate of registration or naturalisation and who is a citizen of a British Overseas Territory -

- (a) the applicant's birth or adoption certificate in a form which contains details of the parents, or, as the case may be, adoptive parents of the applicant, in so far as they are included on the relevant register; and
- (b) the applicant's valid passport describing the applicant as a citizen of a British Overseas Territory.

**15.—(1)** In the case of an applicant who claims to be a British citizen, but not a citizen of a British Overseas Territory, who does not currently hold a valid United Kingdom passport describing the applicant as a British citizen, who was not born or adopted in the United Kingdom, who was born before 1<sup>st</sup> January 1983 and whose father was born in the United Kingdom, the document specified in sub-paragraph (2) and the documents specified in sub-paragraph (3) or the document specified in sub-paragraph (4).

(2) The document specified for the purposes of sub-paragraph (1) is the applicant's passport on which the applicant first entered the United Kingdom.

(3) The documents specified for the purposes of sub-paragraph (1) are -

- (i) the applicant's birth certificate or adoption certificate, not being a certificate issued by a British consulate or High Commission, in a form which contains details of the parents, or, as the case may be, adoptive parents of the applicant, in so far as they are included on the relevant register;
- (ii) the applicant's father's birth certificate; and
- (iii) the applicant's parents' marriage certificate .

(4) The document specified for the purposes of sub-paragraph (1) is the applicant's birth certificate, if issued by a British consulate or High Commission.

**16.—(1)** Subject to sub-paragraph (6), in the case of an applicant who claims to be a British citizen, who does not currently hold a valid United Kingdom passport describing the applicant



as a British citizen, who was not born or adopted in the United Kingdom, who was born on or after 1<sup>st</sup> January 1983, who has not been issued with a certificate of registration or naturalisation and who is not a citizen of a British Overseas Territory –

- (a) the documents specified in sub-paragraph (2), and
- (b) either –
  - (i) one of the documents specified in sub-paragraph (3), or
  - (ii) one of the documents specified in sub-paragraph (4), together with the document specified in sub-paragraph (5).

(2) the documents specified for the purposes of sub-paragraph (1) are –

- (a) the applicant's birth certificate or adoption certificate in a form which contains details of the parents, or, as the case may be, adoptive parents of the applicant, in so far as they are included on the relevant register; and
- (b) the passport on which the applicant first entered the United Kingdom.

(3) The documents specified for the purposes of sub-paragraph (1) are –

- (a) the applicant's mother's United Kingdom birth certificate;
- (b) the applicant's mother's certificate of registration or naturalisation; and
- (c) the applicant's mother's passport, describing her as either a British citizen or a British subject (Citizen of the United Kingdom and Colonies), valid at the time of the applicant's birth.

(4) The documents specified for the purposes of sub-paragraph (1) are –

- (a) the applicant's father's United Kingdom birth certificate;
- (b) the applicant's father's certificate of registration or naturalisation; and
- (c) the applicant's father's passport, describing him as either a British citizen or a British subject (Citizen of the United Kingdom and Colonies), valid at the time of the applicant's birth.

(5) The document specified for the purposes of sub-paragraph (1) is the applicant's parents' marriage certificate.

(6) Where an applicant provides a birth certificate issued by a British consulate or High Commission overseas, references in this paragraph to documents specified in sub-paragraphs (3) to (5) do not apply.

**17.** In the case of an applicant who claims to be an EEA national, the applicant's identity card or passport.

**18.** In the case of an applicant who claims to be a British subject with right of abode in the United Kingdom and who does not hold a valid United Kingdom passport describing the applicant as a British subject with right of abode in the United Kingdom –

- (a) the applicant's birth certificate in a form which contains details of the parents, or, as the case may be, adoptive parents of the applicant, in so far as they are included on the relevant register;
- (b) the applicant's father's birth certificate;
- (c) the applicant's parents' marriage certificate; and
- (d) any notice in writing given to the Secretary of State under section 31(3) of the British Nationality Act 1981 (continuance as British subjects of certain former citizens of Eire)(a).

**19.** In the case of an applicant who has dual nationality, any identity card or passport of the applicant which the applicant is not required to supply by virtue of any of the preceding provisions of this Part of the Schedule.

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(a) 1981 c. 61.

**20.**—(1) In the case of an applicant who is or claims to be a British citizen or a British subject with right of abode, and who supplies pursuant to paragraph 1(a) of Part 1 of this Schedule a name that differs from the name on the birth or adoption certificate, registration or naturalisation certificate or passport relating to the applicant which has been included with the application, one of the documents listed in paragraph (2), which provides evidence of the change of name.

(2) The documents referred to in paragraph (1) are –

- (a) marriage certificate;
- (b) civil partnership certificate;
- (c) gender recognition certificate;
- (d) enrolled deed poll;
- (e) unenrolled deed poll or change of name deed;
- (f) certificate from the court of the Lord Lyon of Scotland;
- (g) copy of an Act of Parliament which provided for a change in the applicant's name;
- (h) statutory declaration;
- (i) baptismal or confirmation certificate; and
- (j) United Kingdom birth certificate issued on re-registration of the birth in a form which contains details of the parents or, as the case may be, adoptive parents of the applicant, in so far as they are included on the relevant register.

## SCHEDULE 2

## regulation 7

### Part 1

#### **Information, other than documents to accompany application to be issued with an ID card which confirms (with or without changes) the contents of an entry in the Register**

1. In the case of all applicants –

- (a) full name by which the applicant is commonly known for official purposes,
- (b) any other names by which the applicant is known for official purposes or by which the applicant has been known for official purposes during the period since the applicant's names as recorded in the Register were most recently updated by the applicant,
- (c) address of the applicant's principal place of residence in the United Kingdom,
- (d) address of any other place of residence in the United Kingdom or elsewhere, which the applicant wishes to be entered in the Register,
- (e) gender of the applicant,
- (f) date of birth of the applicant,
- (g) place of birth of the applicant (including town and country of birth),
- (h) nationality of the applicant,
- (i) any national insurance number allocated to the applicant,
- (j) a contact telephone number for the applicant,
- (k) the number and date of issue of the applicant's current ID card or confirmation that the applicant is unable to provide such details, together with an explanation why this is the case,
- (l) where the applicant's current ID card has been lost, stolen, damaged, tampered with or destroyed, confirmation of that fact and confirmation of whether the Secretary of State has been previously notified,
- (m) whether the applicant owes any money to the United Kingdom for repatriation or any other form of consular relief,

- (n) whether the applicant is subject to a court order that would prevent the applicant from applying for, being issued with or using a travel document, including details of the period when the prohibition will be in force,
  - (o) signature of the applicant,
  - (p) date of signature of the application, and
  - (q) a declaration that the applicant is entered in the Register.
2. In the case of an applicant who holds a valid United Kingdom passport describing the applicant as a British citizen or as a British subject with right of abode, the number and date and place of issue of that passport.
3. In the case of an applicant who claims to be an EEA national, either –
- (a) the number and date and place of issue of a valid identity card, or
  - (b) the number and date and place of issue of a valid passport.
4. In the case of an applicant who has dual nationality, the number and date and place of issue of any valid identity card or passport of the applicant, details of which are not required to be supplied by virtue of any of the preceding paragraphs of this Part of this Schedule.

## Part 2

### **Documents to accompany application to be issued with an ID card which confirms (with or without changes) the contents of an entry in the Register**

1. In the case of all applications, other than where such card has been lost, stolen or destroyed, the applicant's current ID card.
2. In the case of an application by an EEA national, involving a change of the name as recorded in the Register, the applicant's identity card or passport, which records the new name.
3. In the case of an application involving a change of date of birth as recorded in the Register, a birth or adoption certificate which records the new date of birth, in a form which contains details of the parents, or, as the case may be, adoptive parents of the applicant, in so far as they are included on the relevant register.
4. In the case of an application involving a change of place of birth as recorded in the Register, a birth or adoption certificate which records the new place of birth, in a form which contains details of the parents, or, as the case may be, adoptive parents of the applicant, in so far as they are included on the relevant register.
5. In the case of an application involving recording in the Register a change of gender that has been recognised by the Gender Recognition Panel, a gender recognition certificate or a birth or adoption certificate which records the new gender, in a form which contains details of the parents, or, as the case may be, adoptive parents.
6. In the case of an application by an individual who is dual gendered, involving recording in the Register a second gender, a report containing a diagnosis of gender dysphoria from a registered medical practitioner or a chartered psychologist practicing in the field of gender dysphoria.
7. In the case of an application involving a change of nationality as recorded in the Register, where the applicant has become a British citizen, the passport on which the applicant first entered the United Kingdom and a certificate of registration or naturalisation.
8. In the case of an application involving a change of nationality as recorded in the Register, where an EEA national has become a national of a country other than the United Kingdom, a valid passport or identity card issued by the country of which the applicant has become a citizen.

9. In the case of an application by an individual who has become a dual national, involving recording in the Register a second nationality, a valid passport or identity card issued by the country of which the applicant has become a citizen.

10. In the case of an application involving a change of nationality as recorded in the Register, where the applicant has renounced British citizenship, the applicant's copy of the declaration of renunciation of British citizenship and a valid passport issued by the country of which the applicant is a citizen.

### SCHEDULE 3

### regulation 7

#### **Information to accompany application to be issued with a designated document, which confirms (with or without changes) the contents of an entry in the Register**

1. In the case of all applicants –

- (a) full name by which the applicant is commonly known for official purposes,
- (b) any other names by which the applicant is known for official purposes or by which the applicant has been known for official purposes during the period since the applicant's names as recorded in the Register were most recently updated by the applicant,
- (c) address of the applicant's principal place of residence in the United Kingdom,
- (d) address of any other place of residence in the United Kingdom or elsewhere which the applicant wishes to be entered in the Register,
- (e) gender of the applicant,
- (f) date of birth of the applicant,
- (g) place of birth of the applicant (including town and country of birth),
- (h) nationality of the applicant,
- (i) any national insurance number allocated to the applicant,
- (j) a contact telephone number for the applicant,
- (k) a declaration that the applicant is entered in the Register,
- (l) the number and date of issue of the applicant's current ID card or confirmation that the applicant is unable to provide such details, together with an explanation why this is the case, and
- (m) either –
  - (i) a declaration that the applicant's entry in the Register is up-to-date and accurate,
  - (ii) a declaration that the applicant's entry in the Register is up-to-date and accurate save in respect of changes which have been notified to the Identity and Passport Service, together with the number of an application made to the Identity and Passport Service to update information in the applicant's entry, or for the issue of an ID card, or
  - (iii) a declaration that the applicant's entry in the Register is up-to-date and accurate save in respect of changes notified with the application.

2. In the case of an applicant who holds a valid United Kingdom passport describing the applicant as a British citizen or as a British subject with right of abode, the number of that passport.

3. In the case of an applicant who is an EEA national, either –

- (a) the number of a valid identity card, or
- (b) the number of a valid current passport.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations prescribe various matters in relation to (a) applications for entry on the National Identity Register (established under section 1 of the Identity Cards Act 2006 (“the 2006 Act”)), and (b) applications for an ID card. They also make provision in relation to the circumstances in which a place will be regarded as a place in which an individual resides or a person’s principal place of residence in the United Kingdom.

Regulation 3 prescribes the manner in which an application for entry in the National Identity Register (“the Register”) is to be included in an application for a designated document. Regulation 4 prescribes the manner in which an application for entry in the Register is to be made in other cases.

Regulation 5 prescribes the manner of confirming, with or without changes, the contents of an entry already made in the Register.

Regulation 6, together with Schedule 1, prescribes the information which is to accompany an application to be entered in the Register. Regulation 7, together with Schedules 2 and 3 prescribes the information which is to accompany an application which confirms, with or without changes, the contents of the applicant’s entry in the Register. Part 1 of Schedule 1 deals with information to be included in the application form, whereas Part 2 lists documents to be included with the form. Paragraphs 1 and 2 of Part 1 list information to be included by all applicants. Paragraphs 3 to 8 list additional information to be included by particular categories of individual, depending on their nationality and, in the case of a British citizen, whether the individual holds a valid United Kingdom passport. Regulation 6(2) provides that information set out in the Schedule is not prescribed information in relation to an applicant where it is not practicable for the applicant to provide the information.

Regulations 8 to 12 deal with the issue of ID cards. Regulation 8 prescribes registrable facts for the purposes of section 6(4)(b) of the 2006 Act. “Registrable fact” is defined in section 1(5) and (6) of the 2006 Act. Section 6(4) provides that where an individual is entitled to be entered in the Register and is an individual about whom the prescribed registrable facts are so recorded, an ID card must be issued to that individual. Regulation 9 prescribes, for the purposes of section 6(5), the case of a person who is dual gendered and who applies for a second ID card in the second gender. The effect of being so prescribed is that in those circumstances a card may be issued to the individual provided that the prescribed registrable facts are entered in the Register. Regulation 10 prescribes the registrable facts for the purposes of section 6(5).

Regulation 11 prescribes the manner in which an application for an ID card is to be made. Regulation 13 prescribes the information which is to accompany an application for the issue of an ID card. This is the same as the information which is required to accompany an application in relation to an entry in the Register, except in the case of an applicant who is dual gendered and who is applying for an ID card in the second gender. Information to be provided by an individual in those circumstances is set out in regulation 9(3).

Regulation 14 imposes requirements on designated documents authorities regulating how they handle applications made to them that confirm (with or without changes) the contents of an individual’s entry in the Register.

Regulations 15 and 16 respectively make provision about the circumstances in which, in relation to an individual, a place is to be regarded as a place where the individual resides and the individual’s principal place of residence in the United Kingdom.

*Draft Order laid before Parliament under section 9(8) of the Identity Cards Act 2006, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

**IDENTITY CARDS**

**The Identity Cards Act 2006 (Verification of Information  
in the Register Etc.) (Specified Persons) Order 2009**

*Made* - - - - - \*\*\*  
*Coming into force* - - - - - \*\*\*

The Secretary of State makes the following Order in exercise of the powers conferred by section 9 (4) to (6) of the Identity Cards Act 2006(a).

In accordance with section 9(8) of the Identity Cards Act 2006, a draft of this Order has been laid before Parliament and approved by a resolution of each House of Parliament.

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Verification of Information in the Register Etc. (Specified Persons) Order 2008 and shall come into force on [...].

(2) In this Order –

“the 2006 Act” means the Identity Cards Act 2006.

**Specified Persons**

2.—(1) The following persons are specified for the purposes of section 9 of the 2006 Act (power to require information for validating register) —

- (a) any credit reference agency which, at the relevant time, is a party to a contract for the supply of information for the purposes of the carrying out by the Secretary of State of functions under the 2006 Act;
- (b) The Department for Work and Pensions;
- (c) Her Majesty’s Revenue and Customs;
- (d) The Registrar General for England and Wales;
- (e) The Department for Transport; and
- (f) The Foreign and Commonwealth Office.

(2) In this Article —

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(a) 2006 c.15.

“credit reference agency” means a person carrying on a business comprising the furnishing of information relevant to the financial standing of individuals, being information collected by the agency for that purpose; and

“the relevant time” means the time when the particular requirement is imposed under section 9 of the 2006 Act.

### **Enforcement of duty**

3. The duty which is imposed by section 9(3) of the 2006 Act on a person specified in this Order is owed to the person imposing the requirement.

4. In the case of a person falling within article 2(1)(a) the duty referred to in article 3 is enforceable in civil proceedings—

- (a) for an injunction;
- (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988(a) or
- (c) for any other appropriate remedy or relief.

Home Office  
2009

Minister of State

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order specifies certain persons for the purposes of section 9(1) of the Identity Cards Act 2006. Section 9 (4) to (6) enables the Secretary of State to require a person including a person who comes within subsection (5), to provide information which appears to be capable of being used for verifying information recorded about an individual in the Register, or for verifying information which is in the possession of the Secretary of State or a designated documents authority for the purpose of being recorded in an individual’s entry in the Register.

The effect of the specification therefore is that a person specified may be made subject to a requirement under section 9 to provide information.

Section 9(3) places a duty on a person who is required to provide information, and who has the information in his possession, to comply with the requirement. Article 2 of the Order specifies the persons who are to provide information. Articles 3 and 4 provide for the means of enforcement of the duty.

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(a) 1988 c.36

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STATUTORY INSTRUMENTS

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**2009 No.**

**IDENTITY CARDS**

**The National Identity Registration Number Regulations 2009**

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 2(5), 40(4) and 42(1) of the Identity Cards Act 2006(a).

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Identity Registration Number Regulations 2009 and shall come into force on [...].

(2) In these Regulations—

“a NIRN” means a National Identity Registration Number; and

“P” means the individual to whose entry in the Register the NIRN has been given.

**Prescribed requirements**

2.—(1) The requirements set out in paragraphs (2) and (3) are prescribed for the purposes of section 2(5) of the Identity Cards Act 2006.

(2) A NIRN when read alone, must not be capable of being used to deduce information about P, save for the fact that an entry in the Register has been made in respect of P.

(3) A NIRN when read together only with another NIRN must not be capable of being used to deduce information about any connection between the individuals to whose entries these NIRNs have been given, unless the information which can be deduced only relates to the fact that each individual has an entry in the Register.

Home Office  
2009

Minister of State

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Section 2(5) of the Identity Cards Act 2006 provides that the National Identity Registration Number (“NIRN”), which is a unique number given in respect of an entry in the National Identity Register consisting of all the information recorded about the individual, must comply with prescribed requirements. Regulation 2 prescribes those requirements.

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(a) 2006 c.15.



In particular, regulation 2(2) provides that a NIRN when read alone, must not be capable of being used to deduce information about the individual to whose entry in the Register the NIRN was given, save for the fact that an entry in the Register has been made in respect of that individual.

Regulation 2(3) provides that when a NIRN is read together only with another NIRN it must not be capable of being used to deduce information about the individuals to whose entries these NIRNs have been given, save for the fact that each individual has an entry in the Register.

DRAFT

*Draft Regulations laid before Parliament under sections 6(9) and 8(5) of the Identity Cards Act 2006, for approval by resolution of each House of Parliament.*

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D R A F T   S T A T U T O R Y   I N S T R U M E N T S

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**2009 No.**

**IDENTITY CARDS**

**The Identity Cards Act 2006 (Prescribed Information and Period of Validity of Card) Regulations 2009**

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

The Secretary of State makes the following regulations in exercise of the powers conferred by sections 6(2)(b) and (3), 8(2), 40(4) and 42(1) of the Identity Cards Act 2006(a).

In accordance with sections 6(9) and 8(5) of that Act, a draft of this instrument was laid before and approved by a resolution of each House of Parliament.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Identity Cards Act 2006 (Prescribed Information and Period of Validity of Card) Regulations 2009 and shall come into force on [ ].

(2) In these Regulations –

“2006 Act” means the Identity Cards Act 2006;

“digital signature” means a unique code created from certain items of information recorded on an individual’s ID card, which confirms that the information was placed on the card’s chip by the issuer of the card and that it has not been modified since signing;

“document signing certificate” means an electronic certificate which confirms that the digital signature has been created using a cryptographic key held by the issuer of the card;

“EEA national” means a national of an EEA State;

“EEA State” means –

- (a) A member State, other than the United Kingdom;
- (b) Norway, Iceland or Liechtenstein; or
- (c) Switzerland;

“Identification card” means –

(a) an ID card issued to an EEA national;

(b) an ID card issued to an individual in respect of whom –

- (i) a banning order within the meaning of section 14 of the Football Spectators Act 1989(b);

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(a) 2006 c.15.

(b) 1989 c.37; section 14 was substituted by section 1 of and paragraphs 1 and 2 of Schedule 1 to the Football (Disorder) Act 2000 (c.25).

- (ii) a travel restriction order within the meaning of section 33 of the Criminal Justice and Police Act 2001(a); or
- (iii) any other requirement imposed by a court to surrender that individual's passport or ID card to the police or other authority;  
is in force;
- (c) an ID card issued to an individual who owes money to the United Kingdom government for repatriation or any other form of consular relief;
- (d) an ID card issued to an individual who comes within a category of persons not mentioned in paragraph (b) or (c), and which has been notified to Parliament as one in respect of whom the Secretary of State will refuse passport facilities; and
- (e) an additional ID card issued to an individual who experiences gender dysphoria, and for the purposes of this definition "gender dysphoria" has the same meaning as in section 25 of the Gender Recognition Act 2004(b).

"title of nobility" means a title held by –

- (i) a member of the royal family or of the House of Lords or a person whose name appears on the Roll of the Peerage established by Royal Warrant signed on 1<sup>st</sup> June 2004;
- (ii) a person whose title has been acquired by virtue of being a member of the family of a person within sub-paragraph (i);
- (iii) a holder of a knighthood or baronetcy;
- (iv) a person whose title has been acquired by virtue of being the wife of a person within sub-paragraph (iii); or
- (v) a Dame of the Realm.

### **Prescribed part of entry in Register**

2. The part of an individual's entry in the Register that is prescribed for the purposes of section 6(2)(b) of the 2006 Act (Issue etc. of ID cards) is the part containing all the information for the time being recorded in the individual's entry in the Register other than information falling within paragraph 9 of Schedule 1 to that Act (Records of provision of information).

### **Information recorded on an ID card**

3.—(1) This regulation is subject to regulation 5.

(2) The following information is prescribed for the purposes of section 6(3)(a) of the 2006 Act (issue etc. of ID cards)-

- (a) the title of the card;
- (b) the card number;
- (c) the holder's name;
- (d) the holder's gender;
- (e) the holder's nationality;
- (f) the holder's date of birth;
- (g) the holder's place of birth;
- (h) the date of issue of the card;
- (i) the expiry date of the card;

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(a) 2001 c.16.  
(b) 2004 c.7.

- (j) the holder's signature, unless the holder is unable to provide a signature;
- (k) the holder's facial image;
- (l) subject to paragraphs (3) and (4), information relating to any two of the holder's fingerprints;
- (m) information specified in regulation 4 to the extent that such information is available in relation to the holder;
- (n) information relating to the United Kingdom as the issuing country and to the Home Office as the issuing organisation;
- (o) a machine readable code;
- (p) the symbol of the International Civil Aviation Organization denoting a machine readable travel document which contains a contactless chip;
- (q) the document signing certificate;
- (r) information contained in additional security features; and
- (s) an address in the United Kingdom to which an ID card can be returned, if found.

(3) If the holder is unable to provide two fingerprints, but is able to provide one fingerprint, the information specified in paragraph (2)(l) is to be modified so as to refer to any one of the holder's fingerprints.

(4) If the holder is unable to provide any fingerprints, the information specified in paragraph (2)(l) is to be modified so as to refer to the fact that no fingerprints have been provided.

4. The information specified for the purposes of regulation 3(2)(m) is information which relates to any of the following matters –

- (a) any title of nobility held by the holder;
  - (b) any other name specified by the holder as a name by which the holder is or has been known;
  - (c) any clarification required to show that a forename of the holder is not a title of nobility;
  - (d) the inability of the holder to provide a signature ;
  - (e) in the case of a British Subject, within the meaning of Part 4 of the British Nationality Act 1981(a), the fact that the holder has the right of abode in the United Kingdom;
- and
- (f) the fact that the holder is not entitled to benefit from European Community provisions relating to employment or establishment.

### Identification card

5. In the case of an identification card, the following provisions do not apply –

- (a) regulation 3(2)(e); and
- (b) regulation 4(e) and (f).

### Encryption

6.—(1) Subject to paragraphs (3) and (4), the parts of the information to be recorded on an ID card that are prescribed for the purposes of section 6(3)(b) of the 2006 Act (recording prescribed parts in an encrypted form) are the information specified in paragraph (2) that is cryptographically protected by means of the digital signature.

(2) The information referred to in paragraph (1) is –

- (a) abridged version of the title of the card;

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(a) 1981 c.61.

- (b) information relating to the United Kingdom as the issuing country;
- (c) the card number;
- (d) the holder's date of birth;
- (e) the holder's gender;
- (f) the holder's nationality;
- (g) the holder's name;
- (h) the holder's facial image;
- (i) information relating to any two of the holder's fingerprints; and
- (j) the expiry date of the card.

(3) In the case of an identification card, paragraph (2)(f) does not apply.

(4) Where, pursuant to regulation 3(3) or (4), information relating to only one or none of the holder's fingerprints is recorded on the card, paragraph (2)(i) shall be modified so as to refer to only one of the holder's fingerprints or to the fact that no fingerprints have been recorded .

(5) This regulation does not apply to the information referred to in paragraph (1) where it is not included in the digital signature.

### **Validity period**

7. The period prescribed for the purposes of section 6(3)(c) of the 2006 Act period of validity of ID card is the period which ends on the date after the expiry of ten years beginning with the date of issue.

### **Prescribed requirements where ID card is issued together with designated document**

8.—(1) The requirements set out in paragraph (2) are the prescribed requirements for the purposes of section 8(2) of the 2006 Act (functions of persons issuing designated documents).

(2) The requirements referred to in paragraph (1) are that –

- (a) the ID card records only the information prescribed in regulations 3 to 5;
- (b) the parts of the information prescribed in regulation 6 are recorded in an encrypted form; and
- (c) the card is valid only for the period prescribed in regulation 7.

Home Office

2009

Minister of State

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations prescribe information that must be recorded on an identity card and other matters to do with the design, period of validity and use of ID cards.

Section 6 read with section 6(2)(b) of the Identity Cards Act 2006 (“the 2006 Act”) specifies that an ID card is a card which, among other things, carries data enabling the card to be used for facilitating the making of applications for information recorded in a prescribed part of the individual's entry in the National Identity Register. Regulation 2 prescribes the part of the entry and does so in terms of Schedule 1 to the 2006 Act, which lists information that is authorised to be recorded in the Register. The part that is prescribed is the part containing all the information for

the time being recorded in the individual's entry, other than information falling within paragraph 9 of Schedule 1. Paragraph 9 deals with particulars of occasions when information contained in an individual's entry has been provided to any person.

Regulations 3 and 4 prescribe information that must be recorded on an ID Card. Regulation 5 provides that, in the case of identification cards (which are ID cards issued to EEA nationals, persons subject to banning orders etc., and to persons who require an additional card in a different gender), certain information relating to the holder's nationality is excluded from the requirements.

Section 6(3)(b) of the 2006 Act provides that prescribed parts of the information recorded on the card must be recorded in an encrypted form. Regulation 6 provides that the information specified in paragraph (2), when cryptographically protected by means of the digital signature, is prescribed for these purposes.

Regulation 7 deals with the validity period for an ID card. This will be ten years.

Section 8 of the 2006 Act sets out functions of designated documents authorities i.e. persons with the power or duty to issue a designated document. A designated document is a document which is designated for the purposes of the 2006 Act by an order under section 4 of the Act. The effect of designation is that a person who applies for a designated document is required, by section 6(7) of the 2006 Act, to apply for an ID card, unless he already holds one. This is subject to an exemption in relation to United Kingdom passports. Regulation 8 prescribes requirements to be satisfied by an ID card when it is issued together with a designated document. The requirements are the same as those that must be satisfied by an ID card when issued in all other circumstances.

DRAFT

*Draft Regulations laid before Parliament under section 10(6) of the Identity Cards Act 2006, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

**IDENTITY CARDS**

**The Identity Cards Act 2006 (Notification of Changes and Loss, Theft etc. of ID Cards) Regulations 2009**

*Made* - - - - - \*\*\*  
*Coming into force* - - - - - \*\*\*

The Secretary of State, in exercise of the powers conferred by sections 10(1), 10(2), 11(1), 40(4) and 42(1) of the Identity Cards Act 2006(a), makes the following Regulations.

In accordance with section 10(6) of that Act, a draft of this instrument was laid before and approved by a resolution of each House of Parliament.

**Citation, commencement and interpretation**

1. These Regulations may be cited as the Identity Cards Act 2006 (Notification of Changes and Loss, Theft etc. of ID Cards) Regulations 2009 and shall come into force on [ ].

2. In these Regulations –

“2006 Act” means the Identity Cards Act 2006;

“an appropriate office of the Identity and Passport Service” means one of the offices listed in Guidance IDCG-01, issued by the Identity and Passport Service(b), as being an office which handles applications to be entered in the Register and for the issue of an ID card and notifications of changes affecting the accuracy of the Register;

“gender recognition certificate” and “Gender Recognition Panel” have the same meanings as in section 25 of the Gender Recognition Act 2004(c);

**Prescribed changes of circumstances**

3.—(1) The following changes of circumstances are prescribed for the purposes of section 10(1)(a) of the 2006 Act (Notification of changes affecting accuracy of Register) –

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(a) 2006 c.15.  
(b) Guidance IDCG-01 is dated DD/MM/YY and is available from [ ].  
(c) 2004 c.7.

- (a) subject to paragraph (2), change of address of principal place of residence or of any other place of residence recorded in the individual's entry in the Register, including where an individual will no longer have a place of residence in the United Kingdom;
  - (b) change of a name which has been recorded in the individual's entry in the Register;
  - (c) the individual becoming known for official purposes by a name not recorded in the individual's entry in the Register;
  - (d) change of nationality of the individual;
  - (e) change of gender of the individual in a case where the individual has obtained a gender recognition certificate from the Gender Recognition Panel;
  - (f) permanent and significant changes to the individual's signature as recorded on the ID card;
  - (g) permanent and significant changes to the features of the individual's face such that the person cannot be identified from the photograph on the individual's card; and
  - (h) permanent and significant changes to the individual's fingerprints as recorded on the ID card.
- (2) Where an individual –
- (a) no longer has a place of residence in the United Kingdom; and
  - (b) has notified the Secretary of State under paragraph (1)(a) of this change of circumstances,
- a change of address of that individual's place of residence overseas is not a prescribed change of circumstances.

#### **Manner of notification**

4.—(1) The manner in which a notification must be given for the purposes of section 10 of the 2006 Act is prescribed for the purposes of section 10(2)(a) as set out in paragraph (2).

- (2) The prescribed manner is by giving the notification either –
- (a) by telephone to a number specified in Guidance IDCG-01, issued by the Identity and Passport Service, as being a number which is available for the notification of changes under section 10 of the 2006 Act and the notification of lost, stolen, damaged, tampered with or destroyed ID cards under section 11 of that Act; or
  - (b) in person –
    - (i) by prior appointment at an appropriate office of the Identity and Passport Service, and
    - (ii) by completing form IPS IDE-01(a).

#### **Period within which notification to be made**

5. The period prescribed for the purposes of section 10(2)(b) of the 2006 Act, being the period within which a notification for the purposes of section 10 must be given, is a period of three months beginning with the day on which the change of circumstances occurs or the individual in question becomes aware of the error.

#### **Requirement to notify Secretary of State if ID card is lost, stolen etc.**

6.—(1) An individual to whom an ID card has been issued must notify the Secretary of State if such individual knows or has reason to suspect that the card has been –

- (a) lost;
- (b) stolen;

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(a) Form IPS IDE-01 is available from [ ].



- (c) damaged;
  - (d) tampered with; or
  - (e) destroyed.
- (2) A notification for the purposes of this regulation must -
- (a) be given in one of the following ways -
    - (i) by telephone to a number specified in Guidance IDCG-01, issued by the Identity and Passport Service, as being a number which is available for the notification of changes under section 10 of the 2006 Act and the notification of lost, stolen, damaged, tampered with or destroyed ID cards under section 11 of that Act;
    - (ii) in person by prior appointment at an appropriate office of the Identity and Passport Service, or
    - (iii) if overseas, in person by prior appointment at a United Kingdom embassy or consulate;
  - (b) be given within a period of one month, beginning with the day on which the individual becomes aware that the card has, or may have, been lost, stolen, damaged, tampered with or destroyed; and
  - (c) include the provision of sufficient evidence to establish that the individual giving the notification is the individual to whom the ID card has been issued.

Home Office  
Date

Minister of State

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations prescribe various matters under sections 10 and 11 of the Identity Cards Act 2006 (“the 2006 Act”).

Section 1 of the 2006 Act provides for the Secretary of State to establish and maintain a register of individuals, known as the National Identity Register (“the Register”). Regulation 3 prescribes changes of circumstances affecting the information recorded about an individual in the Register which need to be notified by the individual to the Secretary of State under section 10 of the 2006 Act.

Regulation 4 prescribes the manner in which a notification under section 10 must be given. It provides that notification is to be given either by telephone to a number specified in Guidance IDEG-01, issued by the Identity and Passport Service, or in person at an appropriate office of the Identity and Passport Service.

Regulation 5 provides that a notification under section 10 must be given within a period of three months, beginning with the day on which the change of circumstances occurs or the individual becomes aware of the error affecting the information recorded in the Register.

Regulation 6 provides that an individual to whom an ID card has been issued must notify the Secretary of State if the individual knows or has reason to suspect that the card has been lost, stolen, damaged, tampered with or destroyed. Paragraph (2) makes supplemental provision concerning the manner of giving a notification and the period within which a notification must be given.

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STATUTORY INSTRUMENTS

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**2009 No.**

**IDENTITY CARDS**

**The Identity Cards Act 2006 (Civil Penalties) Regulations 2009**

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 31(2), 32(2)(b), 32(5), 40(4) and 42(1) of the Identity Cards Act 2006(a).

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Identity Cards Act 2006 (Civil Penalties) Regulations 2009 and shall come into force on [ ].

(2) In these Regulations –

“the 2006 Act” means the Identity Cards Act 2006; and

“working day” means a day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom (b).

**Service of notice**

2.—(1) A notice given under section 31(2) of the 2006 Act imposition of civil penalties must be –

(a) sent by

(i) first class post,

(ii) prepaid registered post, or

(iii) recorded delivery service,

to the last known address of the defaulter;

(b) sent by facsimile to the last known number of the defaulter;

(c) sent by electronic mail to the last known electronic mail address of the defaulter; or

(d) delivered by hand to the last known address of the defaulter.

(2) A notice given in accordance with paragraph (1) shall be deemed to have been given to the defaulter –

(a) in the case of a notice given in accordance with sub-paragraph (a), on the second day after the day on which it was sent;

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(a) 2006 c.15.  
(b) 1971 c.80.

- (b) in the case of a notice given in accordance with sub-paragraph (b) or (c), on the day on which it was sent; and
- (c) in the case of a notice given in accordance with sub-paragraph (d), on the day on which it was delivered.

### **Objections to penalty**

**3.**—(1) A notice of objection given under section 32(2) of the 2006 Act objection to penalty must be —

- (a) sent by -
  - (i) first class post,
  - (ii) prepaid registered post, or
  - (iii) recorded delivery service,to the address specified in the notice given under section 31(2) of the 2006 Act;
- (b) sent by facsimile to the number specified in the notice given under section 31(2) of the 2006 Act; or
- (c) sent by electronic mail to the electronic mail address specified in the notice given under section 31(2) of the 2006 Act.

(2) A notice referred to in paragraph (1) must be on form IPS CPO-01, published by the Identity and Passport Service(a).

**4.** The period prescribed for the purposes of giving a notice of objection under section 32(2) of the 2006 Act is a period of thirty working days beginning with the day on which the notice under section 31(2) of the 2006 Act was given to the defaulter.

### **Notification of outcome of consideration of objection**

**5.**—(1) A notification given under section 32(5) of the 2006 Act notification of outcome of consideration must be -

- (a) sent by –
  - (i) first class post,
  - (ii) prepaid registered post, or
  - (iii) recorded delivery service,to the last known address of the defaulter;
- (b) sent by facsimile to the last known number of the defaulter;
- (c) sent by electronic mail to the last known electronic mail address of the defaulter; or
- (d) delivered by hand to the last known address of the defaulter.

(2) A notification given in accordance with paragraph (1) shall be deemed to have been given to the defaulter –

- (a) in the case of a notification given in accordance with sub-paragraph (a), on the second day after the day on which it was sent;
- (b) in the case of a notification given in accordance with sub-paragraph (b) or (c), on the day on which it was sent; and
- (c) in the case of a notification given in accordance with sub-paragraph (d), on the day on which it was delivered.

(3) The period prescribed for the purposes of giving a notification under section 32(5) of the 2006 Act is a period of thirty working days beginning with the day on which the notice of objection was received.

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(a) Form IPS CPO-01 is available from [ ].

Home Office  
2009

Minister of State

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision for procedural requirements in relation to civil penalties that may be imposed under section 31 of the Identity Cards Act 2006 (“the 2006 Act”).

Regulation 2 prescribes the manner of service of a notice under section 31(2) of the 2006 Act, being a notice which imposes a penalty.

Regulation 3 prescribes the manner of service of a notice of objection under section 32(2) of the 2006 Act. Regulation 4 prescribes the period within which a notice of objection must be given.

Regulation 5 prescribes the manner of service of a notification of the outcome of a consideration of an objection by the Secretary of State under section 32(5) of the Act and the period within which such notification must be given. .

**DRAFT**

*Draft Order laid before Parliament under section 34(9) of the Identity Cards Act 2006, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

**IDENTITY CARDS**

**The Identity Cards Act 2006 (Code of Practice on Civil Penalties) Order 2009**

*Made* - - - - - \*\*\*  
*Coming into force* - - - - - \*\*\*

The Secretary of State makes the following Order in exercise of the powers conferred by section 34(6) of the Identity Cards Act 2006(a).

In accordance with section 34(5) of the Identity Cards Act 2006, the Secretary of State published proposals for a code of practice under that section and consulted members of the public about the code.

In accordance with section 34(4) of the Identity Cards Act 2006, the Secretary of State laid a draft of the code of practice before Parliament.

In accordance with section 34(9) of the Identity Cards Act 2006, a draft of this Order has been laid before Parliament and approved by a resolution of each House of Parliament.

**Citation and commencement**

**1.** This Order may be cited as the Identity Cards Act 2006 (Code of Practice on Civil Penalties) Order 2009 and shall come into force on [].

**Coming into force of the Code of Practice**

**2.** The Code of Practice entitled “The Identity Cards Act 2006, Code of Practice on Civil Penalties”, laid before Parliament in draft on [], relating to the imposition of civil penalties under section 31 of the Identity Cards Act 2006, shall come into force on the day this Order comes into force.

Home Office  
2009

Minister of State

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(a) 2006 c.15.

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order provides for the coming into force of the Code of Practice issued under section 34 of the Identity Cards Act 2006.

**DRAFT**

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STATUTORY INSTRUMENTS

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**2009 No.**

**IDENTITY CARDS**

**The Identity Cards Act 2006 (Provision of Information with  
Consent) Regulations 2009**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>	-	***
<i>Coming into force</i>	- -	***

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 12(6)(a), (7)(a) and (b), 40(4) and (7) and 42(1) of the Identity Cards Act 2006(a).

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Identity Cards Act 2006 (Provision of Information with Consent) Regulations 2009 and shall come into force on [...].

(2) In these Regulations—

“the 2006 Act” means the Identity Cards Act 2006;

“the Commissioner” means the National Identity Scheme Commissioner;

“consent” means consent given for the purposes of section 12(1) of the 2006 Act;

“identity document” has the meaning given to it in section 26 of the 2006 Act;

“personal data” has the meaning given to it in section 1(1) of the Data Protection Act 1998(b);  
and

“processing” also has the meaning given to it in that section.

**Provision of an authority or consent**

**2.** An individual may give consent, provided it is freely given, to the provision of information from that individual’s entry in the Register under section 12(1) of the 2006 Act on a particular occasion in any of the ways set out in regulations [3 to 5].

**3.**—(1) [An individual may give consent by ticking a box in an application made under section 5(1) of the 2006 Act provided the text accompanying the tick-box in the application explains the effect of ticking the box and in particular the matters set out in paragraph (2).

(2) The matters referred to in paragraph (1) are—

(a) the information which, if recorded in the individual’s entry in the Register, the individual is consenting to the Secretary of State providing under section 12(1) of the 2006 Act;

(b) to whom it would be provided under that section;

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(a) 2006 c.15.  
(b) 1998 c.29.

- (c) the purpose for which it would be provided to that person; and
- (d) how the individual can withdraw their consent.]

4. [An individual may give consent by signing a document which indicates that consent has been given, provided that the information in the document explains the effect of doing so and in particular the matters set out in regulation 3(2).]

5. [An individual may give consent by giving their ID card to a person provided that the person—
- (a) has explained to the individual the effect of doing so and in particular the matters set out in regulation 3(2); and
  - (b) is the person to whom the information would be provided under section 12(1) of the 2006 Act.]

6. [The document referred to in regulation 4 and the person to whom the ID card is to be given in accordance with regulation 5 do not need to explain how an individual can withdraw their consent if the information is provided under section 12(1) of the 2006 Act immediately after the consent has been given.]

### **Prescribed conditions**

7.—(1) The provision of information about an individual to another person under section 12(1) of the 2006 Act is subject to the following conditions—

- (a) that that person has registered the particulars prescribed in regulation 8 with the Secretary of State; and
- (b) that that person is for the time being approved by the Secretary of State in the manner prescribed in paragraph (2).

(2) The prescribed manner is—

- (a) in a written notice of approval given to that person; and
- (b) where there is an agreement between that person and the Secretary of State concerning the disclosure of information to that person under section 12(1) of the 2006 Act, by appending the written notice of approval to that agreement.

8. The particulars prescribed for the purposes of regulation 7(1)(a) are—

[...]

### **The grant of approval conditions**

9.—(1) A grant of approval in accordance with regulation 7(1)(b) in respect of a person is subject to that person complying with the conditions prescribed in regulation 10.

(2) The grant of approval will cease to have effect if that person does not comply with the conditions prescribed in regulation 10.

(3) If any of those conditions referred to in paragraphs (1) and (2) have been modified in respect of that person in accordance with regulation 11, the reference in those paragraphs to the conditions is to those conditions as so modified.

10. The prescribed conditions are that the person—

- (a) provides the Commissioner or a member of the Commissioner's staff, if so requested, with all such information as they may reasonably require for the purpose of carrying out the Commissioner's functions insofar as they relate to—
  - (i) the arrangements made by the person for obtaining information available to that person under section 12(1) of the 2006 Act and for recording and using it, or
  - (ii) that person's use of ID cards;
- (b) [condition relating to the security standards that the person will comply with when processing information which has been supplied to that person under section 12(1) of the 2006 Act];



- (c) [condition relating to how the person is to check that the individual has consented to the information being provided to that person under section 12(1) of the 2006 Act];
- (d) [condition relating to how and when the person is to allow the individual to withdraw consent];
- (e) [condition relating to the purposes for which the person may use information which has been provided to that person under section 12(1) of the 2006 Act];
- (f) [informs the Secretary of State if the person suspects that an individual has committed or is attempting to commit an offence under sections 25, 27, 28 or 29 of the 2006 Act and explains the reason for any such suspicion];
- (g) [co-operates with any investigations by the Secretary of State into fraudulent activity relating to the Register or identity documents];
- (h) [provides the Secretary of State with any assistance as is reasonably required in order to allow the Secretary of State to determine whether to suspend or withdraw the grant of approval in accordance with regulation 12];
- (i) [condition relating to how the person is to monitor compliance with the other conditions]; and
- (j) [condition relating to how the person is to assist the Secretary of State monitor compliance with the other conditions].

#### **Modification of the conditions**

**11.**—(1) The conditions prescribed in regulation 10 may be modified in respect of a person in the manner prescribed in paragraph (2).

(2) The prescribed manner is—

- (a) in a written notice given to that person; and
- (b) where there is an agreement between that person and the Secretary of State concerning the disclosure of information to that person under section 12(1) of the 2006 Act, by appending the written notice to that agreement.

#### **Suspension or withdrawal of an approval**

**12.**—(1) A grant of approval in respect of a person [may] be suspended pending further investigation or withdrawn if it appears to the Secretary of State that that person—

(a) will not comply with—

- (i) the conditions prescribed in regulation 10; or
- (ii) the terms of any agreement made with the Secretary of State regarding the disclosure of information to that person under the 2006 Act; or

(b) has not complied with the terms of any agreement referred to in sub-paragraph (a)(ii).

(2) If any of the conditions referred to in paragraph (1)(a)(i) have been modified in respect of that person in accordance with regulation 11, the reference in that paragraph to those conditions is to the conditions as so modified.

(3) A grant of approval in respect of a person [will] be withdrawn if—

- (a) the Secretary of State has provided that person with 28 days' notice of the intention to do so; or
- (b) new information relating to that person has come to the Secretary of State's attention as a result of which the Secretary of State considers it appropriate to withdraw the grant of approval in respect of that person.

## EXPLANATORY NOTE

(This note is not part of the Regulations)

The Secretary of State may under section 12(1) of the Identity Cards Act 2006 (“the 2006 Act”) provide a person with information recorded in an individual’s entry in the Register if—

- (a) an application for the provision of the information to that person is made by or with the authority of that individual; or
- (b) that individual otherwise consents to the provision of that information to that person.

Regulation 2 provides that an individual may give consent to the provision of information from that individual’s entry in the Register under section 12(1) of the 2006 Act on a particular occasion in any of the ways set out in regulations 3 to 5.

Regulation 7(1) provides that the Secretary of State may only provide information about an individual to another person under section 12(1) of the 2006 Act, if that person—

- (a) has registered the prescribed particulars with the Secretary of State; and
- (b) is for the time being approved by the Secretary of State in the prescribed manner.

Regulation 7(2) prescribes the manner in which the person is for the time being approved. Regulation 8 prescribes the particulars which the person will have to register with the Secretary of State.

Regulation 9(1) provides that a grant of approval in respect of a person is subject to that person complying with the conditions set out in regulation 10. Regulation 9(2) provides that if the person does not comply with those conditions the grant of approval will cease to have effect.

Regulation 11(1) provides that the conditions set out in regulation 10 may be modified in respect of a person in the manner prescribed in paragraph (2).

Regulation 12(1) sets out the circumstances in which the grant of approval in respect of a person [may] be suspended or withdrawn. Paragraph (3) sets out the circumstances in which a grant of approval in respect of a person [will] be withdrawn.

*Draft Regulations laid before Parliament under sections 17(8) and 21(7) of the Identity Cards Act 2006, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

**IDENTITY CARDS**

**The Identity Cards Act 2006 (Provision of Information without Consent) Regulations 2009**

*Made* - - - - \*\*  
*Coming into force* - - \*\*

The Secretary of State, in exercise of the powers conferred by 17(5), 21(4)(a), 40(4) and (7) and 42(1) of the Identity Cards Act 2006 (a), makes the following Regulations.

In accordance with sections 17(8) and 21(7) of that Act, a draft of these Regulations has been laid before and approved by a resolution of each House of Parliament.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Identity Cards Act 2006 (Provision of Information without Consent) Regulations 2009 and shall come into force on [...].

(2) In these Regulations—

“the 2006 Act” means the Identity Cards Act 2006;

“the Commissioner” means the National Identity Scheme Commissioner;

“identity document” has the meaning given to it in section 26 of the 2006 Act;

“personal data” has the meaning given to it in section 1(1) of the Data Protection Act 1998(b); and

“processing” also has the meaning given to it in that section.

**Prescribed government departments and functions**

**2.**The following government departments and functions are prescribed for the purposes of section 17(5) of the 2006 Act—

- (a) The Home Office for the function[s] of [...];
- (b) The Ministry of Justice for the function[s] of [...];
- (c) The Department for Transport for the function[s] of [...];
- (d) The Department for Work and Pensions for the function[s] of [...]; and

- (e) The Foreign and Commonwealth Office for the function[s] of [...].

### **Prescribed conditions**

**3.—**(1) It is a condition of providing information under any of sections 17 to 20 of the 2006 Act to a person, other than a person specified in those sections, that the person is for the time being approved by the Secretary of State in the manner prescribed in paragraph (2).

(2) The prescribed manner is—

- (a) in a written notice of approval given to that person; and
- (b) where there is an agreement between that person and the Secretary of State concerning the disclosure of information to that person under any of sections 17 to 20 of the 2006 Act, in an appendix to that agreement.

### **The grant of approval conditions**

**4.—**(1) A grant of approval referred to in regulation 3 is subject to that person complying with those conditions prescribed in respect of that person in regulation 5.

(2) The grant of approval will cease to have effect if that person does not comply with those conditions.

(3) If any of the conditions referred to in paragraphs (1) and (2) have been modified in respect of the person in accordance with regulation 6, the reference in those paragraphs to those conditions is to the conditions as so modified.

**5.—**(1) Other than in respect of the Home Office, the prescribed conditions are that the person—

- (a) provides the Commissioner or a member of the Commissioner's staff, if so requested, with all such information as they may reasonably require for the purpose of carrying out the Commissioner's functions insofar as they relate to—
  - (i) the arrangements made by that person for obtaining information available to that person under the 2006 Act and for recording and using it for the purpose for which the information was provided; or
  - (ii) that person's use of ID cards;
- (b) [condition relating to the security standards that the person will comply with when processing information, which has been supplied to that person under the 2006 Act, for the purpose for which it was provided];
- (c) [informs the Secretary of State if the person suspects that an individual has committed or is attempting to commit an offence under sections 25, 27, 28 or 29 of the 2006 Act and explains the reason for any such suspicion];
- (d) [co-operates with any investigations by the Secretary of State into suspected fraudulent activity relating to the Register or identity documents];
- (e) [provides the Secretary of State with any assistance as is reasonably required in order to allow the Secretary of State to determine whether to suspend or withdraw the grant of approval in accordance with regulation 7];
- (f) [condition relating to how the person is to monitor compliance with the other conditions]; and
- (g) [condition relating to how the person is to assist the Secretary of State monitor compliance with the other conditions].

(2) Where the person is the Home Office, the prescribed conditions are that the Home Office—

- (a) [condition relating to the security standards which the Home Office will comply with when processing information, which has been provided to it under the 2006 Act, for the purpose for which it was provided]; and
- (b) [condition relating to how the Home Office is to monitor compliance with the other condition].

### **Modification of the conditions**

6.—(1) The conditions prescribed in regulation 5 in respect of a person may be modified in respect of that person in the manner prescribed in paragraph (2).

(2) The prescribed manner is—

- (a) in a written notice given to that person; and
- (b) where there is an agreement between that person and the Secretary of State concerning the disclosure to that person under any of sections 17 to 20 of the 2006 Act, in an appendix to that agreement.

### **Suspension or withdrawal of an approval**

7.—(1) A grant of approval in respect of a person [may] be suspended pending further investigation or withdrawn if it appears to the Secretary of State that that person—

(a) will not comply with—

- (i) the conditions prescribed in respect of that person in regulation 5; or
- (ii) the terms of any agreement made with the Secretary of State regarding the disclosure of information to that person under the 2006 Act; or

(b) has not complied with the terms of any agreement referred to in sub-paragraph (a)(ii).

(2) If any of the conditions referred to in paragraph (1)(a)(i) have been modified in respect of that person in accordance with regulation 6, the reference in that paragraph to those conditions is to those conditions as so modified.

(3) A grant of approval in respect of a person [will] be withdrawn if—

- (a) the Secretary of State has provided that person with 28 days' notice of the intention to do so; or
- (b) new information relating to that person has come to the Secretary of State's attention as a result of which the Secretary of State considers it appropriate to withdraw the grant of approval in respect of that person.

Home Office  
2009

Minister of State

### **EXPLANATORY NOTE**

(This note is not part of the Regulations)

The Secretary of State may under 17 of the Identity Cards Act 2006 (“the 2006 Act”) provide a person with information recorded in an individual’s entry in the Register without that individual’s consent if the provision of information is authorised by that section.

Section 17(5) of the 2006 Act provides that the provision of information not falling within paragraph 9 of Schedule 1 to the 2006 Act is authorised by that section where the information is provided to—

- (a) a prescribed government department; or
- (b) a prescribed Northern Ireland department,

for purposes connected with the carrying out of any prescribed functions of that department or of a Minister in charge of it.

Regulation 2 prescribes government departments and the functions relating to such departments for the purposes of section 17(5) of the 2006 Act.

Regulation 3 provides that the Secretary of State may only provide information to a person (other than a person specified in sections 17 to 20 of the 2006 Act) if that person is for the time being approved by the Secretary of State in the manner prescribed in paragraph (2).

Regulation 4(1) provides that a grant of approval in respect of a person is subject to that person complying with those conditions prescribed in regulation 5 in respect of that person.

Regulation 4(2) provides that if the person does not comply with those conditions the grant of approval will cease to have effect.

Regulation 4(3) provides that if any of those conditions have been modified in accordance with regulation 6, those conditions are the conditions which have been modified in accordance with that regulation.

Regulation 6(1) provides that the conditions prescribed in regulation 5 may be modified in respect of a person in the manner prescribed in paragraph (2).

Regulation 7(1) sets out the circumstances in which a grant of approval in respect of a person [may] be suspended or withdrawn. Paragraph (3) sets out the circumstances in which the grant of approval in respect of a person [will] be withdrawn.

DRAFT

*Draft Order laid before Parliament under section 4(4) of the Identity Cards Act 2006, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

**IDENTITY CARDS**

**The Identity Cards Act 2006 (Designation) Order 2009**

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

The Secretary of State, in exercise of the powers conferred by sections 4(1) and 40(4) of the Identity Cards Act 2006 (a), makes the following Order.

In accordance with section 4(4) of that Act, a draft of this Order has been laid before and approved by a resolution of each House of Parliament.

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Identity Cards Act 2006 (Designation) Order 2009 and shall come into force on [ ].

(2) In this Order –

“airside pass” means a pass allowing the person to whom it has been issued unaccompanied access to a restricted zone or to part of a restricted zone;

“EEA national” means a national of an EEA State;

“EEA State” means –

(a) A member State, other than the United Kingdom;

(b) Norway, Iceland or Liechtenstein; or

(c) Switzerland;

“family member of an EEA national” means a family member of an EEA national with a right to reside under the Immigration (European Economic Area) Regulations 2006(b);

“person subject to immigration control” means a person who under the Immigration Act 1971(c) requires leave to enter or remain in the United Kingdom (whether or not such leave has been given);

“restricted zone” means an area designated by the Secretary of State under section 11A of the Aviation Security Act 1982(a) (Designation of restricted zones); and

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(a) 2006 c. 15.  
(b) S.I. 2006/1003.  
(c) 1971 c.77.

“United Kingdom national” means a person who falls to be treated as a national of the United Kingdom for the purposes of the Community Treaties.

### **Designation**

2.—(1) The description of document specified in paragraph (2) is designated for the purposes of the Identity Cards Act 2006, subject to the exceptions set out in paragraph (3).

(2) The specified description of document is a criminal conviction certificate issued under section 112 of the Police Act 1997**(b)**.

(3) The description of document specified in paragraph (2) is excepted in the following cases –

- (a) where the document is applied for by a person other than a person who applies for that document in connection with a requirement to produce a criminal conviction certificate in order to obtain an airside pass;
- (b) where the document is applied for by a person who is subject to immigration control; or
- (c) where the document is applied for by a family member of an EEA national who is not either an EEA national or a United Kingdom national.

Home Office

2009

Minister of State

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

Section 4(1) of the Identity Cards Act 2006 (“the 2006 Act”) provides a power to designate a document for the purposes of the Act. The effect of designation is that, where an individual applies for a designated document, that individual must either (a) apply at the same time to be entered in the National Identity Register, established under section 1 of the 2006 Act, or (b) if there is already an entry in the Register in respect of that individual, confirm the contents of that entry.

Article 2 of this Order designates a criminal conviction certificate issued under section 112 of the Police Act 1997 (c. 50) for the purposes of the 2006 Act, subject to exceptions set out in paragraph (3). The effect of these exceptions is that such a certificate will only be a designated document where it is applied for by a person in connection with a requirement to produce the certificate in order to obtain an airside pass. In addition, a certificate is excluded where the applicant is a person who is subject to immigration control or a family member of an EEA national, who is not also an EEA national or a United Kingdom national.

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(a) 1982 c. 36; section 11A was inserted by section 8(1) of and paragraph 3 of Schedule 1 to the Aviation and Maritime Security Act 1990 (c.31).  
(b) 1997 c. 50.



*Draft Regulations laid before Parliament under section 35(7)(a) of the Identity Cards Act 2006, for approval by resolution of each House of Parliament.*

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STATUTORY INSTRUMENTS

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**2009 No.**

**IDENTITY CARDS**

**The Identity Cards Act 2006 (Fees) Regulations 2009**

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

The Secretary of State, in exercise of the powers conferred by sections 35(1)(a), 40(4) and 42(1) of the Identity Cards Act 2006(a), and with the consent of the Treasury, makes the following Regulations.

In accordance with section 35(7)(a) of that Act, a draft of these Regulations has been laid before and approved by a resolution of each House of Parliament.

**Citation and commencement**

1. These Regulations may be cited as the Identity Cards Act 2006 (Fees) Regulations 2009 and shall come into force on [ ].

**Prescribed fees**

2. The fee for an application to be entered in the Register is £30.
3. Subject to regulation 4, the fee for an application for the issue of an ID card is £30.
4. No fee is payable for an application for the issue of an ID card in a case where—
- (a) the application accompanies an application to be entered in the Register unless an entry has already been made in the Register in respect of the applicant; or
  - (b) the Secretary of State has cancelled the applicant's previous ID card under—
    - (i) section 11(2)(b) of the 2006 Act, on the ground that the card has been damaged, provided that the damage did not occur after the issue of the card to the applicant, or
    - (ii) section 11(2)(e) of the 2006 Act, on the ground that it was one of a description of cards that the Secretary of State has decided should be re-issued because they are faulty, as a result of a defect in the issue or manufacture process.

**Method of payment**

5. Payment of the fees imposed by regulations 2 and 3 is to be by—
- (a) credit card;

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(a) 2006 c.15.

- (b) debit card; or
- (c) cheque.

Home Office

2009

Minister of State

Two of the Lords Commissioners of Her Majesty's Treasury

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Section 35(1) of the Identity Cards Act 2006 ("the 2006 Act") provides a power for the Secretary of State to impose by regulations fees for certain services connected with the Secretary of State's functions under the Act.

Regulation 2 imposes a fee of £30 for an application to be entered in the Register.

Regulation 3 imposes a fee of £30 for an application for the issue of an ID card. However regulation 4 provides that no fee is payable in respect of such an application if that application accompanies an application to be entered in the Register or the Secretary of State has cancelled the applicant's previous ID card under—

- (i) section 11(2)(b) of the 2006 Act, on the ground that the card has been damaged, provided that the damage did not occur after the issue of the card to the applicant, or
- (ii) section 11(2)(e) of the 2006 Act, on the ground that it was one of a description of cards that the Secretary of State has decided should be re-issued because they are faulty, as a result of a defect in the issue or manufacture process.

Regulation 5 provides that a fee imposed under these Regulations is to be paid by credit or debit card or by cheque.

## **ANNEX B**

### **THE IDENTITY CARDS ACT 2006**

### **CODE OF PRACTICE ON CIVIL PENALTIES 2009**

Code of Practice issued in accordance with Section 34  
of the Identity Cards Act

**This document is an indicative draft only.  
It has no legal effect and is subject to consultation and alteration.**

# Contents

<b>1 The basis for this Code of Practice</b>	<b>95</b>
<b>2 Liability for civil penalties</b>	<b>97</b>
<b>3 Determining the amount of the civil penalty</b>	<b>99</b>
<b>4 Warning letters and penalty notices</b>	<b>101</b>
<b>5 Objecting to civil penalties</b>	<b>103</b>
<b>6 Appealing against civil penalties</b>	<b>104</b>
<b>7 Extenuating circumstances</b>	<b>105</b>

# 1 The basis for this code of practice

1.1 This code of practice is issued under section 34 of the Identity Cards Act 2006 (“the Act”). The purpose of the code is to set out the following:

- When a civil penalty should be issued;
- How the amount of the civil penalty should be calculated;
- The way in which the civil penalty should be issued;
- How to appeal or object to a civil penalty; and
- Circumstances that should be taken into consideration when issuing a civil penalty and during the objection process.

1.2 In accordance with the Act, regard must be had to this code:

- By the Secretary of State when imposing a civil penalty under the Act;
- By the Secretary of State when considering an objection under section 32 of the Act; and
- By the court when determining an appeal under section 33 of the Act.

1.3 The Act lays out the legal duty of the Secretary of State to maintain a “secure and reliable record of registrable facts”. Ensuring the facts that are held on the National Identity Register (the “Register”) are accurate is an essential element of this duty and the civil penalty regime is in place to support this by enforcing the obligation of those who are on the Register to keep Register entries up to date and to surrender an identity card if required to do so.

1.4 A civil penalty may be issued if a person fails to comply with the requirements imposed upon them under the Act, namely, to notify the Secretary of State of changes affecting the accuracy of the Register and to surrender an identity card when required to do so. The requirements under section 7 of the Act, regarding those who are compulsorily registered, will not be commenced until compulsory registration is in force and, therefore, civil penalties will not be issued in relation to those at this stage. Section 2 of this document deals with liability for civil penalties.

1.5 The civil penalty scheme is not intended to be punitive or revenue-raising. It is intended to establish a mechanism which delivers a proportionate means of ensuring compliance with the terms of the Act. If there is good reason for failure to comply or, in cases where the requirements of the Act have been complied with at the time when an objection or appeal is considered, it will normally be appropriate to waive any penalty. The amounts of the penalty specified in the Act are meant as guidelines, the actual amount imposed will be determined on a case by case basis having regard to the principles set out in this code and all the circumstances of the case.

1.6 It is very important that individuals are aware of the importance of these obligations; the civil penalty regime will act as a strong encouragement to comply and will ensure that it is possible to penalise anyone who flaunts the law. It is already a requirement by law for holders of driving licences to notify changes of name or address and that requirement is enforced through a criminal, as opposed to a civil, penalty.

1.7 It should be noted that persons may be issued with further civil penalties if they continue to fail to comply with a requirement (see paragraph 3.5), even if they have paid the civil debt.

1.8 A similar civil penalty regime is in place for biometric immigration documents (also known as identity cards for foreign nationals) issued under the UK Borders Act 2007. However, the sanctions against cases of non-compliance under the UK Borders Act 2007 are much wider and may include refusal or curtailment of leave to remain. These wider sanctions are only applicable to foreign nationals who are subject to immigration control. Further information on civil penalties issued under the UK Borders Act 2007 may be found on the UK Borders Agency website at:

**<http://www.ukba.homeoffice.gov.uk/>**

1.9 Under section 4 of the UK Borders Act, biometric immigration documents may be designated and a single combined “ID card” would be issued and recorded on the Register. Combined ID card holders would then be subject to the maintenance requirements of both Acts. Where a person fails to comply with a similar requirement under both Acts, the Secretary of State will only impose a sanction under the UK Borders Act 2007.

## 2 Liability for civil penalties

2.1 Under the Act the Secretary of State may impose a penalty where satisfied that a person is liable to a penalty. Liability may arise in the following situations under the following sections:

### Section 10: Notification of changes affecting the accuracy of the register

2.2 Section 10(7): Failure by an individual to whom a card has been issued to notify the Secretary of State of prescribed changes of circumstances which affect the information held on the Register, or of errors in that information of which the cardholder is aware. Maximum penalty £1,000.

2.3 In considering liability in relation to changes of circumstances, the Secretary of State will need to be satisfied that the person concerned has been issued with an ID card; that there has been a relevant change of circumstances as set out in regulations under section 10 *The Identity Cards Act 2006 (Notification of Changes and Loss, Theft etc. of ID Cards) Regulations 2009*; and that the person concerned has not notified the Secretary of State within the relevant period set out in those regulations. For example, regulation 5 provides that a change of an address recorded in the Register should be notified within 3 months of the change taking place.

2.4 In relation to errors in the information in the Register, the Secretary of State will need to be satisfied that there was an error in the entry relating to that individual and that he was aware of it. Deliberate or reckless provision of false information is a criminal offence under section 28 of the Act with a maximum penalty of 2 years imprisonment. Where there are grounds to believe that an offence under that section may have been committed, the matter should be referred to the police to consider in conjunction with the Crown Prosecution Service whether a prosecution would be appropriate.

2.5 Section 10(7): Failure to comply with a requirement which is imposed in connection with a notification given under section 10. Maximum penalty £1,000.

2.6 Where a notification of a change is made, the Secretary of State may require the person concerned to do one or more of the following in order to ensure the accuracy of the Register:

- To attend at a specified place and time;
- To allow his fingerprints and other biometric information such as facial biometrics to be recorded;
- To allow himself to be photographed;
- Otherwise to provide such information as may be required by the Secretary of State. This may include for example requests to provide relevant documents such as immigration documents, birth or marriage certificates.

2.7 In considering liability, the Secretary of State will need to be satisfied that a change has been notified, that the person concerned has been required to do one or more of the things referred to in paragraph 2.6 and that the person has failed to do so.

### Section 11: Invalidity and surrender of ID Cards

2.8 Section 11(6)(a): Failure on the part of a cardholder to notify the Secretary of State, where the cardholder knows or has reason to suspect that the card has been lost, stolen, damaged, tampered with, or destroyed. Maximum penalty £1,000.

2.9 Regulations under section 11 *The Identity Cards Act 2006 (Notification of Changes and Loss, Theft etc. of ID Cards) Regulations 2009* require a cardholder to notify the Secretary of State within one month if he knows or suspects his card has been lost, stolen, damaged, tampered with or destroyed. A card will be classed as damaged if it or anything on it has become unreadable or otherwise unusable. A card will be classed as being tampered with if it or the information on it has been modified, copied or otherwise extracted for an unlawful purpose.

2.10 In considering liability, the Secretary of State will need to be satisfied that one of those things has occurred; that the cardholder knew or had reason to suspect that it had happened; and that the card holder failed to notify the Secretary of State within the prescribed period.

2.11 Section 11(6)(b): Failure on the part of a person who is knowingly in possession of an ID Card without the lawful authority of the individual to whom it was issued, or the permission of the Secretary of State, to surrender it as soon as it is practicable to do so. Maximum penalty £1,000.

2.12 Section 11(6)(b): Failure, by a person in possession of an ID Card, to comply with a requirement imposed by the Secretary of State to surrender it within a specified period. Maximum penalty £1,000.

2.13 The Secretary of State may impose such a requirement where it appears to her that:

- The ID Card was issued to another person;
- The ID Card has expired or been cancelled or is otherwise invalid;
- The ID Card has not yet been cancelled but is of a description of cards that the Secretary of State has decided should be re-issued; for example, if a batch of cards were to be recalled following the discovery of a defect in that particular batch.
- The ID Card is in the person's possession in contravention of a relevant requirement. A relevant requirement would be when a card holder is legally required to surrender their card, in the case of a travel banning order, for example.

2.14 In considering liability, the Secretary of State will need to be satisfied either that the person concerned had a card belonging to someone else in his possession in circumstances where he must have known he was not authorised to do so or that a specific requirement to surrender a card has been imposed and has not been complied with. For example, while it may be obvious that a card found in the street belonging to a stranger should be surrendered, this may not be the case in relation to a card belonging to a family member. It will not be appropriate to impose a penalty on family members of a deceased person unless a specific requirement to surrender has been made and not complied with.

2.15 Possession of a card issued to another without reasonable excuse may also be a criminal offence under section 25 of the Act. Where it appears there is no innocent explanation for possession of a card or that it may have been intended to mislead, the matter should be referred to the police and Crown prosecution service to consider whether a prosecution is appropriate.

2.16 If a person has voluntarily surrendered their identity card, by formally returning it to the Secretary of State, a civil penalty will not normally be issued in the case of failure to comply with maintenance requirements.



## 3 Determining the amount of the civil penalty

3.1 The basic penalty level for a person's initial failure to comply with a maintenance requirement will be 1/8 of the maximum statutory penalty (currently £1,000). The Secretary of State will increase the amount of the civil penalty for continued and subsequent failures to comply with a requirement, up to the maximum statutory penalty allowed – see the Sanctions Table at paragraph 3.7.

### Evidence of extenuating circumstances

3.2 The Secretary of State will also consider whether the person has evidence of extenuating circumstances which would warrant a discount to the level of civil penalty notice issued. This will include factors such as where the person can demonstrate he has limited financial means.

### Where there are households with limited financial means

3.3 The Secretary of State may discount the penalty issued to person by the amount stated in the Sanctions Table where there is satisfactory evidence that the issuing of a civil penalty would cause undue financial hardship. An example would be where the person provides evidence that he is in receipt of:

- means tested benefits; or
- income related benefits.

Any evidence of the financial circumstances of the individual of which the Secretary of State is aware should be taken into account.

### Application of discounts for extenuating circumstances

3.4 Where a person provides evidence of more than one extenuating circumstance (see section 7 of this document for details of extenuating circumstances) the Secretary of State will only allow a single discount regardless of the number of extenuating circumstances.

### Further incidences of non-compliance

3.5 Where there are further incidences of non-compliance or continued failure in respect of the original requirement in a five-year period, the Secretary of State may increase the level of penalty by the amounts shown in the Sanctions Table to the statutory maximum. The total amount of the penalty will be based on the number of times the person has failed to comply.

### Payment of penalties

3.6 Once the amount of the civil penalty has been fixed, the Secretary of State or the civil courts may allow the penalty to be paid in instalments. The Secretary of State or the civil courts will decide the amounts and periods of payments.

### 3.7 Sanctions table

	<b>Penalty amount</b>
Basic penalty level	<b>£125</b>
Further incidences of non-compliance or continued non-compliance – for each additional failure <sup>1</sup>	+ £125
Evidence of extenuating circumstances <sup>2</sup>	- £50

<sup>1</sup> For each additional occurrence of non-compliance in a five-year period, to a maximum of £1,000, e.g. the 2nd failure of a requirement in a five year period would attract a civil penalty of £250, (£125 + £125 = £250).

<sup>2</sup> Where evidence of extenuating circumstances is provided the penalty is reduced, e.g. A person in receipt of income related benefits who fails to comply with a requirement would be issued with a civil penalty of £75, (£125 – £50 = £75).

## 4 Warning letters and penalty notices

### Warning letters

4.1 Before imposing a civil penalty for non compliance with a requirement, it will normally be appropriate to send a warning letter setting out the reasons why the Secretary of State has reason to believe liability to a civil penalty has arisen and urging compliance.

4.2 The warning letter will set out the reasons why the Secretary of State considers the person has not complied with one or more of the maintenance requirements, and what action may be taken.

4.3 The warning letter will also outline how the person may avoid a sanction being imposed providing the person:

- arranges to comply with the necessary requirement within the fifteen working days warning period, and gives notification to this effect;
- provides a credible explanation as to why he was unable to comply and gives notification, which demonstrates that compliance will take place as soon as is practically possible;
- provides a credible explanation that allows the Secretary of State to put into place special arrangements to enable the person to comply; or
- provides a credible explanation or satisfactory evidence that he cannot comply.

### Following the issuing of a warning letter

4.4 The person will have fifteen-working days, from the date the warning letter was posted, to comply with the requirement or to take one of the actions listed in paragraph 4.3.

4.5 Where the person fails to do so by the time the fifteen-working days period has passed, the Secretary of State will consider all of the relevant facts, including any written response to the warning letter, before deciding to take action.

4.6 Section 7 of this document deals with further extenuating circumstances which the Secretary of State will take into consideration when deciding whether to issue a civil penalty.

4.7 The Secretary of State will not proceed to issue a civil penalty notice until the fifteen-working days warning period has passed.

4.8 Where the Secretary of State decides to issue the person with a civil penalty notice, the person will have a right to submit a written objection within thirty-working days from the date the civil penalty notice was posted (see section 5). The person will also have a right of appeal against the Secretary of State's decision to issue a civil penalty notice (see section 6).

### The penalty notice

4.1 When imposing a civil penalty the Secretary of State must issue the defaulter with a notice. The contents of the notice are set out in section 31 of the Act. It must contain the following information:

- The reasons for deciding that the person is liable to a penalty;
- The amount of the penalty;
- The date before which the penalty must be paid;
- A description of the ways in which payment may be made;
- An explanation of the steps the defaulter must take if he wishes to object to the penalty or appeal against it to the courts or both, including the grounds on which he may object and appeal; and
- An explanation of the powers of the Secretary of State to enforce the penalty.

### Service of civil penalties

4.10 The civil penalty notice will be treated as properly served (or intimated in Scotland) where a notice is:

- sent by first class post, in a prepaid registered envelope or by the recorded delivery service, addressed to the person on whom the notice is required to be served. It is to be taken to have been received by (and served on) that person on the second day after the day on which it was sent;
- sent by facsimile, to the last known facsimile number of the person to whom the notice is required to be served. It is to be taken to have been received by (and served on) that person on the day on which it was sent;
- sent by electronic mail, to the last known electronic mail address of the person to whom the notice is required to be served. It is taken to have been received by (and served on) that person on the day on which it was sent; or
- delivered in person to the defaulter.

## 5 Objecting to civil penalties

5.1 Under Section 32 of the Act, a person on whom a penalty has been imposed may object to the penalty on the following three grounds:

1. That he is not liable to the penalty;
2. That the circumstances of the contravention in respect of which he is liable make the imposition of a penalty unreasonable;
3. That the amount of the penalty is too high.

5.2 A notice of objection must set out the grounds of the objection and the objector's reasons for objecting on those grounds. It should be given in writing (either by post or electronically), on the appropriate form, and within thirty-working days from the date that the civil penalty notice was posted.

5.3 The Secretary of State must consider a notice of objection and may then:

1. cancel the penalty;
2. reduce the penalty;
3. increase the penalty; or
4. confirm the penalty.

5.4 Where the Secretary of State increases a penalty she must issue the objector with a new penalty notice. If she reduces, cancels or confirms the penalty she must inform the objector in writing.

5.5 Where the Secretary of State has not responded to the objection within thirty-working days from the date that the objection was received by post or electronically, the civil penalty notice will be cancelled. However, it remains open to the Secretary of State to issue further penalty notices if the person's failure to comply with the requirement continues (see paragraph 3.5).

5.6 Section 7 of this document deals with the factors which the Secretary of State will take into account in considering an objection.

## 6 Appealing against civil penalties

6.1 A person on whom a penalty has been imposed may appeal in England, Wales or Northern Ireland to the county court or in Scotland to the sheriff. The grounds of appeal are the same as the ones on which an objection may be made, namely:

1. That he is not liable to the penalty;
2. That the circumstances of the contravention in respect of which he is liable make the imposition of a penalty unreasonable;
3. That the amount of the penalty is too high.

6.2 An appeal may be brought regardless of whether a person has made an objection to the Secretary of State. In practice, if a person appeals whilst his objection is pending, the court will delay consideration until the outcome of the objection has been notified to the objector.

6.3 An appeal will be a re-hearing of the Secretary of State's decision to impose a penalty, and any subsequent decision made after consideration of an objection. There are no statutory limitations on the evidence which may be brought before the court, including evidence which was not before the Secretary of State when he made his decision.

6.4 On consideration of an appeal the court may:

1. allow the appeal and cancel the penalty;
2. allow the appeal and reduce the penalty;
3. dismiss the appeal.

6.5 The court has no power to increase the penalty. The purpose of the appeal is to guarantee the right of access to the courts for those on whom penalties are imposed; it is not intended to be punitive.

## 7 Extenuating circumstances

7.1 This section describes the extenuating circumstances that should be taken into consideration when deciding to issue a civil penalty or when considering grounds for an objection to a civil penalty.

### Liability

7.2 Liability turns on whether the circumstances set out in section 2 of this document are present.

7.3 Any evidence which suggests that the circumstances which gave rise to a penalty under a particular section were not in fact present should lead to cancellation of the penalty. The following are examples for illustrative purposes only:

- A person on whom a penalty has been imposed under section 10(7) because he has failed to notify the Secretary of State of a change of address produces evidence which shows that he did not in fact move house or that he did in fact notify the Secretary of State. The penalty should be cancelled.
- A person on whom a penalty has been imposed under section 11 for failing to notify loss of a card produces evidence that he has been abroad for 6 months and did not know his card had been stolen. The penalty should be cancelled.

### The circumstances of the contravention in respect of which he is liable make the imposition of a penalty unreasonable

7.4. Even if liability is established, there may be circumstances which make the imposition of a penalty unreasonable. It is impossible to predict all the circumstances which might be raised. All relevant facts known to the Secretary of State and any representations from the person concerned should be considered at the objection stage. These may include written representations or other evidence (such as medical certificates) or representations made by telephone or email. Some relevant factors are set out in the following paragraphs but this is not an exhaustive list. Each case should be considered on its merits.

### The awareness of the person concerned of the requirement

7.5. If there is genuine doubt as to whether the person concerned was aware of the requirement, any penalty imposed should normally be cancelled. This may be because they had no notice of the requirement or because they were not able to understand it due to language difficulties, illiteracy or lack of intellectual capacity.

### Where a person lacks capacity to make a decision

7.6. Where there is satisfactory evidence that a person lacks the capacity to make decisions within the terms of the *Mental Capacity Act 2005*, the Secretary of State will allow the person to identify a carer, close friend or family member who is able to assist him to comply. Where the person concerned is unable to identify someone who is able to assist, efforts will be made to identify such a person. Where the person has appointed an attorney, under a lasting power of attorney, whilst he had capacity, or a deputy has been appointed by the Court of Protection, it is likely that he will be the most suitable person to assist. Where there is satisfactory evidence that the person is an adult with incapacity within the context of the *Adults with Incapacity (Scotland) Act 2000*, any guardian, continuing attorney, welfare attorney or manager of an establishment exercising functions under this Act or under any order of the sheriff in relation to the adult is likely to be the most suitable person to assist the person.

7.7. Where no suitable person can be identified, the Secretary of State will act in accordance with the Acts and their principles in supporting the person to comply with the requirements. In particular, the Secretary of State will ensure that the person:

- was given the opportunity to make decisions for himself and has the fullest input into any decisions made on his behalf;
- was given help to express his wishes, ensuring that he was able to make those decisions for which he does have capacity; and where decisions are made on the person's behalf, the person's wishes, where possible, will be taken into consideration.

#### Where a sanction will be imposed upon a vulnerable person

7.8. The Secretary of State will only proceed to impose a sanction where there is satisfactory evidence that the person intentionally failed to cooperate, and that the person also understood what was required of him and the consequences of not complying. This is despite the availability of alternative arrangements, where such arrangements are reasonably practicable.

#### The reason for non compliance

7.9. Even if there is no doubt that there has been a relatively serious failure to comply with a requirement of which the individual concerned was aware, there may be a good reason why he has not complied. For example he may have been abroad or in hospital at the relevant time; or may have been suffering a bereavement; or there may be some other reasonable excuse.

#### Whether there is a history of previous contraventions

7.10. It may often be appropriate to cancel or reduce a penalty on the first occasion there is a failure to comply. However successive failures should normally attract successively higher penalties, subject to the appropriate maximum.

#### Whether there has been compliance since service of the penalty notice

7.11. As the purpose of the penalty scheme is to encourage compliance rather than to punish, it will usually be appropriate to cancel the penalty if the individual has complied with the relevant requirement by the time the objection or appeal is considered. Mere lateness should not generally lead to a penalty unless it is both deliberate and prolonged or repeated.

#### The amount of the penalty is too high

7.12. This ground overlaps to some extent with the question of reasonableness. If there are mitigating circumstances such as those listed above but it is still reasonable to impose a penalty, the financial circumstances of the person concerned should be considered on this ground.

7.13. Any evidence of financial circumstances of which the Secretary of State is aware at the point of imposition of the penalty, or which is made available to him at the objection stage, or which is put before the court at the appeal stage should be taken into account.

7.14. Only in the most extreme circumstances should that result in cancellation of the penalty. Rather the penalty should be reduced to an amount which is affordable.





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