**ILPA Response to UK Border Agency Consultation on Compulsory Identity Cards for Foreign Nationals**

**Q1a Does the Code of Practice clearly distinguish between the likely primary and secondary compliance requirements of the forthcoming biometric regulations?**

**Tick Box** NO

**Explanation**

As per paragraph 2.2 of the Code the Secretary of State may impose a sanction on a person who fails to comply with either a primary or a secondary compliance requirement.

There is some suggestion (at 2.4) that failure to comply with a secondary requirement will 'normally result in the issuing of civil penalty notice'. There is some implication here that a civil penalty notice is the most likely penalty, but this is tempered by the use of the word 'normally'. It is also suggested at paragraph 6.2 that the civil penalty will be higher for contravention of a primary than contravention of a secondary requirement.

The word 'normally' is omitted in the case of sanctions for non-compliance with primary compliances. Is this intended to imply that an immigration sanction will normally be imposed? The Code should be clearer on this point.

If there is to be a distinction in the sanctions between non-compliance with primary and secondary requirements, then the two sets of requirements need clearly to be distinguished. At the moment this is not the case; a failure to notify a change in circumstances fits the definition of a breach of primary requirement ('to notify a change in circumstances which….') and of a secondary requirement ('notify the Secretary of State when he knows or suspects that the information provided in connection…has become false, misleading or incomplete').

Other than in relation to sanctions, the distinction between primary and secondary compliance requirements serves no purpose in the Code. As set out above, both primary and secondary breaches could result in the same penalties. Thus the Code fails clearly to make any distinction between primary and secondary requirements.

Breaches of certain secondary compliance requirements could result in the commission of breaches of immigration law that entail consequences, from criminal liability to administrative sanctions, whether or not under this code. These proposals sit on top of an elaborate framework of criminal offences for breaches of immigration law and administrative sanctions for the same (for example, the use of deception entailing mandatory refusal of an application under paragraph 320(7A) of the Immigration Rules as inserted by HC 321 Statement of Changes in the Immigration Rules). Thus the sum of consequences of a breach of a

'secondary requirement' could be just as serious as a breach of a 'primary requirement', albeit that not all the results will flow from the operation of this Code.

Q1b Do you think that any of the compliance requirements should be reclassified (i.e. a secondary compliance requirement re-classified as a primary compliance requirement?

See answer to question 1A above. We do not consider that the classification is serving any clear purpose in the Code and therefore consider suggestions for reclassification to be otiose.

**Q2 Does the Code of Practice clearly summarise the different sanctions which might be imposed?**

**Tick Box** NO

**Explanation**

See our response to question 1A above. The Code makes no clear statement of the hierarchy of preference: whether a penalty will normally be preferred to an immigration sanction, or *vice versa*. Seriousness is stated at 3.2 to be a consideration, but no indication is given as to which sanction is regarded as the more serious.

Is it the case that a penalty will be imposed save where a person cannot pay, in which case an immigration sanction will be imposed, giving rise to the unedifying prospect of a more severe penalty for the poor?

Or is the case that an immigration sanction will be preferred save where this cannot be imposed, in which case a penalty will be given?

Is the reason for the Code stating that 'normally' a civil penalty will be imposed for breaches of 'secondary requirements' that there are already ample immigration provisions under which immigration sanctions can be imposed for such breaches? If so this should be stated in terms.

Ministerial assurances have been given that the Code will address the question of appropriate sanctions. It does not, and therefore needs to be amended. We recall the comments of the Minister, Liam Byrne MP, Minister for Immigration, Citizenship and Nationality

> *"The Secretary of State would, of course, have the discretion to decide which sanction it was most appropriate to apply in any particular case. The intention would be to set out the* modus operandi *for that judgment to be exercised in a code of practice…" Hansard*, (HC UK Borders Bill Committee) 13 Mar 2007 : Column 285

The draft Code, at paragraph 3.3 states that the Secretary of State will not issue both a civil penalty notice and an immigration sanction for the same instance of non-compliance 'with one of the requirements of the biometric registration regulations'. The significance of the word 'one of the requirements' in that sentence is unclear and should be clarified.

As noted at paragraph 6.32 of the draft code, there is no power to imprison a person for failure to comply, although the draft code states that the offence of contempt may be

applicable. As set out in response to question 1A, the proposals sit within an elaborate framework of criminal offences for breaches of immigration law. Many of these are contained in the Immigration Act 1971 from s.25ff, but others relate to, for example, asylum support etc. and services. Thus imprisonment may flow from the same set of facts as give rise to a failure to comply.

Page 12 (Section 4) of the 6 March 2006 Home Office document *Introducing Compulsory Identity Cards for Foreign Nationals* makes clear that there will be a range of other consequences to not registering, albeit that these are not described as sanctions. If a person is wrongly treated as not complying with registration, or for due to some other administrative failing, these consequences may result. Such wrongful treatment or failing will not necessarily be the action of the State, but may be the action of third parties. We recall the comments of the Baroness Scotland of Asthal:

> "Employers and benefit providers will be able to check this biometric document and know whether a person is here legally and is entitled to work and/or to access benefits." Hansard*, HL Second Reading 13 Jun 2007 : Column 1709*

The wider framework of the results of being held not to comply may be relevant to those deciding which sanctions to impose.

Neither immigration sanctions nor civil penalties can simply ride roughshod over human rights and rights of third country nationals under European Union law. Therefore misuse of sanctions is likely to lead to
a) litigation where a person has representation or
b) breach of these rights where a person does not.

**Q3a Does the Code of Practice clearly outline the circumstances when an immigration sanction would not be imposed for failure to comply with a compliance requirement?**

**Tick Box** NO

**Explanation**

See comments under Question 2 above – immigration consequences may flow from the same set of facts as a failure to comply in any event. The distinction between whether they are sanctions under the Code or under another provision of immigration law may be less than apparent in practice.

Nor is it clear when a civil penalty would be preferred to an immigration sanction.

If, as per paragraph 5.11 a person to be granted leave as a refugee cannot be issued with an identity card (which will grant leave) until s/he applies for the card and complies with biometric identity procedures, this may result in breaches of the UK's obligations under the 1951 United Nations Convention relating to the Status of Refugees. This is because not having the card may affect entitlements. Article 1 of the 1951 Refugee Convention deals with who should be recognised as a refugee. The following articles deal with the rights and entitlements of refugees and it is here that the risk of breach arises.

Breaches of human rights may also result if a person whom it has been accepted cannot leave the UK, because to do so would entail breach of his/her human rights, is denied access to core entitlements.

Paragraph 5.11 of the Code states that where a person has ILR no immigration sanction will be imposed 'unless there are compelling reasons for doing so'. This is anything but clear as no guidance whatsoever is given as to what would constitute compelling reasons.

**Q3b Does the Code of Practice clearly outline the circumstances when the Secretary of State would refuse an immigration application and an application for an identity card for foreign nationals?**

**Tick Box** NO

**Explanation**
See explanation under Question 2 above and question 3 above.

**Q3c Does the Code of Practice clearly outline the circumstances when a person's existing leave to remain in the UK might be varied (curtailed) or cancelled?**

**Tick Box** NO

**Explanation**
See explanation under Question 2 above and question 3 above.

**Q4a Does the Code of Practice clearly outline the circumstances when the Secretary of State may issue a civil penalty notice?**

**Tick Box** NO

**Explanation**

See explanation under Q. 2 above. A statement such as that at paragraph 6.2 'The Secretary of State will consider issuing a civil penalty notice where the Secretary of State has decided not to vary (curtail) leave' is dependant for its clarity on whether it is clear where the Secretary of State will decide not to vary (curtail) leave. As stated above, this is not clear.

**Q4b How important should the following factors be in determining the amount of penalty?**

**Tick box** ILPA does not consider that a tick box formulation is suitable for response to this question.

Financial means must be taken into account when deciding what penalty to impose, not least because it is quite pointless imposing fines that can never be collected.

The question of the nature of the breach should also be taken into account if requirements of reasonableness are to be met, for example in cases of minor and inadvertent breaches. Paragraph 6.8, which states that there should only be a single discount for extenuating

circumstances, regardless of how many circumstances apply, appears incompatible with a 'reasonableness' approach.

**Q4c Which of any of the following should be considered as a 'designated responsible adult'?**

**Tick Boxes** ILPA does not consider that this question is susceptible of a tick-box response.

ILPA is opposed to the imposition of penalties where an under-18 has failed to comply with the biometric registration requirements. ILPA is also mindful of responsibilities under UK law to all children within the jurisdiction and that the withholding of entitlements from children because a biometric registration procedure has not been completed does not appear to be compatible with those responsibilities

We recall the comments of the Minister of State, Liam Byrne MP

> *"It is possible that parents could be designated, but so could permanent carers, relatives with parental responsibility for children in their care, or guardians. Of course, before we seek to draft the code we will consult local authorities and child exploitation and online protection teams, as well as Government and non-Government agencies." Hansard*, HC Report 29 October 2007 Col 540.

It is unclear whether this consultation is intended to meet that Ministerial undertaking. Its tickbox formulation is inadequate to do so. However, had there been prior consultation we regard it as unlikely that the list of options would be presented as it has been in this document. We suggest that family lawyers be asked to advise before a decision to go down the 'designated adult' be taken in this context, along with those identified by the Minister as persons to be consulted: the implications of having different people identified in law or otherwise 'designated' for particular purposes merit a full examination.

For clarity, the Code should contain an unequivocal statement that no immigration sanction will be imposed on under 18s.

As to the imposition of a civil penalty, the best interests of the child should be a primary consideration in these circumstances, and the imposition of a civil penalty on a parent should e considered in the light of this test.

**Q4d Does the Code of practice clearly outline the circumstances when a person might object and appeal to a civil penalty notice?** [sic.]

**Tick Box** None of the above.

**Explanation**

ILPA reads the question as intended to read 'object to and appeal against'.

Civil penalty procedures were first set out for carriers in part II of the Immigration and Asylum Act 1999. They were the subject of a challenge based on violations of Article 6 ECHR in *International Transport Roth Gnbh & ors v SSHD* [2002] EWCA Civ 158, [2003] QBD 728 and as a consequence amended by section 125 of and Schedule 8 to the Nationality

Immigration and Asylum Act 2002. When the government came to introduce a civil penalty regime for employers in the Immigration, Asylum and Nationality Act 2006 it sought to learn the lessons from the *Gmbh Roth* case. One distinction of course is that carriers and employers are likely to have more money (in most cases) and more knowledge of UK law and procedure in general, than individuals under immigration control. There are specific risks in relation to an individual of a breach of that person's rights.

A person has a right to object to a notice. This is stated in paragraph 6.14.

That only certain grounds will found an objection that stands a chance of being upheld, as per 6.15, does not affect that right. The grounds however should include as an express provision the ground that imposition of the penalty is not in accordance with the present Code. To impose a penalty that was not in accordance with the Code would not be reasonable, but we nonetheless consider that an express provision would be helpful.

Where imposing a penalty is contrary to the Code then cancellation of the penalty notice cannot be made conditional upon using a specified form or failing to respond within a specified time. The Code should make this explicit. Similarly where the Secretary of State is unreasonable in the amount of penalty imposed, she cannot hide behind the person's failure to use a particular form or adhere to a specific time limit.

Paragraph 6.13 proposes that a civil penalty notice may be served by facsimile or e-mail as well as by post. Is there a clearly stated obligation to tell the UK Border Agency about changes in fax numbers and email addresses? If not, then these service provisions cannot be fair. If there is an obligation to notify, and notification is given that a person no longer has a fax or an email address, the Code should make explicit that there can be no service to the last-known address.

The Code should state explicitly that there is a rebuttable presumption of deemed service. If for example an email is sent and an out of office auto-reply received then the presumption would be rebutted.

**Q4e Do you think 20 working days is a suitable period within which to object to a civil penalty notice?**

**Tick Box** NO

**Explanation**

See responses to question 4d above and to question 6a below.

A person who receives a warning notice may have no legal representative and not be expecting to need one. The procedure may be new and unfamiliar even if the person already has experience of making immigration applications (for example, appeals are handled in the county court, not the Asylum and Immigration Tribunal). The person may have few if any entitlements to basic sustenance in some cases - and no money to travel, to phone, to access the internet etc. All these affect the ability to find a legal representative. For these reasons 20 days is too short a time limit.

It has not been clarified whether people faced with a penalty notice will be entitled to legal aid for their challenge to that notice. Nor has it been made explicit whether it is intended that advice and representation in such cases can only be given by a person accredited to give immigration advice or provide representation, either by the Solicitors Regulation Authority or by the Office of the Immigration Services Commissioner (while dealing with proceedings in the country court may not require the giving of immigration advice, dealing with the underlying matters may require such advice to be given. If so, it is a crime under the Immigration and Asylum Act 1999 to give such advice in the course of a business whether or not for profit without the appropriate accreditation.). These matters need to be examined and clarified. Without such clarification there is a risk that people envisaged as acting as advisors will be unwilling to give advice for fear of breaking the law.

There is a statement, which has been confined to a footnote (footnote 7), that a warning may be given orally. All warnings should be given in writing. Time starts to run from the time that a warning is given and the warning notice is also intended to be specific, setting out the contravention, the sanction and ways to avoid the sanction. All these things may fall to be examined at a later stage of the process, or the person may wish to take advice on them, and in these circumstances an oral warning is insufficient. There is a risk that a person misunderstands the proposed sanction and that this affects what they say in their response, or what steps they take. This would not rule out service of a warning letter in person, but it is essential that there be a written record, of which both parties had copies, and this would assist in avoiding confusion at a later stage.

In the consultation paper, the use of the word 'sanction is confusing; in some places it refers to both civil penalties and immigration sanctions, in others just to immigration sanctions. A warning letter must avoid such ambiguity.

**Q5a Does the Code of Practice clearly outline the circumstances when the Secretary of State would consider the person to be vulnerable?**

**Tick Box** NO

**Explanation**

Members' experience is that vulnerability is frequently a matter of dispute by the UK Border Agency. One group stated to be vulnerable in the draft Code are people who have been trafficked, but as members have observed, for example in the handling of cases in the Detained Fast Track (people who have been trafficked are not considered suitable for the Detained Fast Track), whether people have been trafficked is frequently a matter of dispute. The reference (in bold) in the consultation paper to **satisfactory evidence** gives some notion of the problem.

The UK Border Agency policy, set out in its 'Suitability List' for the Detained Fast Track is that claims

*'Where there is independent evidence from a recognised organisation, e.g. the Poppy Project, that that the claimant has been has been a victim of trafficking are unlikely to be accepted into the detained fast track process'*[1].

On 3 October 2007, the Strategic Director for Asylum in the Border and Immigration Agency, wrote to Asylum Aid and the Anti-Trafficking Legal Project (AtLeP), who had requested that referrals of cases in the Detained Fast Track to the Poppy Project be treated in the same way as referrals to the Medical Foundation for the Care of Victims of Torture (i.e. a decision to assess would lift the case out of the fast track saying

*'In relation to your recommendation that upon receipt of a letter from the Poppy Project stating that they wish to assess a woman in the detained fast track, the case should be taken out of the fast track. I understand your concerns but I am afraid that it is not possible to release these individuals from the detained fast track until they have been interviewed/assessed. We will do all we can to work with the UKHTC [UK Human Trafficking Centre] and Poppy to try and ensure that the assessment is done within a reasonable time frame. If, following an interview/assessment, a representative from the Poppy Project or the UKHTC has reasonable grounds to believe that an individual has been trafficked, we already try to release them as quickly as possible, usually within 24 hours.'*

This gives an idea of the difficulties we anticipate.

The word 'satisfactory' is repeated in paragraph 7.3 on serious medical conditions but no indication is given of what satisfactory is intended to mean.

The Code then deals with people who lack capacity. ILPA is pleased to see references to the tests in the Mental Capacity Act 2005 and the Adults with Incapacity (Scotland) Act 2000. ILPA is however concerned that no mention is made of the situation where a person lacks capacity because of his/her extreme youth. Contrary to the requirements of European Union law, notably the 'Reception Directive' (2003/9/EC) and the Asylum Procedures Directive, no provision is made for guardians for unaccompanied children in UK law. There will be many situations where no one in the UK (and indeed no identifiable person anywhere) has parental responsibility for such a child[2]. The Code is silent on what is to happen to such children.

ILPA's concern is that the biometric identity document is a passport to other entitlements. It would be a matter of grave concern if a person who lacked capacity were kept out of his/her entitlement while efforts were made to resolve the question of capacity.

Given the very tests of vulnerability in the draft Code, ILPA finds it both surprising and highly regrettable that it is envisaged that sanctions should ever be imposed on a vulnerable person.

**Q6a Does the Code of Practice clearly outline the circumstances when a sanction would not be imposed?**

[1] Border and Immigration Agency *Asylum Process Instruction Suitability for Detained Fast Track and Oakington processes* 28 July 2007

[2] See ILPA's April 2008 response to the UK Border Agency Consultation on a Code of Practice for keeping children safe from harm for a more detailed discussion.

**Tick Box** NO

**Explanation**

The draft Code refers to satisfactory evidence but gives no clue as to what might be accepted as satisfactory. In theses circumstances, it is unclear when a sanction would be imposed.

The problem is compounded by other statements in the list such as 'the person is able to provide a credible explanation that he did not receive a notice…'. There is no objective test for 'credible' and we know only too well from past experience that this tends simply to boil down to whether the Secretary of State believes the person or not. It is not a test that offers any clarity.

It is stated at 8.2 that it is expected that cases where a sanction will not be imposed will be very rare. This adds to the lack of clarity; the list of examples does not appear to be that of cases that will be rare. Language difficulties, for example, may well be frequent. A person will see that they have an official letter they do not understand and may simply put it aside to show to their solicitor, if any, when next they meet, or to raise when they find someone who may be able to assist. Similarly where there are problems with the service of documents.

**Q6b Do you think there are any other circumstances in which the Secretary of State should consider not issuing a sanction for non-compliance?**

**Tick Box** YES

**Explanation**

The Secretary of State is bound by the law to act reasonably and to respect a person's human rights. This involves taking into account all the circumstances of the case. Ministerial assurances have been given on this point. We recall the comments of the Lord Bassam, Minister of State:

> *"…before the Secretary of State imposes a sanction, he or she – she at present – will, of course, consider all relevant circumstances. That will include reasons why the person did not comply… a test of reasonableness will be in place."*
> Lord Bassam of Brighton, Minister of State, *Hansard*, HL Report, 5 July 2007, col GC173.
>
> *"We will fully and amply publicise any changes to the circumstances in which a holder of a biometric immigration document is required to notify the Secretary of State so that people are aware… …if someone has missed the announcement of a change in circumstances, we will be sensitive and will think very carefully before imposing any sanction. We have to operate the system reasonably." Ibid*. Cols GC162-163.

It would be appropriate for the Code to contain express reference to these undertakings and to the obligations they impose.

**Q7 Other comments.**

The Code says nothing about charging for the cards, or about the circumstances in which fees will be raised. We should expect to see this topic covered.

The Code (paragraph 5.9) is unclear on the scope of the Asylum and Immigration Tribunal's jurisdiction. The word 'validity' of the Secretary of State's decision is used. It is unclear what this is intended to mean: it may be read as suggesting that the AIT will have jurisdiction to consider only the procedural propriety of the refusal of an application for leave or the curtailment of such an application, rather than examining the merits of the case. The Code does not create these rights, it merely reflects what is set out in statute. It should be more clearly drafted, making clear that on appeal the AIT deals with the merits of the decision to refuse leave.

Where an appeal is allowed the Code should set out a time limit within which the Secretary of State should issue a card to the successful appellant.

Re paragraph 6.12 and the content of the civil penalty notice: a civil penalty notice should make explicit any possibility of a costs sanction if a person appeals and loses.

The Code does not appear to set out a time limit for appealing to the County Court against the imposition of a civil penalty notice. This should be set out.

We recall the Minister's statement that

> 'We are trying to align the civil penalty regime with the penalty regime that was proposed and passed by Parliament under the Identity Cards Act 2006. We did not want a separate scheme in which there would be one kind of civil penalty for non-compliance under the 2006 Act and another that would kick in under the Bill's biometric immigration document provisions." *Liam Byrne, Minister for Immigration, Citizenship and Nationality* Hansard, *HC UK Borders Bill Committee 13 March 2007, col 291.*

Given that statement, this consultation and the Code have profound implications not only for foreign nationals but for all in the UK who may in future be obliged to carry ID cards.

ILPA reiterates members' very grave concerns about biometric identity cards, as raised in ILPA briefings on the UK Borders Bill and in evidence to the Public Bill committee considering that Bill. Those documents indicated our support for Liberty's position and briefings. Liberty stated in their briefing to the Public Bill Committee (available at http://www.liberty-human-rights.org.uk/pdfs/policy07/uk-borders-committee-commons.pdf):

> *'Liberty's principal concern over the creation of biometric immigration documents is that they have the potential to be used as a form of internal immigration control. We have expressed concerns before about the way Identity Cards might be used in this manner, despite the ID Card Act 2006 stating that regulations requiring people to carry identity cards cannot be passed. The fact that there is no such restriction on regulations here makes the use of documents for internal immigration control more likely.… Once the documents have been brought in it is easy to see how people who do not 'look like' EEA citizens will be regularly asked to establish their status. Those who do not originate from the EEA come from any number of countries and a variety of ethnicities. We are, however, concerned that it will be predominantly black and minority ethnic people who are required to satisfy immigration officers of their status. The creation of the biometric immigration document has the potential to be racially divisive.'*

All ILPA's concerns over identity cards, the discriminatory impact of the introduction of identity cards for immigrants before British nationals, and for certain classes of immigrants before certain other classes, stand.

Other specific concerns ILPA highlighted in its own briefings on the UK Borders Bill and reiterates here are:

- the breadth of the provisions - the data (including non-biometric) that may be held under these provisions, the purposes for which it may be used, the length of time over which it may be held and the breadth and variety of places to which it may be passed – the Liberty briefings provide more detail;
- the failure to make provision in the UK Borders Act allow for clear limitations on the purpose for which regulations may be introduced, in particular the lack of limitations on implementation and information storage;
- the significant scope for errors in systems seeking to match biometric data, as highlighted by those giving evidence to the Public Bill Committee. ILPA concludes that claims made by Ministers during the passage of the UK Borders Act 2007 about the security of biometric systems are not justified.
- powers to disregard or refuse an application as a penalty for non-compliance with biometric registration or to cancel or vary leave to enter or remain risk putting the UK in breach of its obligations under the 1950 European Convention on Human Rights, the 1951 United Nations Convention Relating to the Status of Refugees and European Community law.
- what seems certain to be the substantial cost of biometrics. Large increases have recently been made to many immigration applications. ILPA and others have pointed to the potentially prohibitive size of some of these increased charges and are concerned that charges connected with biometric registration risk new and very large increases to the cost of immigration applications is a serious concern.
- the risk that a person who has applied for an extension of leave (and whose entitlements continue until that application is decided) will be unable to demonstrate their continuing entitlement.

We have further concerns as to the data (including non-biometric) that may be held under these provisions, the purposes for which it may be used, the length of time over which it may be held and the breadth and variety of places to which it may be passed. Liberty has provided more extensive briefings on such concerns.

Given the above we consider it vital that people are entitled to copies of the biometric data held on them. This would be very useful in the event of records getting mixed up by the agencies operating the scheme.

> *"We will fully and amply publicise any changes to the circumstances in which a holder of a biometric immigration document is required to notify the Secretary of State so that people are aware… …if someone has missed the announcement of a change in circumstances, we will be sensitive and will think very carefully before imposing any sanction. We have to operate the system reasonably."* Lord Bassam of Brighton, Minister of State, *Hansard*, HL Report 5 July 2007, cols GC162-163.

It would be appropriate for the Code to contain a reminder of this.

The consequences of not registering, in terms of entitlements, taken together, form a powerful incentive to get a card. If one of the principles behind a sanction is to create an incentive for compliance, one may speculate that sufficient incentives are built into the system to persuade a person to comply (or to seek to obtain a false British passport and thus sidestep the system altogether. There can be no doubt that a risk of the scheme is that it increases the scope for those who profit from making forged identity documents to do so).

If and when ID cards are introduced for British Citizens the range of possible sanctions on offer (allowing for the possibility of further legislation) might include civil penalties, criminal sanctions, and of course the consequences that will also affect foreign nationals such as loss of entitlements – e.g. to social benefits. There will be no scope for imposing immigration sanctions.

We recall the Minister's statement in parliament that

> *"Biometric immigration documents can be designated under the terms of the Identity Cards Act. Obviously, in their original issue they will not be so designated, but that will be possible in future, and cardholders will come under the protections that become available to people under that Act." Liam Byrne MP, Minister for Immigration, Citizenship and Nationality Hansard, HC Report 29 October 2007, cols 536-537.*

Until such time, if any, as the Identity Cards Act becomes law and biometric immigration documents are designated, all the protections that would be available to card holders under that Act should be available to foreign nationals holding biometric ID cards.

ILPA has already voiced[3] considerable concern at the prospect of the documents being sent out from the production centre by post. This raises security questions and we suggest that as a minimum standard, cards be sent out using the Royal Mail Special Delivery service. Delivery time (and, again, not just the actual length of delivery time but its reliability and consistency) is also a concern. Applicants and representatives being able to collect cards would offer a measure of protection, although, of course, we do not yet know whereabouts in the UK the cards will be produced. If the eventual location is remote, perhaps there could be a bulk transfer of cards overnight to one or more alternative locations (including central London) from where they could be collected.

It was understood from the workshop at 17th December that the postal service is expected to maintain an end- to-end service time of 20 days. We do not yet know how far in advance appointments will be booked up, and this is likely to vary from one collection centre to another. Postal time (in and out) added to validation time, time spent waiting for an available appointment and attending it, as well as subsequent caseworking time. We are concerned that people might be kept out of their entitlements for a significant period while waiting for a card.

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May 2008

[3] At the then Border and Immigration Agency's December 2007 workshop.