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# *The Identity Cards Bill*

**Bill 8 of 2004-05**

The *Identity Cards Bill* was introduced into the House of Commons on 29 November 2004 and is due for Second Reading on 20 December 2004. Explanatory Notes to the Bill have also been published [Bill 8-EN].

The Bill establishes the framework for the introduction of a national compulsory identity cards scheme based on secure, biometric information.

This paper looks at the Bill itself, the consultation and draft legislation which preceded its publication, and the arguments which have been advanced for and against such a scheme. It also reviews the previous history of identity cards in the UK and describes the proposed use of biometrics in the new cards.

Philip Ward

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## Summary of main points

Identity cards existed in the United Kingdom during the two World Wars, but there has been no national scheme since 1952. Although British governments in the 1990s examined options for reintroducing a national scheme, it was the terrorist attacks of 11 September 2001 which gave fresh impetus to the idea. In November 2003 the Government announced its intention to build the base for a new national identity cards scheme based on secure, biometric data.

The *Identity Cards Bill* was published on 29 November 2004 and draws on preparatory work by the Home Office, beginning with a consultation launched in July 2002. A draft bill was published in April 2004. The draft Bill was scrutinised by the Home Affairs Committee as part of an inquiry into all aspects of identity cards, and the Bill now before Parliament incorporates recommendations made by the Select Committee in its report.

The Government has stated that it expects the Bill to bring the following benefits:

- a reduction in illegal migration and illegal working; and better community relations as a result
- an enhancement to the UK's capability to counter terrorism and serious and organised crime
- reduced identity fraud
- more efficient and effective delivery of public services

Key elements of the Bill include:

- A definition of the statutory purposes of the identity cards scheme
- Establishment of the National Identity Register
- Provision of powers to issue identity cards
- Measures to ensure that checks can be made against other databases to confirm an applicant's identity and guard against fraud
- A definition of what information will be held and what safeguards will be put in place
- Measures to enable public and private sector organisations to verify a person's identity by having it checked against the National Identity Register
- A clear statement of the limitations on the information which is held on the National Identity Register and which can be checked via the verification service
- Creation of new criminal offences on the possession of false identity documents, including genuine documents that have been improperly obtained or relate to someone else
- Appointment of a new regulator in the person of a National Identity Scheme Commissioner
- The provision of enabling powers so that in the future access to specified public services could be linked to the production of a valid identity card
- Provision of a power at a future date for it to become compulsory to register and be issued with a card, including penalties against failure to register

The Bill is essentially an enabling measure, setting a framework for the introduction of the scheme but leaving much detail for Regulations to be issued later. It applies to the whole of the United Kingdom (although certain clauses grant certain powers to the devolved assemblies).

Critics of the Bill argue that the scheme would have a negligible impact on crime and terrorism, would impact disproportionately on ethnic minorities, represents a serious threat to time-honoured civil liberties, would be costly to implement and uses untested new technology.



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## I History to 2003

Although there is no current legislation providing for such cards, there have already been several identity card schemes in the UK.<sup>1</sup> The *National Registration Act 1915* required the setting up of a population register covering England, Wales and Scotland of all persons aged between 15 and 65. The information was used as an aid to military conscription and to ensure that the available workforce was used to best effect. A certificate of registration was issued to everyone on the Register setting out their personal details. Although not called an identity card, that in effect is what it was. In 1918 an amendment to the Act was passed requiring the production of a certificate on demand to a police officer or other authorised person.

The registration requirement was withdrawn at the end of the First World War but planning for a revised system was undertaken in the 1930s. This enabled a much more comprehensive national registration scheme to be introduced at the outbreak of the Second World War, covering all civilians (members of the armed forces had their own cards) and requiring the carrying of an identity card at all times. Cards were introduced as a security measure and a means of enforcing conscription and continued after the War to help in the administration of food rationing. They were also used as the basis for electoral registration for the 1945 General Election. Under the *National Registration Act 1939*, police officers had the power to require production of a card on demand, but if the individual could not show it he had 48 hours in which to present it at a police station.

The wartime scheme was finally ended in 1952 following a successful challenge in the High Court. The case (*Willcock v Muckle*) concerned a motorist, not suspected of any crime but required to produce his card by a police officer, who argued that it was wrong for the authorities to continue to use a power granted in a national emergency when that emergency no longer existed. Although only three administrative uses were envisaged for the cards in 1939 (national service, security and rationing), by 1950 thirty-nine government agencies were making use of the records for a variety of services. At the time of their abolition, preventing bigamous marriages had become one of the main arguments in favour of retention.<sup>2</sup>

Since the ending of the wartime scheme interest in identity cards has resurfaced at intervals in Parliament and the media.<sup>3</sup> The *Football Supporters Act 1989* provided for a membership scheme for supporters involving identity cards, but the membership scheme was never implemented. In May 1995 the then Conservative Government published a

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<sup>1</sup> The following summary draws on: Home Office, *Identity cards: a consultation document*, Cm 2879, May 1995, pp6-7.

<sup>2</sup> Information Commissioner, *Response to the Government's consultation on legislation on identity cards*, July 2004, p4

<sup>3</sup> For a survey of this subject to 1993 see an earlier Library Research Paper, *Identity cards* (93/112, 6 December 1993)

Green Paper on identity cards, setting out a range of possibilities. The principal options were:

- a) no new card of any kind
- b) use of the photographic Driving Licence (then only a proposal) as a de facto voluntary identity card
- c) including information on the photographic Driving Licence which would enable it to serve as a voluntary identity card
- d) a new voluntary identity card, which would also serve as a valid travel card within the European Economic Area<sup>4</sup>
- e) a new high-tech card, which would serve a number of different functions, including that of a voluntary identity card, and
- f) a compulsory card.<sup>5</sup>

Following the Government's consultation process, which ended in September 1995, the then Home Affairs Committee undertook an inquiry into the issue. The Committee's general conclusion was:

For us, the balance of advantage to the individual citizen and to the public as a whole is in favour of the introduction of some form of voluntary identity card, subject to the proviso that the particular card is sufficiently reliable, is sufficiently widely held, is accompanied by protections for civil liberties, and does not entail disproportionate cost.<sup>6</sup>

The Committee's preferred option for the card itself was the photocard driving licence, with additional voluntary information, such as address and nationality, issued on the basis of a much stricter process than that for the issue of driving licences and supported by a database developed from scratch, to avoid importing errors from existing databases.

In its response to the Committee's report,<sup>7</sup> the then Government stated that it intended to introduce such a voluntary card scheme and announced, in the Queen's Speech opening the 1996-97 Session of Parliament, that it would publish a draft Bill on the introduction of voluntary identity cards. However, the Session was curtailed by the calling of the May 1997 General Election and no draft Bill was published.

The subject was not high on the agenda of the incoming Labour administration:

**2. Mr. Dale Campbell-Savours (Workington):** If he will make a statement on the Government's policy towards the use of identity cards. [85565]

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<sup>4</sup> The EU countries, plus Norway, Switzerland, Iceland and Liechtenstein

<sup>5</sup> Home Office, *Identity cards: a consultation document*, Cm 2879, May 1995, pp33-4

<sup>6</sup> Home Affairs Committee, *Identity cards*, 26 June 1996, HC 172-I 1995-96, xxxix, para 126

<sup>7</sup> *Government reply to the Fourth Report from the Home Affairs Committee, session 1995-6*, Cm 3362, August 1996, p11, para 61

**The Secretary of State for the Home Department (Mr. Jack Straw):** I see no arguments to convince me in favour of compulsory identity cards whereby a failure to carry a card in a public place would become a criminal offence. Subject to that caveat, we keep under review the balance of advantages and disadvantages that national identity cards could bring.<sup>8</sup>

However, the terrorist attacks of 11 September 2001 led to renewed interest in the possibility of a national scheme:

**Mr. George Howarth:** To ask the Secretary of State for the Home Department what recent representations he has received on a national identity card.

**Mr. Blunkett:** After the terrorist atrocities in the United States of America on 11 September, the issue of introducing an identity card scheme was raised by many people. I have received over 600 letters from right hon. and hon. Members and members of the public on identity cards since September 2001.

At the time the Government said that we were not planning to introduce an identity card scheme as part of our response to the events of 11 September, but that the policy was being kept under review. We said that we were considering whether a universal entitlement card which would allow people to prove their identity more easily and provide a simple way to access public services would be beneficial. We also said that a scheme could help to combat illegal working and it could also reduce fraud against individuals, public services and the private sector.<sup>9</sup>

Mr Blunkett went on to say that the Government was preparing a consultation paper on identity cards. This duly appeared in July 2002 as *Entitlement cards and identity fraud*.<sup>10</sup> A summary of findings from the consultation exercise was published in November 2003.<sup>11</sup> The detailed Government response to the Consultation Points was placed on the Home Office website.<sup>12</sup> At the same time as publishing the findings, the Government announced its decision to build a base for a compulsory national identity cards scheme. *Identity Cards: the next steps*<sup>13</sup> set out in more detail how the Government intended to proceed. In November 2003 the Home Affairs Committee announced that it would be conducting an inquiry into the Government's proposals for an identity cards scheme.<sup>14</sup>

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<sup>8</sup> HC Deb 14 June 1999 vol 333 cc2-3

<sup>9</sup> HC Deb 5 February 2002 cc 872-3W. It is also worth noting that, early in 2002, Dr Nick Palmer (Lab) made an unsuccessful attempt to bring in a ten-minute rule bill to provide for identity cards, both to reduce "low-level crime and disorder" and to verify entitlement to services (HC Deb 23 January 2002 cc905-11)

<sup>10</sup> Cm 5557.

<sup>11</sup> *Identity cards: a summary of findings from the consultation on entitlement cards and identity fraud*, Cm 6019

<sup>12</sup> [http://www.homeoffice.gov.uk/docs2/governments\\_resp\\_031111.pdf](http://www.homeoffice.gov.uk/docs2/governments_resp_031111.pdf)

<sup>13</sup> Cm 6020, November 2003

<sup>14</sup> Terms of reference at:

[http://www.parliament.uk/parliamentary\\_committees/home\\_affairs\\_committee/hac\\_031118\\_45.cfm](http://www.parliament.uk/parliamentary_committees/home_affairs_committee/hac_031118_45.cfm)



## II Existing schemes

There are already various national voluntary proof-of-age schemes, prompted by concern about alcohol sales to the young and backed by industry. One such is the CitizenCard, launched in February 1999, operated by a non-profit company. According to its website, “CitizenCard is accepted around the world by retailers, airlines, banks and other organisations that need to see authenticated photo-ID”:

The scheme's guarantors are commercial organisations that wish to develop a comprehensive and autonomous photo-ID and proof-of-age scheme: Association of Convenience Stores, Camelot, Experian, Ladbrokes, National Federation of Retail Newsagents, Somerfield and Tobacco Manufacturers Association.<sup>15</sup>

Another scheme, the Connexions Card, is a Government initiative under the Connexions Service, the advice, guidance and personal development service for all 13 to 19 year olds in England. The Card service operates as a public-private partnership with Capita and is intended by the Government to “provide a powerful incentive to young people to stay in learning”.<sup>16</sup> The Connexioncard website describes the card as follows:

The Connexions Card is a secure smartcard, designed specially for you, which allows you to collect reward points for learning, work-based training and voluntary activities. These can be exchanged for discounted and free goods and services and other rewards, including some exclusive 'money can't buy' experiences. The Card can also be used for on-the-spot discounts and special offers from outlets and business displaying the Connexions Card window sticker. The Connexions Card is available free to all 16-19 year olds in England.<sup>17</sup>

An electronic chip is used to store personal details such as date of birth, which enables the holder to use the card as proof of age. It can also be used by the school or college as an electronic record of attendance. The Connexions Card is optional; however, if a school wishes to use the Card to record attendance data then a pupil would have to carry one on school premises.

Since 2002 asylum-seekers in the UK have been issued with an Application Registration Card. This is a “smart card” containing a photograph and fingerprint data, which is checkable on existing immigration and fingerprint system equipment. It also has “up-to-date security features” designed to “improve document security and allow fast identity verification”.<sup>18</sup> Asylum-seekers need to present their card in order to access the services

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<sup>15</sup> <http://www.citizencard.net>

<sup>16</sup> HC Deb 18 July 2001 vol 372 c256W

<sup>17</sup> <http://www.connexioncard.com/x/c/cxc.jsp%3FP1%3DABCX>

<sup>18</sup> Home Office press notice 266/2001, *Radical reform unveiled for more robust asylum system*, 29 October 2001

provided for them. Up to the end of March 2004, approximately 200,000 Application Registration Cards had been issued.<sup>19</sup>

Most EU countries already have national identity cards (the exceptions are Denmark, the Irish Republic and the UK). A comparative table printed in the 2002 Home Office consultation document indicated that possession, and usually the carrying of, such cards is compulsory in Belgium, Germany, Greece and Spain. Voluntary national ID cards are in place in Austria, Finland, France, Italy, Luxembourg, Netherlands, Portugal and Sweden. With the exception of Austria, the cards all include the bearer's photograph. There are no such schemes in the USA, Australia, New Zealand or Canada.<sup>20</sup> A proposal in Australia to introduce a card in 1986 was withdrawn by the government following popular opposition. This distinction between Continental Europe and the English-speaking world prompts one critic to observe that “there has been no successful introduction of an identity card scheme in any other country with a system of common law”.<sup>21</sup>

### III The draft Bill

The *Draft Identity Cards Bill* was published on 26 April 2004 as part of a larger consultation document, *Legislation on identity cards: a consultation* (Cm 6178). Following the appearance of the draft Bill, the Select Committee announced that it would widen the scope of its inquiry to take account of the draft Bill.<sup>22</sup> The Committee published its report into identity cards and the draft bill on 30 July 2004.<sup>23</sup> While broadly supportive of the idea in principle, the Committee was critical of detail – or lack of it – in the Government’s proposals:

The Committee concludes that the ID card scheme should go ahead and says it can make a real and important contribution to the fight against organised crime and terrorism by disrupting the use of multiple identities, identity fraud and related crimes like money laundering. An ID card scheme, accompanied by wider enforcement measures, could play a significant role in helping to reduce illegal working and immigration.

The report notes it would be easier to establish entitlement to public services and to prevent abuse and says the scheme has the potential to help with joined up government.

Civil liberties objections to the scheme were carefully considered. Whilst recognizing that it would change the relationship between citizen and state, the

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<sup>19</sup> HC Deb 22 June 2004 c1351W

<sup>20</sup> Home Office, *Entitlement cards and identity fraud: a consultation paper*, Cm 5557, July 2002, Annex 3, pp87-93

<sup>21</sup> Rachel Brailsford, “Identity cards: next steps”, *JUSTICE Journal*, 2004, 1(1), p82

<sup>22</sup> Home Affairs Committee press notice, *Home Affairs Committee to scrutinise ID cards bill: Denham pledges “thorough examination”*, 26 April 2004

<sup>23</sup> Home Affairs Committee, *Identity cards*, 30 July 2004, HC 130 2003-04, 2 vols

report concludes that identity cards should not be ruled out on grounds of principle alone: the test should be whether the costs are proportionate to the benefits. International experience indicates that compulsory and voluntary ID cards and population registers operate successfully in other countries. The Committee concludes that the Government has made a convincing case for proceeding with the introduction of identity cards.

However, the Committee is concerned about the lack of clarity over the scheme's scope and practical operation: the report warns that key elements in the proposal are poorly thought out and that the draft Bill goes far wider than is necessary to introduce a simple system to establish and demonstrate identity.

It is unclear how the card and the register will work in practice. The Government should clarify the number, type and costs of card readers and supporting infrastructure required by the scheme. It should also be clear about the number and level of checks on card use that it anticipates.

Stressing that the detailed design of the ID card and the national identity register is critical to its successful operation, the Committee calls for the current proposals to be open to wider scrutiny by technical experts and the public. Concerns were also raised about commercial confidentiality and the current IT procurement process with MPs concluding that more openness is needed.

The report expresses concerns about the proliferation of Government databases and says that an opportunity for joined up Government is being missed. It notes the significant overlap between the General Register Office's proposal for a UK population register—the Citizen Information Project—the proposed identity cards database and other databases. MPs believe that there should not be a central database holding all individual information, but the identity card should enable access to all Government databases.

The Committee makes a number of recommendations to strengthen the draft Identity Card Bill, including a clear statutory aim for the ID card scheme, a powerful and independent regulator, and new primary legislation before a compulsory scheme is introduced.<sup>24</sup>

Two members of the Committee, David Winnick and Bob Russell, remained unpersuaded of the need for an ID card scheme and dissented from the conclusions of the report. Their minority report appears as an amendment in the published document.<sup>25</sup>

The Government's immediate response to the Select Committee report was given in a statement by the Home Secretary:

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<sup>24</sup> Home Affairs Committee press notice, *Committee backs ID cards but criticises implementation and proposed draft legislation*, 30 July 2004

<sup>25</sup> Home Affairs Committee, *Identity cards*, 30 July 2004, HC 130-I 2003-04, pp85-92. The amendment was rejected by a majority of 5-2.

"I am pleased that the Home Affairs Select Committee report confirms that the Government's plans for a compulsory ID cards scheme will deliver real benefits, in particular making a significant contribution to tackling organised crime, terrorism, illegal working and illegal immigration. They also make clear that they believe that 'it is possible to deliver the project on time, to specification and to cost'.

"ID cards will bring enormous benefits to us as individuals and as a society. The Government is acting now to prepare the UK for 21st century challenges such as crime, security, the speed and nature of communication and international travel, and the number of sophisticated and complex transactions that we as individuals need to do effectively and securely. We need to have the freedom to live without being exploited, to prove quickly and decisively who we are and to travel freely. And we need to ensure the security of our country and make sure that our public services are only used by those who are entitled to them.

"The Government and the public - and the HASC - believe that the project will deliver real benefits and should go ahead. The remaining questions are, naturally, about the detail of the scheme.

"We have always made clear that there will be guarantees against 'function creep' once the features of the national identity register are agreed. Our draft bill explicitly prohibits holding information such as criminal convictions and tax records on the national identity register, and makes clear that Parliament will have to approve when the scheme will become compulsory and how it could be used to access public services. There will be strong and proper oversight of the scheme to prohibit unwarranted access to personal data.

"I do not accept that it is appropriate to release detailed, market-sensitive information about the financial and contractual aspects of the scheme at this stage. I understand the desire for more information, but we need to balance this with our duty to ensure we get the best value for money for the taxpayer.

"We are at the early stages of what is an ambitious, long-term project, and we have made it clear from the outset that this will take a number of years to put in place. We are committed to wide consultation and debate on our proposals. That is why we have published a draft bill for detailed scrutiny, and I look forward to that constructive discussion continuing. We will consider fully the HASC's many comments and suggestions as we progress with our consultation."<sup>26</sup>

The Government's formal reply to the Committee was published in October (as Cm 6359). In response to comments, they announced some refinements to the proposed scheme, namely:

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<sup>26</sup> Home Office press notice STAT 033/2004, *Response to Home Affairs Select Committee report on identity cards*, 30 July 2004

- A single, universal ID card for all UK nationals, to be issued alongside passports. This will simplify the operation of the scheme, and reflects public support for a universal card.
- A simpler, more effective structure to deliver and run the scheme. A new executive agency will be set up incorporating the UK Passport Service and working closely with the Home Office's Immigration and Nationality Directorate.
- The verification process will be simpler and more secure. There will be a standardised on-line verification service which will make the system more secure against fraud and provide a full audit trail.<sup>27</sup>

These proposals, accepted by the Government, are reflected in the substantive Bill now before Parliament. In most respects, the final form of the Bill is similar to the draft. One significant alteration is that the term "ID card" no longer refers to any card that may be so designated from a "family" of identity documents. In the consultation launched in April 2004, the Government spoke of the driving licence or passport "doubling" as an identity card.<sup>28</sup> It has now been decided to uncouple these documents and issue the ID card as a stand-alone document.

#### **IV The *Identity Cards Bill***

A substantive Bill was promised in the Queen's Speech on 23 November and given First Reading on 29 November.<sup>29</sup> Together with the Bill, the Government published detailed Explanatory Notes on clauses, a Regulatory Impact Assessment (RIA) and a Race Equality Impact Assessment. All these documents are available on the Home Office website.<sup>30</sup> On the front of the Bill the Home Secretary states that, in his view, its content is compatible with the European Convention on Human Rights. Since immigration and nationality are reserved matters, the Bill applies to the whole of the United Kingdom. However, the legislation allows devolved administrations in Wales and Northern Ireland to make regulations making the production of an ID card a condition of providing a public service for which these administrations are responsible (**clause 15(1)**), and any requirement for production of an ID card to be a condition of a public service in Scotland which is within the legislative competence of the Scottish Parliament would require authorisation by an Act of the Scottish Parliament (**clause 44(2)**).

The Government has said that it expects the Bill, if passed, to lead to:

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<sup>27</sup> Home Office press notice 331/2004, *Home Secretary sets out next steps on ID cards*, 27 October 2004

<sup>28</sup> Home Office, *Legislation on identity cards: a consultation*, Cm 6178, p19 (para 2.17)

<sup>29</sup> HC Deb 23 November 2004 c4; HC Deb 29 November 2004 c376

<sup>30</sup> <http://www.homeoffice.gov.uk/comrace/identitycards/index.html>

- less illegal migration and illegal working; and better community relations as a result;
- an enhancement to the UK's capability to counter terrorism and serious and organised crime;
- reduced identity fraud;
- more efficient and effective delivery of public services.<sup>31</sup>

The Bill's main provisions are as follows:

- [defining] the statutory purposes of the scheme;
- establishing the National Identity Register;
- providing powers to issue identity cards;
- ensuring checks can be made against other databases to confirm an applicant's identity and guard against fraud;
- setting out what information will be held and what safeguards will be put in place;
- enabling public and private sector organisations to verify a person's identity by having it checked against the National Identity Register;
- making clear the limitations on the information which is held on the National Identity Register and which can be checked via the verification service;
- creating new criminal offences on the possession of false identity documents, including genuine documents that have been improperly obtained or relate to someone else;
- creating a specific offence of tampering with the National Identity Register;
- including enabling powers so that in the future access to specified public services could be linked to the production of a valid identity card; and
- providing a power at a future date for it to become compulsory to register and be issued with a card, including penalties against failure to register.<sup>32</sup>

The Bill is essentially an enabling measure, setting a framework for the introduction of the scheme but leaving much detail for Regulations to be issued later. The Government

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<sup>31</sup> RIA, para 1

<sup>32</sup> Home office press notice 374/2004, *Strengthening security, protecting identity: Home Office publishes Identity Cards Bill*, 29 November 2004

says that it is too early in the development of the scheme for decisions to have been made on how the scheme will work in practice.<sup>33</sup>

The *Next Steps* document (November 2003) confirmed that the scheme is to be introduced in two stages. In the first, voluntary, stage no one will be required to register for a card unless or until they apply for, or re-apply for, a passport. This stage will include:

- Establishing a National Identity Register;
- Proceeding towards more secure passports and driving licences based on biometric technology – with personalised, specific identifiers;
- For those who do not need a passport or driving licence and choose to take it up, making available a voluntary plain identity card. This would not become compulsory (or be mandatory for access to services) until the appropriate further Parliamentary decision;
- Introducing mandatory biometric identity documents<sup>34</sup> for foreign nationals coming to stay in the UK for longer than 3 months. For nationals from countries in the European Economic Area (EEA) this will be done in a way which is fully compatible with European law.

Subject to Parliamentary approval, this first stage will then be followed by the second, a move to a compulsory card scheme in which it will be compulsory to have a card – though not to carry one – and to produce a card to access public services in ways defined by those services. The Government expects most people in the UK to have biometric ID cards by 2013, and it is probably at that point that the “move to compulsion” would be considered (no date has been set by the Government):

The move to compulsion would require full debate and a vote in both Houses of Parliament. Clearly the Government would only take this step after a rigorous evaluation of the first stage, when it was confident that everything was in place to enable the scheme to work successfully, that its benefits outweighed any costs and risks and that it was fully affordable within future agreed spending plans. In particular, we would want to be confident that:

roll out during the first phase has already delivered significant coverage of the population;

- there is clear public acceptance for the principle of a compulsory ID card which would be used to access free public services. This would already have included a scheme of charges based on cost recovery and subsidy for those on low incomes;
- use of the card for access to free public services would not prevent people without cards from accessing emergency services, and those on low incomes and other vulnerable groups would not be disadvantaged;

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<sup>33</sup> *Race equality impact assessment* para 3

<sup>34</sup> “Biometric” is defined below, section VI

- the scheme would make a further significant difference to tackling fraudulent access to free public services, and to tackling illegal working at an acceptable compliance cost to business; and
- the technology is working and public services have implemented the technology and business changes necessary to take full advantage of the scheme.<sup>35</sup>

The Law Society is one of a number of organisations which have argued that the move to compulsion should only be effected by new primary legislation, not, as envisaged, by using order-making powers under the present Bill.<sup>36</sup> The same point was made by the Home Affairs Committee.<sup>37</sup> The Police Federation, in evidence to the Committee, made clear that it would like to see a compulsory scheme brought in as soon as it is practicable (and, concomitantly, that they would like police officers to have mobile technology to enable them to verify identity on the street).<sup>38</sup>

**Clauses 1 to 5** cover the establishment and purposes of the National Identity Register (NIR; see below, section V). The NIR will be the responsibility of a new Executive Agency. The nature of this Agency is not spelled out in the Bill, but we know that the stand-alone “identity card” will not be issued by a single-purpose Agency, but rather by a new body incorporating the UK Passport Service.<sup>39</sup> **Clause 4** relates to the designation of documents, such as passports, for the purposes of registration. If a document is “designated”, the applicant will also need to apply for an ID card unless he already holds one. Both ID cards and passports are “identity documents” for the purposes of the Bill – a definition developed in **clause 28**.

**Clause 6** gives the Secretary of State power to require an individual to apply for registration. If it is decided in future to move to compulsion, the Government would use powers in this clause to make registration compulsory. In the meantime, it would be possible for an order under clause 6 to make it a requirement for foreign nationals of a description specified in the order to register and to be issued with an ID card in the form of a designated residence permit.

**Clause 7** sets out the “super-affirmative” procedure to be followed before a future Government can move to the second, compulsory, stage:

- The Government must publish a report setting out its case for the move to compulsion;
- The report must include a proposition on how compulsion would work;

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<sup>35</sup> Home Office, *Identity cards: the next steps*, Cm 6020, November 2003, p5

<sup>36</sup> Law Society, *Legislation on identity cards: a consultation – the Law Society response*, July 2004, para 3.5

<sup>37</sup> Home Affairs Committee, *Identity Cards*, 20 July 2004, HC 130-I, p61 (para 248)

<sup>38</sup> Home Affairs Committee, *Identity Cards*, 20 July 2004, HC 130-II, Qq265,266, Ev 40-1; Q245, Ev 37-8

<sup>39</sup> *Explanatory notes* para 232



- The report must be laid before Parliament for debate and vote in both Houses. Both Houses may amend the proposition;
- The Government then lays for 60 days an order for compulsion via affirmative resolution. The order must be consistent with the motion agreed by Parliament;
- There would be a debate and vote in both Houses.

If either House does not approve the proposal or the Government is not content with the proposal as modified by either House, it must start the process again with a fresh report and proposal if it decides to make the case again for a move to compulsion (**clause 7(3)**).

**Clause 8(7)** is the mechanism by which future applicants for passports will be required to obtain an ID card as well, passports having been designated under clause 4.

**Clause 11(1)** places a duty on a person to provide information to the Secretary of State for the purpose of verifying an individual's entry on the Register. Under **clause 11(3)** this obligation is mandatory.

Under **clause 12(1)** a registered person must notify the Secretary of State of any change in the registrable facts recorded on the Register, e.g. a change of address. **Clause 12(6)** prescribes a fine for failure to do so. This clause has already attracted controversy:

We fear that those who are most vulnerable are most likely to be affected by failure to provide up to date information. This could include people with chaotic lifestyles such as those suffering mental illness or addictions; people with complex or frequently-changing personal information; homeless people; older people; immigrants and asylum seekers; and individuals fleeing domestic violence situations who may fear disclosing their information.<sup>40</sup>

In reply to the Home Affairs Committee, who made the same point,<sup>41</sup> the Government drew attention to the powers under **clause 43(10)** to make future regulations defining “place of residence” and argued that this will allow flexibility in the scheme for those without a fixed place of abode.<sup>42</sup> Even those of fixed abode may move frequently, especially in large cities, which will result in a need for frequent reissue of cards and potential liability for fines when people fail to notify their new address. Information from the electoral register suggests that on average in London 40% of people change addresses each year.<sup>43</sup>

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<sup>40</sup> Law Society, *Legislation on identity cards: a consultation – the Law Society response*, July 2004, para 4.37

<sup>41</sup> Home Affairs Committee, *Identity Cards*, 20 July 2004, HC 130-I, p63 (para 256)

<sup>42</sup> *Government reply to the Fourth Report from the Home Affairs Committee session 2003-04 HC 130*, Cm 6359, p34

<sup>43</sup> Local Government Association evidence to Home Affairs Committee, *Identity Cards*, 20 July 2004, HC 130-II, Q250, Ev 39

**Clause 14** permits the use of information from the Register to be provided for purposes of identity verification as long as the individual concerned consents. Only those organisations that have been approved under an accreditation scheme would be able to make checks on the ID cards of individuals who have consented to verification checks against the Register (**clause 14(6)**). The Better Regulation Task Force has pointed to a danger of “regulatory creep”, with companies likely to face pressure to install identity card readers to perform identity checks.<sup>44</sup> The Regulatory Impact Assessment admits that the demand for on-line checks will probably be greatest in those sectors most affected by illegal working such as agriculture, construction and hotels and for those working in sectors where the public could potentially be at risk if a person is employed under a false name e.g. staff working in airports.<sup>45</sup> The Bill envisages that there will be a cost for any identity check against the National Identity Register (**clause 37(1)**). The Bar Council commented on this provision:

That cost would either be borne by the individual trying to prove his identity, or by the service provider passing the cost onto the customer through price increases. In an attempt to keep costs down, or to avoid asking the individual to incur a one-off identity check charge, the result is likely to be a reluctance to make checks against the National Identity Register. There would instead be reliance upon an identity checking system similar to the one frequently encountered now: in order to establish identity one has to present one or more formal articles of identification (such as a passport and/or driving licence), along with one or more recent utility bills showing a home address.<sup>46</sup>

**Clause 14(8)** affirms that nothing in this clause impairs an individual’s rights under other legislation (such as the *Data Protection Act 1998*); this subsection was inserted in response to concerns expressed by the Home Affairs Committee about apparent loss of data protection rights in the draft Bill.<sup>47</sup> As most of the information on a person's entry will be information that has been provided by them in the first place it remains to be seen whether people will want to use this facility. It would include information about when a person's data had been provided to a third party with or without their consent. However, the *Data Protection Act* restricts information that may be disclosed under subject access if it would interfere with national security or the prevention or investigation of crime. Thus if the police have asked for an individual’s address because they are a suspect in an on-going investigation this request would not be revealed to the data subject. However, if the same information has been provided to a bank, say, when the person used an ID card to verify identity when opening an account, details of that check on their Register entry could be provided to the data subject in response an access request.

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<sup>44</sup> “ID cards ‘to tie business up in red tape’”, *Financial Times*, 3 December 2004, p3

<sup>45</sup> RIA, p11

<sup>46</sup> Bar Council, *Law Reform Committee response to the Home Office consultation on legislation on identity cards*, July 2004, <http://www.barcouncil.org.uk/document.asp?documentid=2766&languageid=1>

<sup>47</sup> Home Affairs Committee, *Identity Cards*, 20 July 2004, HC 130-I, p64 (para 259)

**Clause 15(1)** provides a power to make regulations under which, in future, access to public services will be conditional on producing an ID card or other evidence of one's registrable facts. **Clause 15(2)** stipulates that this power can only apply when it is compulsory for that person to register under clause 6. In the compulsory phase, this will, presumably, be the whole population. **Clause 15(3)** prohibits any order making the carrying of cards compulsory. An interesting asymmetry might arise here as a result of devolution. Since health services are devolved to Scotland and Wales, if either country or both countries elected not to make treatment conditional on production of a card, the result would be inconsistent procedures across the United Kingdom.<sup>48</sup> Under **clause 16(3)** any regulations made under clause 15 must be approved by a resolution of both Houses.

Under **clause 18** there can be no obligation on an individual to "produce" an ID card unless they fall into clause 6 or clause 15 applies.

**Clauses 19 to 23** cover various allowed uses of registered information. **Clause 19** creates a power to disclose information from the Register to the police and security services, the Inland Revenue, Customs and Excise and prescribed Government departments for specified purposes – national security and the prevention or detection of crime. **Clause 23** concerns rules for using information without consent. An important proviso is that an agency can only request information from the database if they are not able to supply it from their own resources; this would apply, for example, when the police requested fingerprint records from the Register.

**Clause 24** creates an office of National Identity Scheme Commissioner to oversee the scheme. The Commissioner's function is to keep under review the "arrangements for the time being maintained" by the Secretary of State and designated documents authorities, such as the UK Passport Service, for the exercise of their functions under the Act. The Commissioner must also review the uses to which ID cards are being put. Under **clause 24(3)** he is excluded from considering the imposition of fines, criminal offences related to ID cards or information provided to the security services. He must make annual reports to the Secretary of State (clause 25; in the draft Bill his reports were made to the Prime Minister). The Secretary of State must lay a copy of the annual report before Parliament but he may edit or delete information if it appears to him that publication would be prejudicial to national security, the prevention or detection of crime, the continued discharge of the functions of any public authority, or the "public interest".

**Clauses 27 to 31** create a number of new criminal offences, for example (**clause 27**) the possession of false identity documents. By means of this clause identity fraud becomes a specific offence for the first time. The terminology is important here. "Identity documents" are defined in **clause 28** to include passports and driving licences as well as

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<sup>48</sup> Law Society, *Legislation on identity cards: a consultation – the Law Society response*, July 2004, para 4.55

the new ID cards. Thus the offence created at clause 27 will go wider than merely the possession of a false ID card. Other new offences include the unauthorised disclosure of information from the Register (**clause 29**), providing false information (**clause 30**) and tampering with the Register (**clause 31**).

Elsewhere in the Bill there are civil penalties in the form of fines which will be applied when people breach duties not giving rise to criminal offences. Fines varying between £1,000 and £2,500 maximum are prescribed for failure to register when required to do so (**clause 6(4)**), failure to renew a card (**clause 9(5)**) and failure to notify change of registrable facts (**clause 12(6)**). **Clauses 33 to 36** set out how such civil penalties will be imposed and how the recipient can object to or appeal against them. The Regulatory Impact Assessment includes a useful table summarising the new offences and penalties.<sup>49</sup>

**Clause 37(3)(f)** allows the Secretary of State to vary fees charged for ID cards according to the individual circumstances of the applicant, e.g. the very elderly or those with mental health problems.<sup>50</sup>

**Clause 40** amends existing legislation to allow ID cards to be used as travel documents within the European Union. It also amends existing law on, for example, known football hooligans to ensure that where someone is required to surrender their passport before an overseas match they also surrender their ID card.

**Clause 45** emphasises that the Bill is to be introduced incrementally over time. This is not the “big bang” approach adopted in 1939. Different parts of the Act may come into force at different times, e.g. provisions relating to particular groups of people. On a trial basis, the scheme may be rolled out at different times in different geographical areas (**clause 45(4)**).

## V The National Identity Register

The Bill at **clauses 1-3** establishes a National Identity Register (NIR). This will hold all the information about those people who have registered and been issued with an identity card. It will be a new register created as people apply for identity cards, rather than simply a revised or updated version of existing databases, for example of persons issued with passports or driving licences. **Clause 1(3)** sets out the statutory purposes of the Register:

- a) the provision of a convenient method for such individuals to prove registrable facts about themselves to others; and

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<sup>49</sup> RIA, pp23-4

<sup>50</sup> These examples appear in Home Office, *Legislation on identity cards: a consultation*, Cm 6178, p106 but are not repeated in the Explanatory Notes to the Bill.

(b) the provision of a secure and reliable method for registrable facts about such individuals to be ascertained or verified wherever that is necessary in the public interest.<sup>51</sup>

Thus the Register is to provide a record of “registrable facts” about the identity of individuals who are resident in the United Kingdom or have applied to be entered on the register. **Clause 3(1)** sets limits to what information may be recorded and a Schedule to the Bill lists the categories of “registrable facts” to be held on the database. These include:

- personal information (name, address, gender, date and place of birth),
- identifying information in the form of a photograph and fingerprints or other biometric information, such as an iris image,
- residential status (e.g. entitlement to remain in the UK) and
- a “national identity registration number” (to be held together with other “relevant” numbers such as national insurance, passport or driving licence number)

Medical information is not included. Schedule 1 may be amended by secondary legislation following a resolution in both Houses of Parliament (**clauses 3(5) to (7)**) to add to the list of information that may be recorded on the Register. However, any additional information must be consistent with the statutory purposes of the Register. Anyone entered on the Register must be aged 16 or over and must be resident in the United Kingdom for a minimum period, which is intended to be 3 months. All foreign nationals who stay in the UK for less than 3 months will continue to use their national passports or identity cards for identification purposes. The Government does not intend to oblige them to register with the ID card scheme.<sup>52</sup> However, the Register will be more than just a database of people holding identity cards. Entries will be held on people who make an application for an identity card whether or not that application is granted (**clause 2(1)**) and the Register will also be able to hold information, if it is available, about people who have not applied for an identity card, e.g. illegal entrants (**clause 2(4)**).

One criticism made of the identity card schemes operating in Continental Europe is that they rely on combining pre-existing data. The *Next Steps* document emphasises that such databases, built up on an *ad hoc* basis over time, are more prone to error and fraud. The National Identity Register is intended to avoid those failings:

It will be built from scratch as people are issued with identity cards and not rely solely on other sources of data which may have historical or other errors. However, before an entry is confirmed, it will be checked against other databases such as passports, driving licences and immigration records. The Register will also link each individual’s record to a biometric that is unique to that person. The

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<sup>51</sup> “Public interest” is defined in clause 1(4)

<sup>52</sup> *Government reply to the Fourth Report from the Home Affairs Committee session 2003-04 HC 130*, Cm 6359, p10

National Identity Register will therefore be a single highly reliable record of a person's identity and will be built using best practice in countering identity fraud.<sup>53</sup>

An article in the *Economist* quoted Richard Barrington, head of government affairs at Sun Microsystems. Barrington emphasises the difficulty of establishing such a database to ensure that false and multiple identities are expunged: "If this is not done in a disciplined way, the register will become like every other government database – that is, full of junk". The article continues:

This becomes exponentially more difficult as the job progresses. On the current, rather relaxed timetable for building the register (a pace forced by Cabinet sceptics), it will capture about 80% of the economically active population by 2013. Then comes the challenge. The final 20% includes people on the fringes of society – those who do not work legitimately, drive, vote, or hold British passports; in other words, precisely the sort you would want in a database. Capturing them will be desperately difficult, despite a proposed £2,500 fine for non co-operation.<sup>54</sup>

The NIR is only one of several large-scale Government databases currently either in preparation or under consideration. In its report on identity cards, the Home Affairs Select Committee expressed concern at the apparent profusion of databases with overlapping responsibilities and content:

186. We are concerned by the proliferation of large-scale databases and card systems, since we have seen little to suggest that they are being approached in a co-ordinated way. While we have not taken detailed evidence on current proposals, other than the Citizen Information Project, we have the impression that each government department is continuing with its own project in the hope that it is not going to be significantly affected by other projects. The format of registration on different databases should be coherent and consistent.

187. We believe that the Government must tackle this proliferation of databases, examining in each case whether the number, identifier or database is needed, what its relationship is to other existing or planned databases, how data will be shared or verified and other relevant issues. For this action to be effective, it must be co-ordinated at the highest levels of the Civil Service.<sup>55</sup>

The examples singled out by the Committee were:

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<sup>53</sup> Home Office, *Identity cards: the next steps*, Cm 6020, November 2003, p9

<sup>54</sup> "Identity cards: will they work?" *Economist*, 1 May 2004, pp31-2

<sup>55</sup> Home Affairs Committee, *Identity cards*, 20 July 2004, HC 130-I, pp48-49

- the NHS Care Records Scheme, which would provide all 50 million NHS patients with an individual electronic NHS Care Record, detailing key treatments and care within either the health service or social care;
- the introduction by the Department for Education and Skill of a Unique Learner Number;
- a database or databases of all children as legislated for under the *Children Act 2003* (section 9); and
- the Office of the Deputy Prime Minister's recently completed National Smart Card Project which, *inter alia*, set out a framework for local authority smart card implementation and development.

These initiatives are, they pointed out, additional to existing databases, such as those of the Inland Revenue, UK Passport Service and Vehicle Licensing Agency.<sup>56</sup>

Since the Home Affairs Committee reported, the Regulatory Reform Committee has considered draft regulations allowing for the electronic registration of births and deaths.<sup>57</sup> A memorandum submitted to the Home Affairs Committee by the Office for National Statistics suggests that the NIR, since it, uniquely, is a record of "identity", will function as an "authority file", against which any of the other proposed databases can be verified. At the same time, these other databases are apparently to be used to confirm non-biometric details supplied to the NIR:

The starting point [of the NIR] will be information provided by individuals, which will be cross-checked against information held in other databases to establish a "biographical footprint". The record in the National Identity Register will then be linked to the individual via biometric information. Once an individual is authenticated through the identity cards system, it will be possible to flag the record in the CIP [Citizen Information Project] population register that corresponds with that name and address as having been "authenticated", thereby enhancing the robustness of the data in the population register.<sup>58</sup>

It is recognised that, if these databases are to be interoperable, cooperation across Departments will be essential at the planning stages:

**Dr. Gibson:** To ask the Minister for the Cabinet Office what plans there are to co-ordinate the Office for National Statistics citizen information project, the

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<sup>56</sup> Home Affairs Committee, *Identity Cards*, 20 July 2004, HC 130-I, p48

<sup>57</sup> *Draft Regulatory Reform (Registration of Births and Deaths) (England and Wales) Order 2004*. The Regulatory Reform Committee concluded that the order-making power under the *Regulatory Reform Act 2001* should not be used in respect of this proposal (HC Votes and Proceedings 7 December 2004)

<sup>58</sup> Home Affairs Committee, *Identity Cards*, 20 July 2004, HC 130-II, Ev 247. Since the Committee reported the Home Office has said that "CIP is no longer actively exploring plans to develop a separate population register but rather will be exploring options to improve the quality and effectiveness of existing registers" (*Government reply to the Fourth Report from the Home Affairs Committee session 2003-04 HC 130, Cm 6359, p22*)

Home Office identification cards database plan and the NHS health records spine.  
[163155]

**Ruth Kelly:** The information requested falls within the responsibility of the Registrar General for England and Wales, who has been asked to reply.

Letter from Len Cook to Dr. Ian Gibson, dated 29 March 2004:

As Registrar General for England & Wales, I have been asked to reply to your recent parliamentary question on the Citizen Information Project (CIP) and other government initiatives. (163155)

The CIP, the National Identity Register (part of the Government's proposals for an identity card scheme) and the NHS data spine are separate but complementary projects. I fully recognise the need for effective communication between these initiatives and we are working hard to support this. For example, the Home Office and the Department of Health are represented at senior level on the CIP Project Board and there is ONS representation on the ID Cards Programme Board.

However the programmes are at different stages and as yet there has not been ministerial approval to implement CIP. Therefore, the main objective is to ensure that the programmes are proceeding in such a manner that would allow integration in the future if appropriate whilst continuing to work closely and liaise at every stage of the development phase.<sup>59</sup>

What one person might view as benign interoperability someone else might see as a sinister level of data-sharing. The latter danger was flagged up by the Information Commissioner, Richard Thomas, in an interview with the *Times* in August 2004, where he warned of the dangers of “function creep”:

“My anxiety is that we don’t sleepwalk into a surveillance society where much more information is collected about people, accessible to far more people shared across many more boundaries than British society would feel comfortable with.”<sup>60</sup>

## VI Biometrics

Interest in identity cards runs side by side with the search for a more secure form of passport. Since the terrorist attacks of 2001 the International Civil Aviation Organisation (ICAO) has been pressing for travel documents to be standardised worldwide and to incorporate a “biometric”. A biometric is a unique identifying physical characteristic such as facial recognition, iris pattern or fingerprints.<sup>61</sup> The ICAO has nominated facial recognition as the primary biometric for travel documents, with iris pattern and

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<sup>59</sup> HC Deb 29 March 2004 c1154W

<sup>60</sup> “Beware rise of Big Brother state, warns data watchdog”, *Times*, 16 August 2004, p1

<sup>61</sup> For more information see Library Standard Note SN/SC/3325, *Biometrics*



fingerprint as secondary but not mandatory. In line with these recommendations, the UK Passport Service is planning to implement a facial recognition image biometric in the British passport book from late 2005/early 2006. The biometric can be derived from a passport photograph and will be in accordance with ICAO standards. The UKPS website explains:

The facial image biometric will help to counter identity fraud (e.g. duplicate issues), and to verify the identity of the holder against the document. From the introduction of ID cards, all passports for British Citizens will be renewed or issued to the ID card standard.

The UKPS constantly seeks improvements to the security features in the British Passport and in the issuing process. The use of biometric information to link a person to a passport will enhance security. Security features within a passport serve a dual role. Firstly, they allow for detection of counterfeit or manipulated documents and secondly, confirm the identity of the individual.<sup>62</sup>

The US has already imposed a fingerprint requirement on all visitors to the US who have historically not required a visa (“the visa waiver scheme”). This includes British citizens. The EU will be mandating biometric passports for its citizens in the next few months. With so much international pressure on the UK, the Regulatory Impact Assessment issued with the Bill draws the conclusion that: “The costs of recording biometric information and issuing more secure identity documents (in the form of biometric passports) are therefore unavoidable.”<sup>63</sup>

During 2004 the UK Passport Service ran a biometrics trial in partnership with the Home Office Identity Cards Programme and the DVLA. The biometric passport trial took place at four fixed sites in London, Leicester, Newcastle and Glasgow, while a mobile unit visited other locations across the country. Any UK resident aged 18 or over could volunteer to take part in the trial (the recruitment of volunteers was managed by the polling organisation MORI). Each volunteer received a personalised “demonstrator smart card” carrying printed details and electronic information on a chip. The trial aimed to ensure a proper cross selection of the population, including people with disabilities. According to the accompanying press release, the objectives of the UKPS biometric pilot were:

- to test the use of biometrics through a simulation of the passport process;
- to include exceptional cases, e.g. people who may have difficulties in enrolment;
- to measure the process time and hence estimate costs;
- to assess customer perceptions and reactions;
- to assess practical aspects of incorporation of biometrics into a biometric database;

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<sup>62</sup> <http://www.ukpa.gov.uk/identity.asp>

- to trial the use of biometrics to prevent duplicate identities;
- to test fingerprint and iris biometrics for one-to-many identification and facial recognition for one-to-one verification; and
- to identify issues and risks and produce an outline implementation plan.<sup>64</sup>

The pilot, which tested the enrolment of three biometrics - facial recognition, iris pattern and fingerprint images - has not been problem-free. Although it was due to start on 2 February, the project's launch was delayed for three months because of difficulties with the hardware and software, according to a briefing paper from the Passport Service presented to the Select Committee in May.<sup>65</sup> As a result, the planned duration of the pilot was reduced from six to three months.<sup>66</sup> The project director estimates that 7% of volunteers will fail iris recognition, for a variety of reasons (e.g. they wear hard contact lenses).<sup>67</sup>

There has been much discussion about the relative merits of different forms of biometric information. The more effective forms of technology are undoubtedly the most expensive. Facial recognition is supposedly the least successful of the proposed methods.<sup>68</sup> Any inaccuracies will be magnified when an entire population is covered: a news item last January observed that, with more than 60 million people travelling through Heathrow Airport each year, even if an iris scanning system with 99.9% accuracy was used, it could still fail to register 63,000 individuals a year.<sup>69</sup> The Cabinet Office study of identity fraud, published in 2002, commented:

Biometric systems are by no means foolproof: all types of biometric systems currently available run the risk of reporting "false positives" or "false negatives"; around 10–15% of "genuine" people will fail the test if it is set to minimise the numbers of fraudulent people let through. This is very much a developing area. Biometrics offer undoubted potential, but it is a potential which has yet to be realised in any large scale applications.<sup>70</sup>

The Government has ruled out DNA as a possible biometric:

**Mr. Tynan:** To ask the Secretary of State for the Home Department what assessment he has made of how DNA information might be used alongside other biometric data when identity cards are introduced. [161223]

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<sup>63</sup> RIA, para 16

<sup>64</sup> Home Office press notice 159/2004, *David Blunkett: national ID card scheme is the key to the UK's future*, 26 April 2004

<sup>65</sup> Home Affairs Committee, *Identity Cards*, 20 July 2004, HC 130-II, Ev 269

<sup>66</sup> "ID card trails put back by technical glitches", *Times*, 5 May 2004, p2

<sup>67</sup> "Weepy eyes hinder ID scans", *Times*, 7 May 2004, p4

<sup>68</sup> "Does the new security work?" *Financial Times*, 22 January 2004

<sup>69</sup> "Facing a biometric future", *BBC News Online*, 13 January 2004, <http://news.bbc.co.uk/1/hi/technology/3389209.stm>

<sup>70</sup> Cabinet Office, *Identity fraud: a study*, July 2002, p61

**Beverley Hughes:** DNA has well-known applications in identification of people in a law enforcement context and is both universal and able to discriminate among a very large number of individuals. However, the requirements of an identity card scheme are for high-volume, real-time identity verification and so DNA would be unsuitable because of the specialist expertise and length of time needed in taking and analysing samples.<sup>71</sup>

## VII Costs

The Home Office consultation paper *Entitlement Cards and Identity Fraud*, published in 2002, outlined some indicative costs associated with the introduction of entitlement cards and strengthening systems to prevent identity fraud. The cost estimates outlined covered a thirteen year period comprising,

- Three years while the necessary IT and other infrastructure is developed and installed
- Six years where the scheme is rolled out to the population
- Four years of normal (or ‘steady-state’) operation.

The set-up costs of the scheme were estimated at £136 million to include the design, development and implementation costs of the central database and the information gateways between this database and other systems (for example, driving licence and passport agencies). Set-up costs would also include the cost of establishing a network of biometric information recording equipment. Operating costs of a new infrastructure were estimated at £332 million over thirteen years. Additional staff costs to ensure that additional checks on applicants were carried out are estimated at £62 million over thirteen years. The cost of processing applications over this period was estimated at a further £608 million.

Total card production costs would depend on the type of card issued. The total cost estimates for the introduction and operation of an identity card scheme over thirteen years were:

- £1,318 million for plain plastic cards
- £1,640 million for simple smartcards
- £3,145 million for more sophisticated smartcards

It was always envisaged that the costs of running the scheme might be recovered by increasing the fees for passports and charging a fee for the identity card when not issued in conjunction with a passport. The Home Office consultation paper outlined possible fee increases to cover the costs of the scheme (Table 5.4).<sup>72</sup>

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<sup>71</sup> HC Deb 16 March 2004 vol 419 c186W

<sup>72</sup> Home Office, *Entitlement cards and identity fraud*, Cm 5557, July 2002, p67

When the Regulatory Impact Assessment appeared in November 2004 – by which time the Government was committed to the “sophisticated smartcard” option, incorporating state-of-the-art biometric technology - these costings had apparently been revised. The new figures were immediately seized upon by the Opposition:

**Mr. Kennedy:** Two years ago, the Home Office said that the entire scheme would cost £3 billion. Two days ago, it said that the revised estimate, which is not a final maximum figure, was now running at almost twice that amount. [...]

**The Prime Minister:** The right hon. Gentleman is simply wrong on the costs. The ID card element is around £85 million a year, and that is spread over several years. [...] <sup>73</sup>

The Regulatory Impact Assessment (beginning at paragraph 16) gives no total to set against the earlier estimate.<sup>74</sup> Mr Kennedy must have arrived at his figure by totalling up annual forecasts given there of UKPS operating costs of £415m, the additional running costs of the new agency incorporating the functions of UKPS which will be occasioned by the introduction of ID cards at £85m, and £50m the cost of verification service. These total £550m p.a. Since the original estimate was for a ten-year period, by multiplying this figure by ten, the reader arrives at a total of £5.5bn. The Home Office suggests that this comparison must be treated with caution for a number of reasons. First, the UKPS figure represents costs that will have to be incurred anyway as a result of international obligations requiring the UK to introduce biometric data on passports (see above). Second, giving an annualised figure blurs the distinction (made in the 2002 consultation) between initial set-up costs and operating costs over a ten-year period. Third, the Government is proceeding on the basis of full-cost recovery. Whatever the costs, they will be not be met from tax revenue that would be diverted from other uses:<sup>75</sup>

It is intended that, when the scheme is established, overall running costs will be covered by a combination of charges for applications, issue of cards, identity verification services provided by the scheme and for related services such as accreditation.<sup>76</sup>

The RIA insists that the process of setting a fee structure will require the explicit consent of the Treasury and Parliament. However, the Home Office’s “current best estimate” for an indicative price for an adult passport/ID package for UK citizens for 10 years is £85.<sup>77</sup>

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<http://www.homeoffice.gov.uk/docs/chapter5.pdf>

<sup>73</sup> HC Deb 1 December 2004 c627

<sup>74</sup> [http://www.homeoffice.gov.uk/docs3/ria\\_251104.pdf](http://www.homeoffice.gov.uk/docs3/ria_251104.pdf)

<sup>75</sup> Personal communication, Home Office official, 2 December 2004. Using the same figures one could arrive at a ten-year total of £1.35bn as the additional cost of introducing ID cards, by adding £85m to £50m and multiplying the result by 10.

<sup>76</sup> *Explanatory notes* para 231

<sup>77</sup> RIA, paras 21-22

## VIII The Government's case for an identity card scheme

A public consultation exercise on identity cards ran from July 2002 to January 2003.<sup>78</sup> The Home Office's summary of findings gave the following thematic shorthand of the favourable responses received from the general public:<sup>79</sup>

- Enhance sense of community – visible means to feel pride in citizenship
- Psychological security – knowledge that we are properly accounted for by our authorities
- Provides user with easy way to confirm identity
- Proof of eligibility to benefits
- Easy access to a range of services
- Only object if something to hide
- Will not infringe civil liberties
- Help fight identity fraud
- Costs [justified]
- Proof of age
- Shouldn't be a problem as we already have passports and driving licences
- Help prevent illegal working and immigration
- Internal travel identity requirements by airlines
- Easy travel in Europe
- Reference to having cards in the Second World War with no problems
- Long overdue

Analysis of correspondence received by the Home Office from the general public and stakeholder organisations suggested that, of the 4,241 responses in which an opinion was expressed, 61% were in favour of ID cards, 38% were against and 1% neutral.<sup>80</sup> (These figures do not take account of some 5,000 e-mails received from “an organised opposition campaign”, over 96% of which were opposed).<sup>81</sup>

In a MORI survey in April 2004, 80% of those questioned said that they backed a national ID card scheme. A similar proportion said they would be happy to carry a card with them at all times, although the Government does not intend to make it compulsory to do so. The principal reason people gave for backing the adoption of ID cards was to prevent illegal immigration. However, 58% of those questioned said they were “not confident” the Government would be able to introduce the system smoothly and only one

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<sup>78</sup> Home Office, *Entitlement cards and identity fraud: a consultation paper*, Cm 5557, July 2002

<sup>79</sup> Home Office, *Identity cards: a summary of findings from the consultation exercise on entitlement cards and identity fraud*, Cm 6019, November 2003, p17  
[http://www.homeoffice.gov.uk/docs2/identitycards\\_summary\\_of\\_finding\\_031111.pdf](http://www.homeoffice.gov.uk/docs2/identitycards_summary_of_finding_031111.pdf)

<sup>80</sup> *Op. cit.*, p16. The figures represent views received by the beginning of March 2004.

<sup>81</sup> Home Office, *Identity cards: the next steps*, Cm 6020, November 2003, p8

in five said they would be prepared to meet the suggested charge (which then stood at £35).<sup>82</sup>

The Home Office website gives six reasons for introducing a scheme:

- To tackle illegal working and immigration abuse;
- To disrupt the use of false and multiple identities by organised criminals and those involved in terrorist activity;
- To help protect people from identity fraud and theft
- To improve public confidence and strengthen our security
- To ensure free public services are only used by those entitled to them;
- To enable easier and more convenient access to public services.<sup>83</sup>

The following paragraphs look in more detail at these reasons. In their report of July 2004 the Home Affairs Committee observes that, while the list of the Government's aims has remained fairly stable over the past two years, the "relative prominence" given to each aim has varied:

In July 2002 the original consultation document [Cm 5557] asked for views on whether cards would help with: providing better services; identity fraud; tackling illegal immigration and illegal working; a convenient travel document; proof of age; reducing crime; electoral registration and voting; and emergency medical information. In this list there was no mention of terrorism. The card was called an entitlement card and there was clearly a greater emphasis on the link between the card and the use of public services than in later proposals.<sup>84</sup>

For its part, the Government explains that the apparent shift in priorities, the change from "entitlement" to "identity" and the addition of counter-terrorism to the list of *explicit* aims were all responses to the public consultation exercise conducted in 2002-3.<sup>85</sup>

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<sup>82</sup> "Public 'happy to carry ID cards'", *BBC News Online*, 22 April 2004, [http://news.bbc.co.uk/1/hi/uk\\_politics/3648309.stm](http://news.bbc.co.uk/1/hi/uk_politics/3648309.stm) The Law Society observes that the question on support for ID cards was placed eighth in a series of 15 questions, sandwiched between questions on terrorism and Osama bin Laden - "a context which makes the results unreliable", in their view (Law Society, *Legislation on identity cards: a consultation – the Law Society response*, July 2004, para 3.15)

<sup>83</sup> <http://www.homeoffice.gov.uk/comrace/identitycards/faq.html> (accessed 8 December 2004)

<sup>84</sup> Home Affairs Committee, *Identity cards*, 30 July 2004, HC 130-I 2003-04, p24

<sup>85</sup> See the Home Secretary's evidence to the Committee: Home Affairs Committee, *Identity cards*, 30 July 2004, HC 130-II 2003-04, Q609, Ev 100

## A. Illegal working and immigration abuse

In the consultation document of April 2004, immigration control was presented as the “primary” reason for introducing the scheme:

The identity cards scheme is intended primarily as a United Kingdom wide measure to help deter and control illegal immigration by helping to establish the nationality and immigration status of UK residents [...]<sup>86</sup>

According to Home Office statistics, illegal entry action was initiated against 48,050 people in 2002.<sup>87</sup>

In evidence to to the Home Affairs Committee, the Home Office argued that an identity card system would enable employers to establish the status of prospective employees more quickly and more simply, thus making it easier to establish that a foreign national has the right to work. It also argued that the creation of the National Identity Register would, by verifying entitlements to public services, make it more difficult for those here illegally to gain access to them, and thus would reduce the “pull factor” - the perception that once in the country people can work and obtain benefits and public services with impunity.<sup>88</sup> In its submission to the Committee, the Commission for Racial Equality recognised “a potential benefit to [the] ID cards scheme in that they could enable immigrants and other groups to authenticate their identities (for accessing the labour market and public services where they are entitled)”.<sup>89</sup> The Law Society, however, argued that the real problem was the small number of employers who did not at the moment carry out the appropriate checks and who would continue to employ people illegally, regardless of whether or not there was a national identity card.<sup>90</sup>

## B. Crime prevention and counter-terrorism

Interest in identity cards began to grow after the “9/11” attacks in New York and Washington. However, the Government does not present the terrorist threat as the primary justification for their introduction. Mr Blunkett was quoted in the *Financial Times* in April:

“The primary reason for having ID cards is not because we believe they will stop terrorists. It will contribute towards the overall task of prevention but it will not guarantee that we will not be hit. It can’t, but it will make a big difference to the operation of the counter-terrorism and security services.”<sup>91</sup>

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<sup>86</sup> Home Office, *Legislation on identity cards: a consultation*, Cm 6178, para 2.72, p29

<sup>87</sup> HC Deb 9 March 2004 vol 418 cc1464-5W

<sup>88</sup> Home Affairs Committee, *Identity cards*, 30 July 2004, HC 130-II 2003-04, Ev 199

<sup>89</sup> *Op. cit.*, Ev 273

<sup>90</sup> *Op. cit.*, Qq 184-5

<sup>91</sup> “Blunkett maps out compulsory ID cards scheme”, *Financial Times*, 27 April 2004, p5

Nonetheless, as stated in a written answer:

The Government believes that a secure identity card scheme would disrupt the use of false identities by terrorist organisations, for example in the money laundering and organised crime, which support terrorist activities.<sup>92</sup>

According to another answer, “about 35 per cent of terrorists use false or multiple identities”<sup>93</sup> and Home Office estimates suggest that about £390 million a year is laundered through the use of multiple identities.<sup>94</sup>

Evidence given by the police to the Home Affairs Committee endorses this argument. For example, the Association of Chief Police Officers (ACPO) asserted that identity cards would put “an additional hurdle in the path of those who aid and support terrorism by providing funding, false identities and ‘safe locations’”. ACPO also argued that an identity card scheme would be beneficial in areas such as organised crime, people trafficking, the sex trade and money laundering.<sup>95</sup> The Metropolitan Police took the view that while the introduction of an identity card would not of itself lead to a reduction in crime or an increase in detection rates, a society built around an individual’s true identity and their ability to prove it would significantly reduce the opportunity for crime in a number of areas.<sup>96</sup> In their appearance before the Committee the Police Federation saw ID cards as the solution to the police’s problems in establishing identity:

Not everybody we deal with on the street is willing to give us information in a very timely way. Sometimes we have to take them into custody and take them back to the police station, and it takes many hours in custody before they actually tell us who they are. You also have situations where people are not necessarily in a fit state to tell us who they are. They might be mentally ill; they might be drunk; they might be incapable. There is a whole host of different reasons why we need to check people's identity. Of course, the worst-case scenario is that you could have a number of dead bodies. Again, the identification card could assist you with being able to identify dead bodies. There are a wide variety of times when we need to check people's identity.<sup>97</sup>

The advantages would be more apparent in the compulsory phase than the voluntary one:

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<sup>92</sup> HC Deb 10 May 2004 c73W

<sup>93</sup> HC Deb 17 May 2004 c773W

<sup>94</sup> Home Affairs Committee, *Identity cards*, 30 July 2004, HC 130-II 2003-04, Q16, Ev 3

<sup>95</sup> *Op. cit.*, Ev 149

<sup>96</sup> *Op. cit.*, Ev 239

<sup>97</sup> *Op. cit.*, Q269, Ev 41



[O]nly with a compulsory scheme would the full benefits in countering terrorism and organised crime be delivered as it would have a 100% coverage rate of all those with a legal entitlement to be resident in the UK.<sup>98</sup>

### C. Identity fraud

One of the advantages claimed for identity cards is that they will help to combat identity fraud. “Identity fraud” arises when an individual assumes a fictitious name or adopts the name of another person with or without their consent. A Cabinet Office report in 2002 estimated that identity fraud costs the economy in excess of £1.3bn a year.<sup>99</sup> A variety of statistics are quoted for the year 2000/01. For example, 564 cases of identity fraud were identified by the Benefit Agency’s Security Investigation Service and 3,231 driving tests were terminated prematurely because of doubts over the driver’s identity. In the private sector, it was estimated that between three and five percent of all fraud was identity fraud.<sup>100</sup> The report also included a useful definition of “identity”:

There are three basic elements of identity:

- *biometric identity*: attributes that are unique to an individual, i.e. fingerprints, voice, retina, facial structure, DNA profile, hand geometry, heat radiation, etc;
- *attributed identity*: the components of a person’s identity that are given at birth, including their full name, date and place of birth, parents’ names and addresses;
- *biographical identity*, which builds up over time. This covers life events and how a person interacts with structured society, including:
  - registration of birth;
  - details of education/qualifications;
  - electoral register entries;
  - details of benefits claimed/taxes paid;
  - employment history;
  - registration of marriage;
  - mortgage account information/property ownership;
  - insurance policies;
  - history of interaction with organisations such as banks, creditors, utilities, public authorities.<sup>101</sup>

The Cabinet Office report considered various options for countering identity fraud. In acknowledging that “Government currently holds an array of data about individuals, in a myriad of separate databases”, the report suggested two separate options. The first was to establish a new, single “super database”, while the second was to use existing data in a

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<sup>98</sup> Memorandum submitted by Home Office to Home Affairs Committee, *Identity cards*, 30 July 2004, HC 130-II 2003-04, Ev 201

<sup>99</sup> Cabinet Office, *Identity fraud: a study*, July 2002, p4

<sup>100</sup> *Op. cit.*, p13

<sup>101</sup> *Op. cit.*, p9

virtual database revolving around a central “hub”.<sup>102</sup> A further long-term option, in the view of the Cabinet Office, involved the introduction of a single “entitlement card”.<sup>103</sup> The Home Office consultation paper issued at the same time developed this idea further and recommended the creation of a specific new criminal offence of identity fraud. As the law currently stands:

The use of a false identity or the adoption of another person’s identity is not a criminal offence unless it can be proved that there was some conspiracy to commit a criminal act or fraud, or it can be proved that a criminal act or fraud took place. However in these circumstances, the defendant would be prosecuted for the conspiracy or criminal act itself as this would be the more serious offence and would carry a higher penalty.

By making it an offence to use a means of identification of another person or a fictitious person without reasonable cause, the very act of using a false identity would be a criminal offence without the need to prove any criminal intent or conspiracy. This would provide the police with the means to disrupt the activities of fraudsters in the early stages of their criminal activities [...]<sup>104</sup>

The Finance and Leasing Association, the main representative organisation for UK consumer credit, welcomes the Bill as a means to combat identity fraud.<sup>105</sup>

#### **D. Entitlement to public services**

This argument is closely linked to concerns about identity fraud. The *Next Steps* document explains that identity cards

will help people prove their identity to access services such as free health treatment or benefits and give everyone confidence that legal migration will not result in increased fraudulent use of hard-pressed public services.<sup>106</sup>

In submissions to the Home Affairs Committee, the Home Office argued that an identity cards scheme would allow public services to check whether an individual's entitlement, for example to benefits, had expired or had never existed:

An identity card would give everyone a recognised Government-confirmed proof of identity, would mean that an individual did not need to provide many different cards or pieces of paper, and would combat impersonation and identity fraud.<sup>107</sup>

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<sup>102</sup> *Op. cit.*, p51

<sup>103</sup> *Op. cit.*, p56

<sup>104</sup> Home Office, *Entitlement cards and identity fraud: a consultation paper*, Cm 5557, July 2002, p44

<sup>105</sup> *FLA response to the Home Office’s consultation on legislation on identity cards*, July 2004, [http://www.fla.org.uk/fla\\_home/Consultation\\_Papers/Home%20Office%20draft%20legislation%20on%20Identity%20Cards%200704.doc](http://www.fla.org.uk/fla_home/Consultation_Papers/Home%20Office%20draft%20legislation%20on%20Identity%20Cards%200704.doc)

<sup>106</sup> Home Office, *Identity cards: the next steps*, Cm 6020, November 2003, p6

<sup>107</sup> Home Affairs Committee, *Identity cards*, 30 July 2004, HC 130-II 2003-04, Ev 200

The Parliamentary Under-Secretary at the Department of Work and Pensions, Chris Pond MP, told the Committee that his Department estimated that of the estimated £2 billion total annual benefit fraud, £50 million came from people not being who they said they were when making a claim. He argued that as the Department clamped down on other forms of fraud, there would be more attempts at this type of fraud. He also believed that identity cards might help tackle an additional £50 million of other types of benefit fraud annually.<sup>108</sup>

As well as rooting out fraudulent claims, it is argued, identity cards will help the law-abiding citizen to access the services to which he or she is entitled:

An identity card that was recognised by the range of service providers across both the public and private sectors would considerably ease an individual's life. This will be particularly important for those people who do not have a driving licence or a passport, and who may currently experience difficulties in proving their identity, and therefore their entitlement to services, in those situations where proof of identity is routinely asked for.<sup>109</sup>

## **IX Issued raised in criticism of an identity cards scheme**

In the Home Office analysis of responses received to its public consultation exercise, the summary under “general public – views against” reads as follows:

- Privacy issues and civil liberties
- Costs
- Problems in setting system up and associated costs
- Government’s inability to run a scheme
- Not effective in combating identity fraud
- Ineffective on illegal working and immigration
- Data protection
- Function creep
- Compulsory aspect
- Fears over loss/theft of the card
- Ineffective on preventing crime
- Aggravate racism
- Would not help with benefit fraud
- Biometrics – privacy issues<sup>110</sup>

A commentator in the *Guardian* summed up the debate on ID cards thus:

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<sup>108</sup> Home Affairs Committee, *Identity cards*, 30 July 2004, HC 130-II 2003-04, Q549, Ev 91

<sup>109</sup> Memorandum submitted by the Home Office to Home Affairs Committee, *Identity cards*, 30 July 2004, HC 130-II 2003-04, Ev 201

<sup>110</sup> Home Office, *Identity cards: a summary of findings from the consultation exercise on entitlement cards and identity fraud*, Cm 6019, November 2003, p22

It is really about four connected things: whether we live in new times; whether such times require systems of control that, in earlier societies, would have been seen as doubtful restrictions on liberty; whether we have the means to enforce those controls efficiently; and whether the price is worth paying, both financially and figuratively.<sup>111</sup>

This section will consider several issues that have been raised in criticism of the proposed legislation.

### **A. Negligible impact on crime and terrorism?**

Evidence was submitted to the Select Committee which cast doubt on the effectiveness of ID cards in countering crime and terrorism:

91. Liberty said that all of those involved in the 9/11 atrocities had either legitimate identification papers or very compelling forgeries and argued that sophisticated terrorist networks would be able either to forge the cards themselves or produce false papers enabling an individual to register under a false identity. [...] When we put this argument to the Minister of State for Citizenship and Immigration, he replied that other countries did not have the biometric database that was being proposed as part of this scheme, and that this, rather than the card, was the defence against the use of multiple identities [Q618].

92. The Law Society doubted that identity cards would be effective in reducing crime, arguing that the biggest problem for the police lay not in identifying individuals, but rather in linking an individual to a crime. Liberty shared these doubts and argued that the Government had not produced any evidence, for example from experiences in the rest of Europe, that identity cards were cost-effective; they believed that funding for an identity card scheme could be better spent on police recruitment, retention and training.<sup>112</sup>

A report compiled by the pressure group Privacy International concluded that the link between identity cards and anti-terrorism, though frequently suggested, was “largely intuitive”:

The detailed analysis of information in the public domain in this study has produced no evidence to establish a connection between identity cards and successful anti-terrorism measures. Terrorists have traditionally moved across borders using tourist visas (such as those who were involved in the US terrorist attacks), or they are domiciled and are equipped with legitimate identification cards (such as those who carried out the Madrid bombings).

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<sup>111</sup> Martin Kettle, “ID cards are beginning to look like Blunkett’s Iraq”, *Guardian*, 27 April 2004, p24

<sup>112</sup> Home Affairs Committee, *Identity cards*, 30 July 2004, HC 130-I 2003-04, p29

Of the 25 countries that have been most adversely affected by terrorism since 1986, eighty per cent have national identity cards, one third of which incorporate biometrics. This research was unable to uncover any instance where the presence of an identity card system in those countries was seen as a significant deterrent to terrorist activity.

Almost two thirds of known terrorists operate under their true identity. The remainder use a variety of techniques to forge or impersonate identities. It is possible that the existence of a high integrity identity card would provide a measure of improved legitimacy for these people.

Of the ten most frequently employed methods terrorists use to enter or operate within a country, only one would potentially be combated by a national identity card. Most terrorists enter a country on tourist visas which because of their popularity are subject to low-level scrutiny.

At a theoretical level, a national identity card as outlined by the UK government could only assist anti-terrorism efforts if it was used by a terrorist who was eligible and willing to register for one, if the person was using their true identity, and if intelligence data could be connected to that identity. Only a small fraction of the ninety million crossings into the UK each year are supported by comprehensive security and identity checks.<sup>113</sup>

## **B. Disproportionate impact on ethnic minorities?**

This is one of the “10 reasons” suggested by the Liberal Democrats for opposing the bill:

ID cards will undermine the contract between the police and the public, with many more people being stopped and required to identify themselves, or present their card at a police station at a later date. Given that the government wants the police to use the cards to detect more illegal immigrants and suspected al-Qaida terrorists, we can expect most of these stops to target black and Asian people.<sup>114</sup>

Appearing before the Home Affairs Committee in June, Trevor Phillips, Chairman of the Commission for Racial Equality (CRE), said there had yet to be a proper race impact assessment on the plans. In view of that fact that black people are eight more times more likely than white people to be subjected to police stop-and-search powers, and Asians three times more likely, ethnic minority groups were uneasy - in the CRE's submission - because they believed that some police officers could abuse the system. He suggested that one way of countering the problem was for a watchdog to monitor whether ID cards were being checked in different ways for people from different communities. That could mean

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<sup>113</sup> Privacy International, *Mistaken identity: exploring the relationship between national identity cards and the prevention of terrorism*, April 2004, <http://www.privacyinternational.org/issues/idcard/uk/id-terrorism.pdf>

<sup>114</sup> Liberal Democrats press release, *Draft ID cards bill is flawed: Lib Dems launch 10-point rejection of scheme*, 26 April 2004, <http://www.libdems.org.uk/module/printnews.cfm/article.6599>

that ethnicity was one of the biometric details held on the card.<sup>115</sup> (In Home Office surveys among ethnic minority communities the majority of respondents felt that ethnicity should not be shown on ID cards<sup>116</sup> and it is not one of the “registrable facts” which may be recorded under Schedule 1 of the Bill). A recent investigation by the CRE found that only one of the 15 police forces surveyed was, as of June 2004, fully compliant with the requirements of the *Race Relations Act*.<sup>117</sup>

The Committee called for a full Race Impact Assessment to be published with the substantive Bill.<sup>118</sup> This was published with the Bill on 29 November.<sup>119</sup> The document draws on the results of polling and focus group work among ethnic minorities and outlines how the Government changed the draft Bill in specific areas following responses from race and refugee organizations to the consultation. The areas concerned were:

- provision of information without consent,
- police powers to stop and search,
- protection of asylum-seekers entering the UK using false documents and
- the degree of independent oversight of the whole scheme<sup>120</sup> (paragraphs 114-118).

Certain themes predominated in responses:

7. The real concerns expressed in all our consultation thus far relate to how the police and service providers will use the scheme in practice. There were fears that the police will interpret the legislation around identity cards in a way that will discriminate against minority ethnic groups, with a strongly held view that the police will stop a disproportionately high number of black and Asian people and demand sight of the identity card even though the Bill provides no such powers.

8. There were concerns that requiring the production of a card to access services increases the risk of potential discrimination. People from black and minority ethnic groups might be asked to provide the card as proof of identity more frequently than white people which in some cases might lead to people being denied access to services to which they are entitled if they cannot produce their card.

9. There were concerns that the cards will be used detrimentally due to institutional racism existing in public and private service authorities, particularly where there was a reliance on discretion.<sup>121</sup>

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<sup>115</sup> Home Affairs Committee, *Identity cards*, 30 July 2004, HC 130-II 2003-04, Q384, Ev 145; Ev 275-6; Q844, Ev 147

<sup>116</sup> *Identity Cards Bill: Race equality impact assessment* para 50

<sup>117</sup> Commission for Racial Equality press release, *CRE to take enforcement action against police forces and authorities*, 14 June 2004, [http://www.cre.gov.uk/media/nr\\_arch/2004/nr040614b.html](http://www.cre.gov.uk/media/nr_arch/2004/nr040614b.html)

<sup>118</sup> Home Affairs Committee, *Identity cards*, 30 July 2004, HC 130-I 2003-04, p63

<sup>119</sup> [http://www.homeoffice.gov.uk/docs3/reia\\_241104.pdf](http://www.homeoffice.gov.uk/docs3/reia_241104.pdf)

<sup>120</sup> *Race equality impact assessment*, paras 114-118

However, encouraged by the finding that the majority of those polled from ethnic minorities were in favour of the proposal to introduce ID cards in the UK (paragraph 48), the Government is confident in defending the Bill against its critics:

14. The identity cards scheme will be an inclusive scheme, designed to cover everyone who has the right to be in the United Kingdom. It will show that everyone belongs to our society whether they were born here, have chosen to make their home here or are just staying for a while to study or work. It will help people prove their identity to access services such as free health treatment or benefits and give everyone confidence that legal migration will not result in increased fraudulent use of hard-pressed public services. If our communities have confidence in our immigration controls, they will be more welcoming of new arrivals, helping to promote a more cohesive society.<sup>122</sup>

### C. A threat to civil liberties?

The Foundation for Information Policy Research, an independent “think-tank”, viewed the proposals in the draft bill as an invasion of privacy:

The card has great potential for invading UK citizens’ privacy. It will be used to link together a large number of government and private sector databases. Customs and Excise and the Inland Revenue will have access to the central government database. The card will also be required by financial institutions, airlines and a range of other companies. In turn the government will be able to require access to information from any person or organisation to verify ID card information.

An “audit trail” will be created in a government database every time the card is checked. This trail will show every organisation that has checked an individual’s card, allowing information held by those organisations to be accessed under other government powers or court order. The audit trail can be accessed for a range of purposes including the investigation of crime committed by a large number of people in a common purpose — such as GM crop protesters. This information can be stored indefinitely.<sup>123</sup>

Liberty’s submission to the Home Affairs Committee began by staking out the constitutional high ground:

Any national identity scheme raises profound constitutional concerns regarding the relationship between the individual and the state, and the presumption of privacy and individual liberty. These concerns can only be rebutted by clear and compelling evidence to the contrary, and a proportionate and effective mean of achieving the state’s aims. In other words, there is a rebuttable presumption in favour of the liberty, autonomy and privacy of the individual (and thus against ID

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<sup>121</sup> *Op. cit.*, paras 7-9

<sup>122</sup> *Op. cit.*, para 14

<sup>123</sup> <http://www.fipr.org/press/040426id.html>

cards). This is underpinned by Britain's common law and constitutional tradition, and the analytical approach of the European Convention on Human Rights (ECHR). The issue is whether the government's proposals rebut that strong presumption.<sup>124</sup>

In his appearance before the same committee, Richard Thomas, the Information Commissioner, signalled his unease about the proposals for a National Identity Register, saying that "the introduction of such a register marks a sea change in the relationship between the state and the individual".<sup>125</sup> The Home Office has always said that the Bill is fully conformable with the requirements of the *Data Protection Act 1998* and, indeed, a whole Appendix of the draft Bill consultation document is devoted to demonstrating how this is so.<sup>126</sup> However, critics are unconvinced. A Home Office official told the Committee:

The information that is proposed to be held on the National Identity Register is simply that information which is required to establish a person's core identity. So that might include name, date of birth and a record of certain biometric identifiers.<sup>127</sup>

Yet Schedule 1 allows for the recording of present – and past - addresses, prompting the Director of Liberty to comment:

We do not see in principle why detailed information about someone's past residential status or, indeed, past immigration status, perhaps many years after they have acquired British nationality, is something that can in any sense be said to be limited to identity and identifying information.<sup>128</sup>

In his detailed response to the draft Bill the Information Commissioner reported that his initial "healthy scepticism" towards the Government's plans had turned to "increasing alarm" as he realised that "what is envisaged is an extensive national identity registration system, not just an identity card", which engages "substantial data protection concerns". Apart from the danger of "function creep" through the unpredictable use of secondary legislation (mentioned above), the Information Commissioner is concerned about the range of organisations which will be able to access the Register without the consent of the individual and the nature and extent of the personal information that will be collected and retained.<sup>129</sup>

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<sup>124</sup> Liberty, *The Government's identity card proposals: Liberty's outline submissions*, 3 February 2004, <http://www.liberty-human-rights.org.uk/privacy/id-card-oral-evidence-feb-04.pdf>

<sup>125</sup> "ID card proposals criticised by data watchdog", *Financial Times*, 9 June 2004, p2

<sup>126</sup> Home Office, *Legislation on identity cards: a consultation*, Cm 6178, April 2004, Annex D

<sup>127</sup> Home Affairs Committee, *Identity cards*, 30 July 2004, HC 130-II 2003-04, Q46, Ev 7

<sup>128</sup> *Op. cit.*, Ev 116

<sup>129</sup> Information Commissioner, *Response to the Government's consultation on legislation on identity cards*, July 2004, [http://ico-  
cms.amaze.co.uk/DocumentUploads/the%20information%20commissioners%20response%20to%20the%20draft%20bill.pdf](http://ico.cms.amaze.co.uk/DocumentUploads/the%20information%20commissioners%20response%20to%20the%20draft%20bill.pdf)



Commenting on the substantive Bill, Liberty was concerned by what it perceives as the regulatory impotence of the National Identity Scheme Commissioner:

Liberty's view is that the Commissioner's role should be broader and his powers stronger. In particular, he should report to Parliament directly as the Information Commissioner does. It is impossible to independently review the Secretary of State if reports to Parliament are filtered by the Secretary of State himself.<sup>130</sup>

#### D. Costly and impractical?

The UK Computing Research Committee,<sup>131</sup> in evidence to the Home Affairs Committee, pointed to a disjunction between theory and practice:

In principle, there should be no insuperable technical challenge in constructing a database that could handle the likely volume of queries with acceptable performance and resilience. In practice, we have deep scepticism about the Home Office's ability to specify, procure and implement a national, software intensive system on the scale that would be necessary.<sup>132</sup>

Iris recognition has been presented as a highly reliable form of biometric identifier. However, in his appearance before the Home Affairs Committee, Prof Ross Anderson of Cambridge University raised doubts even about this:

**Q379 Mrs Dean:** What evidence do you have that it is practically feasible to produce contact lenses to fake irises on a significant scale?

**Professor Anderson:** Well, I have not done it myself but I have seen a photograph of one that was produced by one of the researchers in the field and, given the underlying mathematics, I do not think there is any difficulty in principle with producing a contact lens that will produce a certain iris code. The manufacturers of iris scanning equipment will say in their defence that it is possible to measure the nictation, the oscillation in the diameter of the pupil. I understand that none of the equipment currently on sale does that and I would be worried that someone might produce a well printed contact lens with a sufficiently clear area in the middle where the movement of the underlying eye would be taken by the scanner as indicating that the genuine eye were present. There is room for further technological work here. As things stand I am afraid that iris scanners, like fingerprint scanners, are liable to be defeated by sophisticated attack if they are used in an unattended operation. Attended operation is different, of course, if you train the staff properly they can feel

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<sup>130</sup> Liberty, *Key points in the Identity Cards Bill*, December 2004, <http://www.liberty-human-rights.org.uk/privacy/id-card-bill-key-points.PDF>

<sup>131</sup> The UKCRC is an Expert Panel of the British Computer Society, the Institution of Electrical Engineers and the Council of Professors and Heads of Computing; see <http://www.ukcrc.org.uk/>

<sup>132</sup> Home Affairs Committee, *Identity cards*, 30 July 2004, HC 130-II 2003-04, Ev 267

people's fingerprints, they can look carefully at the eye and check there is no funny business.<sup>133</sup>

The Association of Payment and Clearing Services, which has taken the lead in credit and debit card security, is reported to have doubts about the quality of biometric identification. Such a system was under consideration for the new generation of chip and pin credit and debit cards but it was reportedly rejected because no system was found to be reliable enough.<sup>134</sup>

Privacy International has concerns about the ability of technology to keep one step ahead of the criminal:

### **Can an ID card be forged?**

Invariably, yes. The technology gap between governments and organised crime has now narrowed to such an extent that even the most highly secure cards are available as blanks weeks after their introduction. Criminals and terrorists can in reality move more freely and more safely with several fake "official" identities than they ever could in a country using multiple forms of "low-value" ID such as a birth certificate.

Criminal use of fake identity documents does not necessarily involve the use of counterfeiting techniques. In 1999, a former accountant was charged in London with obtaining up to 500 passports under false identities. The scam was merely a manipulation of the primary documentation procedure.

It is worth considering some inevitable formulae that apply across the board to the black-market economy. Whenever governments attempt to introduce an ID card, it is always based on the aim of eliminating false identity. The higher the "integrity" (infallibility) of a card, the greater is its value to criminals and illegal immigrants. A high-value card attracts substantially larger investment in corruption and counterfeit activity. The equation is simple: higher value ID equals greater criminal activity.<sup>135</sup>

The UK Computing Research Committee doubts that the National Identity Register could ever be proofed against hackers:

UKCRC believes that any sensitive database that is attached to the Internet (or otherwise available to a large and changing population of users) will almost inevitably be successfully attacked. If the system is built on commercially

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<sup>133</sup> Home Affairs Committee, *Identity cards*, 30 July 2004, HC 130-II 2003-04, Q379, Ev 59

<sup>134</sup> "Question marks over identity", *Guardian*, 17 April 2004, Jobs & Money, p11

<sup>135</sup> <http://www.privacyinternational.org/issues/idcard/uk/uk-idcard-faq.html#forged>

available products, we do not believe that it could be made secure against intelligent, resourceful and sustained assault.<sup>136</sup>

The consequences of a large-scale system “crash” were illustrated recently when the national automated fingerprint identification system (Nafis) collapsed on 24 November, leaving police officers unable to check suspects’ fingerprints against national records for several days.<sup>137</sup>

As well as using untried technology, the scheme cannot yet be costed with any precision. The Liberal Democrats’ response to the draft bill quoted home affairs spokesman Mark Oaten:

The Home Secretary is leading us towards an expensive and flawed piece of plastic. This will do little to tackle terrorism and the £3bn would be better spent on more intelligence and policing. Costs are bound to escalate if expensive equipment is going to be installed in every post office, hospital and benefits office throughout the land.<sup>138</sup>

The ID cards scheme will be one of the most ambitious and expensive public-sector IT project ever undertaken in Britain. The Liberal Democrats’ press release reminds its audience that large-scale IT projects at the Post Office, Passport Office, Probation Service, Police Service, Courts Service and Child Support Agency have all run considerably over budget. A recent report from the National Audit Office highlighted serious shortages of public sector staff with the necessary project and programme management skills for large-scale IT contracts.<sup>139</sup>

Shadow Home Secretary David Davis picked up several of these concerns in his initial reaction to the draft Bill:

The practical problems in the way of ID cards are immense. If a scheme can overcome these problems without sacrificing civil liberties, ID cards should be introduced soon - not in ten years time. The terrorist threat is real, and is here today. [...] Any proposal has to be measured against four key criteria. First, can we protect civil liberties and privacy, not just in the use of the ID cards but also in its associated databases? Second, will it work to curb terrorism, serious crime, and the avalanche of illegal immigration? Third, is it cost-effective? And fourthly, is this Home Office capable of introducing them?<sup>140</sup>

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<sup>136</sup> Home Affairs Committee, *Identity cards*, 30 July 2004, HC 130-II 2003-04, Ev 268

<sup>137</sup> “Chaos as police fingerprint database fails”, *Independent*, 3 December 2004, p19

<sup>138</sup> Liberal Democrats press release, *Draft ID cards bill is flawed: Lib Dems launch 10-point rejection of scheme*, 26 April 2004, <http://www.libdems.org.uk/module/printnews.cfm/article.6599>

<sup>139</sup> National Audit Office, *Improving IT procurement: the impact of the Office of Government Commerce’s initiatives on departments and suppliers in the majority IT-enabled projects*, HC 877 2003-04, p8

<sup>140</sup> Conservative Party press release, *The case for ID cards must be made*, 26 April 2004.

In announcing their decision to support the Bill in principle at Second Reading, the Conservatives confirmed that these four criteria had now been replaced by five tests:

During the course of the Bill, the Conservatives will continue to hold ministers to account over our five tests: the exact purpose of the scheme, whether it will meet those objectives, whether this Home Office is capable of delivering them, the cost-effectiveness of the scheme, and whether proper protection can be provided for privacy.<sup>141</sup>

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<sup>141</sup> Statement from Conservative Central Office quoted in “Tories will back ID card bill”, *Daily Telegraph*, 14 December 2004, p1