

Response to Consultation on Legislation on Identity Cards

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There is no good argument for a national identity card scheme. The arguments put forward by the government are vague and do not justify the costs and risks of the scheme. There is no reason to suppose that cards will substantially reduce crime (why should a burglar who is compelled to have an ID card be less likely to burgle?) nor that they will make it easier for the Police to catch criminals (it is rare for the Police to have trouble identifying a suspect, which is the only way the cards could assist them). The cards will not make terrorism any harder (terrorists will be perfectly able to recruit from among people who are entitled to an identity card; most terrorists do not use false identities). The scheme is supposed to stop benefit fraud, but according to the Department for Work and Pensions, around 98% of losses to benefit fraud do not involve false identities, but lying about income or similar dishonesty which ID cards cannot stop. It is said that the scheme will reduce the cost of “identity theft”, apparently £1.3 billion per annum (this estimate is hard to justify and seems to be a substantial overestimate); but a centralised Register with a single identifying number for each individual (as proposed in this scheme) creates the risk of substantially *increasing* the opportunities for identity fraud. Meanwhile the cards create well-known infringements of civil liberties.

However, this information must already be known to the Home Office, and this consultation does not solicit information about whether the scheme justifies its costs, but rather about certain details of the proposed legislation. Point by point, then:

1 Proposals for a National Identity Register

- The centralised nature of the Register and the idea of a unique identifying number for each citizen will make ‘identity theft’ — that is, impersonating another person in some transaction — much easier. For instance, in the United States, where individuals are

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identified by a (more-or-less) unique ‘social security number’ (SSN), identity theft is extremely easy because many institutions use the SSN both for *identification* and *authentication*. With knowledge of another person’s SSN an identity thief can effectively impersonate them and obtain (for instance) credit from financial institutions; and because SSNs are so widely used to identify people, identity thieves can easily obtain them. Presently there is no analogous unique identifier in the UK, so identity theft here is rather harder than in the US.

The proposed Register will contain identifying numbers for individuals (such as the ‘National Identity Registration Number’ of in 2(6)). Many institutions here will start to use these identifying numbers as database keys, making the same mistake as with SSNs in the United States.

Frankly I have no idea how you would go about fixing this. If you insist on having a single Register with a single primary key, there’s probably nothing that can be done; you just have to put up with increased identity fraud. An alternative would be to issue cards *locally* (as in many European countries) and ensure that any number assigned to an individual identifies the *card*, not the person. The card numbers won’t be a lot of use to third parties (as they will change when new cards are issued every few years) and so third parties will not be attracted to using them; this removes this particular opportunity for fraud. (It would also make the scheme cheaper and more reliable, since it remove the single point of failure which the national Register constitutes.)

An alternative would be to try to keep the identity numbers secret. I don’t really see how this could be managed, though, unless there are no unique numbers on the card at all. Since the draft Bill isn’t tied to any technical solution, I doubt it would be possible to incorporate this safeguard, so we’re back to square one.

As a workaround, the Bill could create an offence of “using a number from the Register to identify a person in another database”.

- What is the point of recording address information in the database? This is intrusive, serves no obvious useful purpose, may be difficult for people who lead unconventional lifestyles (who may then be denied access to services to which they are entitled), and will undoubtedly lead to lots of absent-minded people being fined. This requirement should be removed unless there’s actually a compelling argument for it.
- Clause 2 creates various powers to compel people to be entered in the Register. 2(5) gives the Secretary of State the power to correct the register, but explicitly frees him from the duty to do so. There is no reason for the Secretary of State to be given the power to preserve inaccuracies in the Register, and 2(5)(b) should therefore be removed. Further, determining the accuracy of the Register should not be at the whim of the Secretary of State (2(5)(a)) but should be overseen by an independent body (perhaps the Information Commissioner) with recourse by individuals to the courts if inaccurate information is not corrected.
- The power to vary the age of compulsion (2(7)) should be Parliament’s, not the Secretary of State’s, since such a change could substantially change the purpose of the scheme.

- Clause 3 (and Schedule 1) of the Bill covers the information that may be recorded in the Register. It is full of vague generalities (“information of a technical nature for use in connection with the administration of the Register”, for instance, could mean almost anything) and devolves all sorts of power onto the Secretary of State. For instance in 3(4), the Secretary of State may alter the general categories of information which are to be recorded in the Register.

Such changes must be ‘considered’ to be consistent (3(5)) with the statutory purposes of the scheme, but these (1(2)) are so wide-ranging as to present little barrier to an imaginative Minister, who could, for instance, add genetic information to the list in Schedule 1, immediately transforming the thing from an ID cards scheme to a national DNA register. (Presently, I am pleased to note, the definition of ‘biometric’ in Schedule 1 seems to exclude DNA by virtue of being restricted to ‘data about [a person’s] external characteristics’; but of course this is meaningless in the face of 3(4).)

This and other such changes should be a matter for wide-ranging national debate, rather than being in the gift of a single Minister. One possibility would be to extend 8(8) so that any changes to Schedule 1 would require a resolution by both Houses of Parliament, though it would be preferable if the thing required a proper Act.

2 Proposals for the issue of ID cards and designation of existing documents as ID cards

- If you must give people cards, then obviously you need to create some legislative powers to get them to register and whatnot. It’s hard to see how this process can be made less of a nuisance to the public, but a good start would be to ensure that references to being compelled to attend at,

a specified place and time

are corrected to include ‘reasonable’ to prevent vexatious use of the powers in the Bill, which will be delegated to all manner of officials and contractors.

- 5(5)(b) needs to make explicit what happens when it is not possible to obtain fingerprints or other biometric information from an individual. (Many people do not have readable fingerprints.)
- There are vast differences in cost and practicality between various biometric technologies. It seems unwise to leave the choice so open-ended at this stage.
- It is impossible to evaluate whether much of clause 8 without further technical details about the scheme. For instance, 8(2)(b) requires that part of the information on the card must be recorded,

in an encrypted form

but we have no idea what this means. Is this public- or secret-key encryption? How are the keys distributed? Is the information readable to the bearer of the card? Etc. Further consultation on the technical details will be necessary once the technical specifications are better defined — but not so late that it would be impractical to change them!

- Further consultation is needed on the lifetime of the cards (8(2)(c)), once more details of the scheme are known.
- 8(6)(a) appears to be intended to force people applying for certain unrelated documents to apply also for an ID card. This makes a mockery of the voluntary scheme and should be removed.
- 8(8) is good news, but a requirement for a proper Act would be a better safeguard against abuse.
- Between them clauses 6 and 9 allow individuals to be compulsorily added to the Register, given an ID card, and made to renew the card every time one expires. It looks like there's no way for a person to cease to be compulsorily registered. The Secretary of State should be given the power to rescind compulsory registration.
- Clause 12 is the bit which will be most inconvenient for people (well, other than those who are victims of identity fraud facilitated by the National Identity Register; they'll be most annoyed by Clause 1, I suppose). The inconvenience could be lessened by making the Register less intrusive; for instance, if the requirement to record address information were removed, then people wouldn't have to inform the government every time they moved; if the requirement to record fingerprints were removed, people wouldn't have to inform the government if they cut or burned themselves. It would also be useful to define the 'prescribed period' 12(2)(b) in the legislation.
- The 'civil penalties' stuff is explicitly political. They should be replaced with proper criminal offences.
- We don't know what the fees in clause 37 are going to be. The scheme is supposed to be self-funding, which presumably means that if there are cost overruns in the implementation, the fees will rise. Over the past eighteen months the expected cost of the cards has risen from £5 to £40. How far will the cost have to grow before the thing is abandoned?

3 Data sharing of information that needs to be checked in order to issue identity cards

- Clause 11 appears to be intended to allow the Secretary of State or a 'designated documents authority' to make anyone tell them anything they know about another person that could be relevant to that person's application for a card, under penalty of civil proceedings (11(5)). According to the notes on the bill this is there for sharing data among various government bodies, but this isn't stated in the clause. It should be made much

narrower. As it stands it gives the Secretary of State an extraordinary and unnecessary inquisitorial power.

4 Disclosure of information from the National Identity Register without consent for the prevention and investigation of crime and on grounds of national security and also the options for oversight

- The various powers to disclose information in this clause should be subject to judicial oversight, rather than oversight by a Commissioner whose budget and staff are under political control.
- 20(5) allows the Secretary of State to have information disclosed to any part of the Home Office for any reason. This is far too broadly drafted and should be replaced by a specific list of parts of that department which actually need the information.
- Clauses 23 and 24 give the Secretary of State very broad powers to disclose information from the Register to other bits of the government, without significant safeguards. These should be removed.

5 Criminal offences and civil penalties relating to identity cards

- 27(1) leaves underage people who use fake ID to buy alcohol, cigarettes and so forth liable to a jail term of ten years. This is excessive.
- 29(1) applies only to people who “[hold] an office or employment the duties of which relate, in whole or in part, to [the Register etc.]”. This means that it is not an offence for anyone else to release such information. It should be. (Yes, I know that they shouldn’t be able to get hold of it, but obviously they will. The National Identity Register is unlikely to be perfectly secure, as the presence of clause 31 makes clear.)
- The criminal penalties in clause 29 are not proportionate. Why should a crooked official only get two years when somebody (perhaps harmlessly) using fake ID can be put away for ten?
- In clause 30 an additional offence of forging a biometric identifier (for instance using a contact lens overprinted with the pattern of another person’s iris) should be added. Forging biometrics is pretty easy to do so you should make sure that it’s illegal rather than just relying on the definition of ‘information’ in 30(1).
- Clause 31 is troublesome on several grounds. Firstly, there is no definition of

a computer [whose contents] consist of the National Identity Register.

This should be clarified.

Secondly, the claim in the notes in the consultation document is that this adjustment is necessary because s. 27(4) makes the manufacture of a false ID card punishable by ten years in prison, the Computer Misuse Act offence only merits five years, and “making a false entry on the Register is the equivalent of making a false ID card”: so the two offences should have the same penalty. This is silly, because making a false entry on the Register is not the equivalent of making a false card unless a card is issued as a result, and if that happens the perpetrator would have committed an offence under s. 27(1) or (3).

Even under the argument in the notes, this new offence should apply *only* when the modification of computer material results in creating a new entry.

- Clauses 33–36 are more on civil penalties and a novel appeals scheme for same. The motivation for these appears to be explicitly political and they should be removed and replaced with proper criminal offences.

6 Wider identity fraud issues

- Wouldn't the effort be better spent on making life easier for victims of identity fraud, rather than creating new categories of offence which will be hard to prosecute and rarely used?

7 The power to set a date when it would become a compulsory requirement to register

- Compulsion should only follow proper Parliamentary scrutiny and be implemented by a separate Act, rather than simply following the novel scheme outlined here.

8 The power to make Regulations on the use of a card, where existing powers relating to the service concerned are not adequate

- What is the point of 15(1)(c)? If an ID card isn't enough to prove “entitlement” on its own, why bother with it?

9 Proposals on the application of the draft Identity Cards Bill and the use of identity cards in Scotland, Wales and Northern Ireland

(I have no comments on this section.)

10 Options for a governance structure for the identity cards scheme

(I have no comments on this section.)

11 Other comments

Although there are various criminal penalties for identity fraud in the draft Bill, nothing is done to protect people who are the victims of identity fraud. Discussion so far has assumed that the biometric identifiers on which the scheme's security rests are difficult to forge, but this is not the case. Serious thought needs to be given to what happens when one person's biometric is forged by another and used to impersonate them. This *will* happen, and if there are no plans on how to deal with it, the victims will suffer grave inconvenience and perhaps worse.

Unfortunately, the analogy with the banking sector, where many victims of cash-card fraud ("phantom withdrawals") have also been the victims of miscarriages of justice (for instance, themselves being jailed for the fraud committed against them) is not promising. The draft Bill should be amended to protect the victims of identity fraud from similar consequences.

I have no idea how you would do this, but it's pretty important and seems to be completely missing from the proposals so far.