

EXPLANATORY MEMORANDUM TO
THE IDENTITY CARDS ACT 2006 (DESIGNATION) ORDER 2009

2009 No.

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 This Order designates criminal conviction certificates issued under section 112 of the Police Act 1997 (see: http://www.opsi.gov.uk/acts/acts1997/pdf/ukpga_19970050_en.pdf), but only those applied for in connection with a requirement to produce the certificate so as to obtain an airside pass. Once designated, anyone applying for a criminal conviction certificate, as part of the existing process for obtaining a security pass to work in the restricted area at an airport, will also require an ID card.

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

3.1 None.

4. Legislative Context

4.1 4.1 The Identity Cards Act 2006 (“the Act”) received Royal Assent on 30th of March 2006. This instrument, together with a further nine, will be the first set of orders and regulations made under the Act.

4.2 Alongside this instrument, a further five instruments subject to the affirmative resolution procedure are being laid before Parliament in May 2009. They are as follows:

- The Identity Cards Act 2006 (Application and Issue of ID Card and Notification of Changes) Regulations 2009, which prescribe various matters in relation to applications for entry on the National Identity Register, applications for an ID card and notification of changes and make provision in relation to place of residence.
- The Identity Cards Act 2006 (Prescribed Information) Regulations 2009, which prescribe information that must be recorded on an ID card or an identification card and other prescribed requirements and facts.
- The Identity Cards Act 2006 (Information and Code of Practice on Penalties) Order 2009, which prescribes organisations that may be required to provide information to verify information held on the National Identity Register or provided in an application to be entered on Register, as well as the public authorities that may be provided with information from the Register without the consent of the individual to whom the record relates. It also sets out an additional purpose for which a chief officer of the police may be provided with information from the Register and specifies when the Code of Practice on Civil Penalties comes into force.

- The Identity Cards Act 2006 (Provision of Information without Consent) Regulations 2009, which prescribe the Government departments which may be provided with information in connection with specified functions, as well as who may be provided with information on behalf of those named on the face of the Act, as well as the conditions that must be met before information is provided.
- The Identity Cards Act 2006 (Fees) Regulations 2009 which prescribe the fees to be charged for applications relating to the National Identity Register and ID cards and exemptions to those fees.

4.3 In addition, four instruments subject to the negative resolution procedure will be laid before Parliament in June 2009. They are as follows:

- The Identity Cards Act 2006 (Entitlement to be Registered) Regulations 2009, which prescribe, in addition to those specified in section 2 of the Identity Cards Act, those people who are entitled to be registered on the National Identity Register.
- The National Identity Registration Number Regulations 2009, which specify the format with which the number must comply.
- The Identity Cards Act 2006 (Civil Penalties) Regulations 2009, which prescribe the manner in which a penalty notice would be issued and the way in which any objection to a penalty may be made.
- The Identity Cards Act 2006 (Provision of Information with Consent) Regulations 2009, which prescribe the way that consent may be given and the particulars that must be provided before any organisation can be approved as suitable for the provision of information with consent, as well as the conditions that must be met before information can be provided.

4.4 These instruments will enable the first phase of the National Identity Service to be implemented, which will involve limited initial rollout to a numbers of volunteers from the general public and selected airside workers, starting with those at Manchester and London City airports.

4.5 The instruments relate only to provisions for those who are British citizens, British subjects with right of abode in the United Kingdom, EEA nationals or family members of EEA nationals from outside the EEA. There will be additional secondary legislation laid before Parliament in due course to extend the issue of biometric immigration documents (commonly known as identity cards for foreign nationals) under the UK Borders Act 2007. This will make similar provisions for airside workers who are subject to immigration control, also starting with those at Manchester and London City airports.

4.6 This order is the first designation order made under section 4 of the Identity Cards Act 2006 (see: http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060015_en.pdf). Section 4 provides a power to designate a category of official document issued by a government department, including the devolved administrations in Scotland, Wales or Northern Ireland. Once a category of document is designated, it then becomes a requirement for persons applying for such a document to register on the national identity register and to be issued with an identity card.

4.7 During the passage of the Act through Parliament, it was stated that designated documents would in due course (and subject to approval of secondary legislation) include passports issued to United Kingdom nationals and residence permits or immigration documents issued to foreign nationals. It was also made clear that designation might also apply to other official documents and that the government would look at the possibility of designating criminal record certificates (see: House of Commons Official Report, 13th February 2008 Column 1175 <http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo060213/debtext/60213-19.htm>).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 The order applies only to criminal conviction certificates required before obtaining an airside pass. It has no impact on any other applicants for a criminal conviction certificate, including applicants for standard and enhanced criminal record checks.

5.3 Section 44(4) of the Act 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, it will be possible for identity cards to be introduced in a manageable way. It is planned to start the roll out of identity cards for airside workers at Manchester and London City airports in the first instance from autumn 2009. Accordingly, the government has made clear that the Order will apply initially only to people applying for passes at Manchester and London City airports. Separate commencement orders will bring the application provisions in section 5 of the Act into force incrementally and these will be linked to the phased introduction of identity cards both in relation to airside workers who may be required to obtain an identity card as a result of this designation order and to people applying for an identity card on an entirely voluntary basis.

5.4 Furthermore, it is intended that the initial requirement for airside workers to obtain an identity card will be limited to new airside workers applying for the first time for an airside pass. Commencement of the designation power will therefore apply initially only to first time applicants for an airside pass. Other existing airside passholders at Manchester or London City airports will be able to apply for an identity card on a voluntary basis, but there will be further consultation with the airport authorities at both Manchester and London City airports before extending the commencement of this power so that the effect of this designation Order would apply to existing passholders. Until then they would not be required to apply for an identity card when they apply for a new criminal conviction certificate prior to renewal of their airside pass.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State, Ministry of Justice and Home Office, Shahid Malik MP has made the following statement regarding Human Rights: “In my view the provisions of the Identity Cards Act 2006 (Designation) Order 2009 are compatible with the Convention rights.”

7. Policy background

7.1 The Identity Cards Act 2006 establishes a statutory framework for issuing fingerprint biometric identity cards together with the creation of a secure and reliable National Identity Register to hold the identity information of everyone issued with an identity card. This is as part of what is now termed the National Identity Service and will lead eventually to a point at which anyone who is aged 16 or over and is resident in the United Kingdom may apply for an identity card.

7.2 The Act sets out the statutory purposes for the establishment of a National Identity Register and the issue of identity cards. In summary these are to provide a convenient method for individuals to prove their identity to anyone who reasonably requires proof and, at the same time, to provide a secure and reliable method for people to be identified wherever that is necessary in the public interest – that is:–

- in the interests of national security;
- for the prevention or detection of crime;
- for the enforcement of immigration controls or controls on illegal working;
- to secure the more efficient and effective delivery of public services.

7.3 The National Identity Scheme Delivery Plan 2008, published in March 2008 (see: <http://www.ips.gov.uk/identity/downloads/national-identity-scheme-delivery-2008.pdf>) set out the plans for introducing identity cards. This included the introduction of identity cards for foreign nationals which started from November 2008 under separate powers contained in the UK Borders Act 2007 (see: http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga_20070030_en.pdf).

7.4 The Delivery plan also made clear that the first identity cards issued to British citizens and European Economic Area nationals would be issued by the Home Office Identity and Passport Service under the Identity Cards Act 2006, starting in autumn 2009. These will be issued to critical workers at airports from 2009 and also to a limited number of volunteers with a focus on young people from 2010. Finally, from 2012, identity cards will be issued in high volumes alongside passports with applicants being enrolled on the national identity register and being given the option of a passport or identity card or both documents.

7.5 The reason that it is intended that initially identity cards will be issued to airside workers is to facilitate improvements to the pre-employment identity checking process for airside workers and so provide additional reassurance and security as to the identity of employees having access to the restricted airside area.

7.6 Criminal conviction certificates (also known as basic criminal record checks) are issued currently to airport employees in England and Wales as well as in Scotland by Disclosure Scotland, the criminal records agency in Scotland. The requirement for airside workers to obtain a basic criminal record check to prove that they do not have a UK criminal record is already a legal requirement imposed by a direction from the Secretary of State for Transport made under section 14 of the Aviation Security Act 1982 (see: http://www.opsi.gov.uk/acts/acts1982/pdf/ukpga_19820036_en.pdf). Thus once the criminal conviction certificate is designated, the requirement to have an

identity card will depend not only on the Identity Cards Act designation order, but also on the Aviation Security Act direction.

8. Consultation Outcome

8.1 A draft of these Regulations formed part of the 12 week consultation on draft secondary legislation under the Act which was contained in the document "Identity Cards Act Secondary Legislation – a Consultation", published on 21st November 2008. (see: http://www.ips.gov.uk/identity/downloads/NIS_Legislation.pdf).

8.2 The main issues raised in response to the consultation about the designation order related to the policy surrounding it including whether it was necessary in order to improve the security of the pass issuing process at airports, whether the designation process amounted to compulsory registration and finally whether the designation power would be extended to other groups of individuals who may be required to obtain a criminal record check.

8.3 The government view is that proposal to designate criminal conviction certificates for airside workers is justified and does not equate to compulsory registration as there would be no penalty imposed for failure to register. In addition the order only applies to people who require an airside pass and initially only at Manchester and London City airports. Following the consultation the designation order has been revised as a result of some minor drafting changes.

8.4 A summary of the consultation has been published and placed on the Identity and Passport Service website (at <http://www.ips.gov.uk/identity/index.asp>).

9. Guidance

9.1 Guidance and publicity will at first be limited to the 2 airports (Manchester and London City airports) where the Order will apply initially.

10. Impact

10.1 An Impact Assessment has been published to cover the regulatory and other impacts of the secondary legislation currently proposed under the Identity Cards Act including this Order (at <http://www.ips.gov.uk/identity/index.asp>).

The Impact Assessment includes 3 separate sections - Costs and Benefits, Equality, and Other Reviews (including competition, small firms, legal aid, sustainable development, rural proofing and privacy).

- The Costs and Benefits assessment concludes that the introduction of identity cards and the roll out of the National Identity Service will return a net benefit of £6 billion over a 30 year period.
- The Equality assessment focuses on the impact on people who will be affected by the initial introductory phases of the National Identity Service in relation to race, gender, gender identity, religion or belief, sexual orientation and age.
- The Other Reviews concluded that there was little additional impact. The privacy review acknowledged concerns expressed and set out safeguards that are in place or will be put in place to address those concerns.

11. Regulating small business

11.1 As part of the impact assessment mentioned above, an initial small firms impact assessment was conducted. It found that in the initial rollout phases of the service, the small volumes of cards in circulation means that the overall impact on the small business community will be negligible and would primarily fall on small firms employing airside workers. An assessment conducted with employers at Manchester and London City found that there was minimal impact thanks to the fee waiver for the first 18 months for airside workers. The results underlined that small firms do not want the application process to be unduly bureaucratic or cause further delay but would welcome steps whereby the identity card was used as a means to streamline existing pre-employment checks.

12. Monitoring and review

12.1 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 initial aviation industry partners – in particular Manchester Airport Group and London City Airport – will be amongst the participants in this evaluation.

13. Contact

13.1 Robin Woodland at the Home Office, Identity and Passport Service, Tel: 020 7035 8021 or email: robin.woodland@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.