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Submission to the Identity and Passport Service Consultation about the Identity Cards Secondary Legislation 2008

Discussion paper [or working paper, etc.]

Original citation:

Whitley, Edgar A. (2009) *Submission to the Identity and Passport Service Consultation about the Identity Cards Secondary Legislation 2008*. London School of Economics and Political Science, London, UK.

This version available at: <http://eprints.lse.ac.uk/45223/>

Originally available from [London School of Economics and Political Science Identity Project](#)

Available in LSE Research Online: August 2012

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Submission to the Identity and Passport Service Consultation about the Identity Cards Secondary Legislation 2008.

London School of Economics and Political Science Identity Project

23 February 2009

About the LSE Identity Project

1. The LSE Identity Project¹ provides ongoing research and analysis into the UK Government's proposals to introduce national biometric identity cards. The *main* Identity Project report² issued in June 2005 identified six key areas of concern with the government's plans including their high-risk and likely high-cost, as well as technological and human rights concerns.
2. Since the publication of the *main report* in June 2005, the Identity Project has produced a number of further reports and cross-party briefings for key debates in Parliament that helped shape key amendments to the legislation, including issues of cost reporting and compulsion. Since the proposals became law in March 2006, the project has provided evidence for the Science and Technology Select Committee review of the use of scientific evidence by the Scheme, the Home Affairs Committee inquiry into "A surveillance society?" and the House of Lords Constitution Committee inquiry into "the impact of surveillance and data collection". Members have also analysed information issued about the ongoing costs of the Scheme. They have reviewed the Strategic Action Plan released in December 2006 and the implications of the Delivery Plan 2008 and responded to the Delivery Plan Consultation.
3. Although initially focused on the UK proposals, the analysis presented by the Identity Project has also contributed to policy deliberations in related areas including Real ID in the US, the Australian Access Card and similar proposals for Canada.
4. Members of the LSE Identity Project have published and submitted a number of academic articles, including pieces in *The Information Society* journal, the European Conference on Information Systems, the *European Journal of Information Systems* and *Communications of the ACM*. A book on identity

¹ <http://identityproject.lse.ac.uk>

² <http://identityproject.lse.ac.uk/mainreport.pdf>

assurance policies will be published by Palgrave in 2009. Additional papers are currently under review with other peer-reviewed academic journals.

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.

5. The detailed (100+ page) document outlining the reasoning and detail of the proposed secondary legislation indicates just how unnecessarily complex the proposed Scheme has become. A few simple examples will illustrate this point. Although the primary legislation is the Identity Cards Act, the secondary legislation talks about “ID cards” and identification cards (which are a logically distinct category of card). Moreover, the definition of “ID cards” (the formal name for a card issued under Section 6 of the Identity Cards Act) is only given in a footnote in the consultation document, not in the secondary legislation itself. Indeed, in the Applications regulations, the term “identity card” is introduced as “an identity card that is valid as a travel document for travel *to* the United Kingdom” (emphasis added) and refers, not to the UK identity card but rather to a card held by an applicant who claims to be an EEA national.
6. A second set of problems arises from the relationship between cards and the ability to use (some variants of) the card for travel purposes (hence the detailed clarifications in the Prescribed Information and Period of Validity of Card Regulations).
7. Detailed comments about the specific regulations follow below.

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.

8. We remain unconvinced that these issues have been properly addressed (despite the planning process for this card scheme having been ongoing for at least seven years). There is also a concern that those living a transient lifestyle are still required to pay for their card using a credit card, debit card or cheque, all of which typically require the issuing authority (bank) to have some record of an address (and presumably income) for the individual.
9. There is an additional concern that this will require the collection of payment details (credit card details / bank account details) of all those paying for cards. The privacy and data protection issues associated with this data collection are not considered in the legislation.

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

NIRNo on the card. However, the layout and information held on the card will need to comply with international travel document standards established by the ICAO.

10. We welcome the decision not to hold the NIRNo on the card and hope that this decision remains in the actual secondary legislation that is published. In particular, we would expect that if this decision is overturned as a result of the consultation process, the IPS *clearly* indicates such a policy reversal, so that Parliamentarians can take a fully informed view on the consequences. The wording of the regulations might be developed to clearly state that the card number is a “card issue number” and not the NIRNo.
11. It is unclear how this decision relates to issue number on the Foreign National Identity Card (which is also stored in the Machine Readable Zone on the card).
12. We also note that a number of countries have considered a shorter validity period for the travel documents (typically five years), to allow for technology upgrades.

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.

13. One of the examples given of notifying changes is a woman changing her name upon marriage. If ever there was a case for joined up government, surely this is it. Given that the marriage has to be officially authorised, it would make sense for a citizen-centric service to allow for this update to be automatically performed.
14. There are numerous practical issues with the updating process as outlined in the consultation, regulations and code of practice which are outlined below.

We welcome comments on the provisions outlined for those who have moved abroad from the UK to report a change to the details on their identity card.

15. It is unclear how these provisions relate to the government’s previous decision not to issue identity cards for UK nationals living abroad (the case of those living in Spain is particularly relevant).

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.

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.

16. Again, we find it astonishing that despite the slow development of the Scheme and the considerable expenditure already incurred that the government has no detailed proposals for these key aspects of the Scheme's implementation.

17. Detailed comments on the draft code of practice are given below.

Consultations on question of consent

18. Some members of the LSE Identity Project are members of the EnCoRe project (<http://www.encore-project.info>) that is supported by the IPS and is explicitly looking at mechanisms for ensuring consent and providing reliable means of revoking that consent.

19. There is considerable ambiguity between the potential provision of information from the NIR (with or without consent) and the previously announced decision that only Yes/No responses will be provided when an identity is verified against the NIR. Further clarification of the difference between verification and other data push activities is required.

20. The questions under 4.57 do not appear to relate to specific secondary legislation

21. It is unclear whether the provisions in Regulations 11/12 are likely to be affected by the provisions of the data sharing elements of the Coroners and Justice Bill.

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.

22. The proposals, other than designation of specific documents, are rather vague. Moreover, if the current plans for Beacon Sites (such as the City of Manchester) are to proceed, it is unclear how commencement orders / designation of specific documents could possibly operate in such sites (especially for those with transient life styles).

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 enroll on the National Identity Register and are issued with an identity card.

23. We believe that the fee is far too high for the cards to be successful. There is no detail in the regulations about the waiving of fees for airside workers and we fear that those who are being compelled to enroll on the NIR may be expected to pay the £30 fee after all. We note that there are no plans at this stage for verification fees to be set or the cost to industry of using various identity related services. This ambiguity will severely hamper the take up of the Scheme by the private sector.

Specific comments on regulations

Applications and issue of ID cards

24. 3 (2) (b) Refers to applying “in person” at an IPS office. It is unclear how this regulation fits in with the plans outlined in the Front Office Services prospectus.

25. 3 (2) (c) Refers to a specific form. This level of specificity seems inappropriate given the tendency for various versions of the forms to be issued (for example, in different languages).

26. Schedule 1, part 1. No details appear to be given about the biometrics being collected (other than the signature of the applicant).

27. Part 1, 1 (p) speaks of “answers to questions for the purposes of paragraph 8(c) of Schedule 1 to the 2006 Act. Ministers have frequently claimed that the Register will hold little more than is held on a typical passport, however, 8(c) concerns “questions and answers to be used for identifying a person seeking to make such an application or to apply for or to make a modification of that entry”. According to publicly available information about the biographical enrolment process this could be 20 minutes worth of questions that only the individual will know. Moreover, recording the questions and answers on the NIR would appear to contradict written answer to question [219766] where Parliament was informed that “While precise arrangements for the retention of personal information gathered for the purposes of the interview have not been finalised, we will seek to build upon existing practice for interviews of first time passport applicants, which is usually to destroy the information shortly after the interview” [20 November 2008].

28. On the assumption that these security questions will vary according to the individual, it is unclear why this element does not also include the question to which the answer is given.

29. Part 1, 1 (r) The periods of prohibition on travel suggests that, for some, the period of validity will not be 10 years.
30. There is a real issue about the potentially discriminatory effects of such identification cards: when presented with a card for a UK national that is not valid for travel, the person examining the card may infer that the holder is subject to a banning order within the meaning for section 14 of the Football Spectators Act 1989(b); a travel restriction within the meaning of section 33 of the Criminal Justice and Police Act 2001(a); or any other requirement imposed by a court to surrender that individual's passport or ID card to the police or other authority, an individual who is within the category of persons not mentioned above and which has been notified to Parliament as one in respect of whom the Secretary of State will refuse passport facilities. According to recent press reports³ might include 'absent parents'.

Verification of information on the Register

31. 4 (c) The statement "any other appropriate remedy or relief" is rather vague.

Prescribed information

32. 3 (2) (a) It is unclear what is meant by the term "title of the card" in this context – unless it is intended to be the clear distinction between identity and identification cards.
33. 3 (2) (l) Is the intention for *any* two fingers to be stored or, will normal practice be that two particular fingers are stored. If the former, will the applicant have a choice as to which two fingers will have their fingerprints stored?

Notification of changes

34. 4 (2) (a) Given the need for high integrity for the Scheme, it is unclear how a high integrity system can be implemented that allows telephone applications for notifications to be made. Moreover, given that part of the checking of telephone notifications will involve the answers to the security questions, this would suggest that far more than 100 civil servants will have access to personally sensitive data held on the Register.

³ http://news.bbc.co.uk/1/hi/uk_politics/7852640.stm "Absent parents may lose passports"

35. 4 (2) (b) See above (24) for comments about appointments at IPS offices and the specification of particular forms.

36. 6 (2) (c) It is unclear how “sufficient evidence to establish that the individual giving the notification is the individual to whom the ID card has been issued” will be implemented without addressing the security concerns outlined above (34).

Civil penalties

37. 2 (1) (b) It is unclear how the IPS would possibly have a “last known” facsimile number for the defaulter. This information is not listed as being stored on the Register so how and where is it being stored and is it being kept securely.

38. 2 (1) (c) Similar concerns arise in relation to the last known electronic mail address.

39. The confidence in the delivery times for post, electronic mail and fax is to be commended.

40. 4 seems to have a different time scale than 2 in that it refers to “the day on which the notice ... was given to the defaulter”

Provision of information with consent

41. 5 (a) Is it intended that the explanation of the rights of an individual would be a formal set of words similar to a police caution?

42. 5 (b) How does an individual know that the person is the person to whom the information would be provided?

43. How are we to comment on 8 given that it is incomplete?

44. 10 (b) Again, this element is incomplete.

Code of practice on civil penalties

45. 2.6 It is unclear what the distinction between collecting facial biometrics and being photographed is.

46. 2.13 Does this really refer to surrendering a card or surrendering a card with travel rights for a replacement (to be charged at £30?) identification card without travel rights?

47. 2.14 Are there plans for families to retain the card of a deceased relative (in the same way in which passports may be cancelled and then returned to the family)?
48. 2.16 It is unclear what is meant by this statement. Does this mean that someone could formally return their card to the Secretary of State and have their details removed from the NIR? If so, in what circumstances could this formal returning take place? If their details remain on the NIR, how does the IPS ensure that such individuals are not chased for civil penalties arising from failure to update their details.
49. 4.4 refers to the date a letter was posted, 4.10 refers to the date a letter was received (two days after posting, according to the earlier regulations?), whilst 5.5 refers to the actual date that the Secretary of State received the objection.
50. 7.11 Presumably Wether is meant to be Whether?

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The LSE Identity Project is more than willing to provide further details / clarification as required.