



Identity Documents Bill (Bill 1)
House of Commons Second Reading
9 June 2010

ILPA BRIEFING

Introduction:

ILPA is a professional association with some 900 members (individuals and organisations), who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics and non-government organisations working in this field are also members. ILPA aims to promote and improve the giving of advice on immigration and asylum, through teaching, provision of resources and information. ILPA is represented on numerous government, court and tribunal stakeholder and advisory groups.

ILPA invites MPs to use the second reading debate to identify why the identity document for foreign nationals is not being repealed at the same time as the national identity card, a matter to which we should hope to return at further stages in debates on this bill.

Briefing:

The UK Borders Act empowers the Secretary of State to make regulations requiring anyone subject to immigration control to apply for a 'biometric immigration document'. These documents were subsequently referred to by the UK Border Agency and others in statements and press releases as 'ID cards for foreign nationals' and were included in the National Identity Scheme Delivery Plan 2008¹ where they were described as the first identity cards.

On 27th May 2010, the Home Office Identity & Passport Service issued a statement relating to this Bill². At the same time, a short document 'Cancellation of identity cards: FAQs' was issued³, which stated:

Are identity cards being cancelled?

Yes. The Government introduced the Identity Documents Bill to Parliament on 26 May 2010. The Bill makes provision for the cancellation of the UK National Identity Card, the Identification Card for EEA nationals and the destruction of the National Identity Register. The identity card for foreign nationals (biometric residence permit) is not being scrapped.

...

Is the identity card for foreign nationals also being scrapped?

No. The UK Border Agency (UKBA) will continue to issue biometric residence permits for non-EU nationals.

¹ Identity & Passport Service, March 2008

² This statement is available at: http://www.ips.gov.uk/cps/rde/xchg/ips_live/hs.xsl/1691.htm

³ The FAQ is available at: http://www.ips.gov.uk/cps/rde/xchg/ips_live/hs.xsl/1690.htm

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European law requires non-EU foreign nationals to be provided with biometric residence permits.

They are separate from the programme to introduce the UK National Identity Card and the Identification Card for EEA nationals, and are issued under entirely different legislation.

The biometric data is not kept on the National Identity Register.

It would be helpful if Ministers were to confirm whether the sole reason for retaining identity cards for foreign nationals, other than those exercising EEA free movement rights, is to comply with European law.

If not, what are the reasons for retaining these cards and the biometric registration scheme associated with them?

In evidence given to the Select Committee on European Scrutiny in 2006, Ministers of the previous Government explained that the biometric registration schemes they planned to introduce went further than European law requirements (this was referred to as the 'incremental' option), and at substantial additional cost – their projections at that time suggested that the additional costs were approximately £36 million in start up costs and £41 million per annum running costs.⁴

Liam Byrne MP, then Minister of State at the Home Office, suggested three benefits from this additional expenditure. The first of these benefits was that this would contribute "to the wider National Identity Scheme", which the present Government is now scrapping. The third of these benefits was for "compliance with EU legislation", but this did not and does not appear to make any sense since what the then Minister was apparently seeking to explain to the Committee were benefits in going beyond what was necessary for compliance. The second (and remaining) benefit was said to be simplification of immigration control, in relation to which the then Minister suggested that the UK plans would provide for greater security of biometric data and the identity cards.⁵

As regards these matters, the Select Committee on European Scrutiny concluded:

5.13 The implementation of the proposed Regulation, through either the 'minimum' or 'incremental' option would cost a great deal of public money, perhaps even more than (sic) the Government's current estimates. At present, the likely benefits appear intangible and we have seen nothing to show that they would exceed the estimated start-up and annual running costs.

The following year, the Committee agreed to clear the matter from scrutiny. Liam Byrne MP had then put revised figures before the Committee. While these revised the projected costs downwards, the then Minister made clear that the UK scheme would go further than required by European law and provided no new reasons for this.⁶ In July 2008, in supplementary written evidence to the Constitutional Committee, Tony McNulty MP, then Minister for Security, Counter-terrorism, Crime and Policing indicated that the "costs have risen from £182 million to £311 million" for a projected 10 years period.⁷

⁴ See European Scrutiny Committee 35th Report of Session 2005-06, 19th July 2006 HC 34-xxxv, page 19 et seq, para. 5.7

⁵ *op cit*

⁶ See European Scrutiny Committee 23rd Report of Session 2006-07, 15th June 2007 HC 41-xxiii, page 79 et seq, para. 20.9

⁷ See the annex to his supplementary written evidence to the Constitutional Committee published by the Committee in its 2nd Report of Session 2008-09 *Surveillance: Citizens and the State*, 6th February 2009 HL 18-II, page 352 et seq.

As to the obligations under European Union law, the relevant law is Council Regulation 1030/2002/EC⁸ as amended by Council Regulation 380/2008/EC.⁹ The UK voluntarily opted in to both instruments. Neither of these instruments contain any requirement for a central biometric database.

In 2009 the Home Office awarded a contract to IBM to set up the National Biometric Identity Service. We understand this to be a seven-year contract worth £265 million pounds and that it would have included information held on the National Identity Register, now being abolished.

Provision was made in statute for the National Identity Register. No such provision is made for the National Biometric Identity Service. It is created in reliance on general powers in immigration law and thus there are no specific statutory safeguards as to access to data and its storage and retention, but only those of data protection law and the common law. Meanwhile the UK Border Agency has taken further steps to collect information on foreign nationals. The UK Border Agency set out in its June 2008 document *Enforcing the Deal* that it intends to seek parliamentary approval to join CIFAS, the Credit Industry Fraud Avoidance System and share information on individuals with the private companies participating in the scheme, thus giving them access to certain data held on individuals. Parliamentary approval has yet to be sought. This raises the question of access to any database in a very acute form.

Also in 2007, the legislation currently underpinning the foreign nationals' biometric scheme was introduced to Parliament. The UK Borders Bill Public Bill Committee took expert evidence. Damian Green MP, now the Minister for Immigration, was a member of that Committee. In the debates on the UK Borders Bill which followed, he was critical of the then Government's claims as to the security of biometric data and identity cards stating that these flew:

...in the face of evidence from around the world, and of the expert evidence that we heard in Committee, that blind faith in biometric technology will not result in the solution that the Minister claims.¹⁰

What, if anything, does the Government consider to have changed since then?

On the introduction of the current Bill, Nick Clegg MP, the Deputy Prime Minister, has explained the Government's intentions in respect of identity cards and associated biometric and personal data:

*The wasteful, bureaucratic and intrusive ID card scheme represents everything that has been wrong with government in recent years.
By taking swift action to scrap it, we are making clear that this government won't sacrifice people's liberty for the sake of Minister's pet projects.
Cancelling the scheme and abolishing the National Identity Register is a major step in dismantling the surveillance state...¹¹*

Theresa May MP, the Home Secretary, described the Bill:

⁸ http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33043_en.htm

⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:115:0001:01:EN:HTML>

¹⁰ Hansard HC, UK Borders Bill Report stage, 9 May 2007 : Column 259

¹¹ See Identity & Passport Service statement of 27 May 2010 *op cit*

This bill is a first step of many that this government is taking to reduce the control of the state over decent, law-abiding people...¹²

If the scheme for identity cards and a national identity register for British nationals is wasteful, bureaucratic and intrusive, does the Government not consider that the same applies for a scheme that only affects foreign nationals?

Having regard to the absence of a satisfactory explanation from the previous Government for the expenditure on a foreign national's identity card and biometric scheme, does the Government not consider it prudent to revisit that scheme?

Given the skepticism previously expressed by members of the Government front bench, when in opposition, about claims made as to the security of that scheme, does the Government not consider the intrusion upon law-abiding foreign nationals to be equally unnecessary?

Finally, we are aware that many stereotypes prevail and people do continue to make assumptions about who, to them, looks or sounds as though they are a person under immigration control. Not every British citizen or person living in the UK free from immigration control possesses a passport. There are risks that stereotypes will play out in terms of demands that certain individuals produce biometric identity documents, documents to which they are not and never were entitled, because they not subject to immigration control.

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¹² *Op. cit.*