

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Liberty's evidence to the Home Affairs Committee on the Draft Identity Cards Bill

May 2004

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent funded research.

Liberty's policy papers are available at

www.liberty-human-rights.org.uk/resources/policy-papers/index.shtml

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Introduction

1. We are restricting our comments to the detail of the draft Identity Cards Bill. Liberty has already provided written and oral evidence to the Committee detailing our concerns with a national compulsory identity scheme.
2. Our comments on the Bill should not be taken to imply that Liberty accepts that a National Identity Register is either desirable or justified. The Government has ignored the financial, constitutional, and privacy implications of the Register and identity card scheme. The financial costs, both in set up and maintenance, will be huge. Any perceived benefit would not justify introduction as public funds could invariably be better spent elsewhere. The introduction of an identity card scheme will have far reaching implications for the relationship between the individual and the state. Profound privacy implications arise from both the Government's record in maintaining databases, and the lack of enforceable privacy rights in comparable EU countries that do have identity cards. We contest the Home Secretary's assertion that black and minority ethnic groups support his proposal. Race groups we have liaised with are concerned both about the experience of minority ethnic groups in other countries with identity card schemes, and the implications of a scheme in Britain whilst stop and search powers are disproportionately used against members of ethnic minority communities.
3. None of the arguments for identity cards stand up to examination. The impact in fighting crime, benefit fraud, terrorism and combating illegal immigration will be negligible. Any benefits in accessing services could be matched through single purpose identifiers. We are asked 'why not have an identity card?' The more pertinent question is 'what justification is there for a card?' Comparative research shows that countries with identity card schemes suffer the same problems that we are told cards will combat.
4. There are a number of general comments to be made about the Bill. The consultation document makes repeated reference to the need for affirmative resolution by both Houses of Parliament to extend any provisions in the Bill relating to compulsion, information recorded, information sharing and so on. While this provides

some check to the Government's ability to extend the provisions in the Bill, the affirmative resolution procedure is a blunt tool for legislative scrutiny, as it does not allow amendment of a proposed regulation. To take an example: a regulation that proposes extending the data sharing ability to a wide range of public bodies, will either stand or fall as a whole. Parliamentarians may agree with some, but not all, aspects of proposed regulation, but they will be unable to amend it. To enable full legislative scrutiny and parliamentary debate the power to amend regulations should be written onto the face of the Bill, whenever regulations deal with categories of persons or bodies¹.

5. The Home Office has stated that compulsion will not occur until a number of criteria have been satisfied, and that this is not envisaged for several years. It is worth noting that there is nothing in the Bill to prevent immediate compulsion. Clause 7 requires compulsion to be approved by Parliament and lays down a number of requirements, but the timeframe envisaged appears to be dictated by logistical factors and can presumably be brought forward.

6. Although the Bill is called the 'Draft Identity Card Bill' its primary purpose (and the subject of the bulk of clauses) is to create a National Identity Register. An identity card itself is a consequence of entry onto the register. Provisions about data sharing powers and the level of detail recorded relate to the Register. This underlines the distinction between the previous wartime national identity scheme and the current proposal. It also means that the identity card itself is less relevant to the debate. All provisions relating to identity cards could effectively be removed from the Bill without undermining its principal purpose.

The Bill

7. Clause 1 creates the National Identity Register. Information that can be held is limited to the definition of 'registrable facts' contained in Clause 1 (4). The consultation document states at 2.10 that registrable facts cannot be extended by

¹ As in (clause 7 (2) (c)) which creates an ability to amend when extending compulsion. The problem with regulation approval was apparent in the recent orders made under the Regulation of Investigatory Powers Act 2000 where list of bodies to be given access powers to communications data for example had to be all approved or none.

regulation to cover categories not relating to identification, such as criminal convictions or medical records. Liberty disputes this assertion. The list of ‘registrable facts’ includes at 1 (4) (g), ‘information about numbers allocated to him for identification purposes and about documents to which they relate’. As identification numbers of the Police National Computer and National DNA database, for example, are used to establish links to identifying information they could arguably be included. Even if such information could not be added by regulation it is misleading to imply some sort of bar preventing addition to the list by subsequent primary legislation. We have recently seen provisions for data retention contained in anti terrorism legislation² and proposals for detention of terrorism suspects contained in an asylum bill³. It is easy to envisage extension proposals arising in a future criminal justice bill.

8. Use of the compulsion power in Clause 6 carries a greater burden on those compelled than simply the prospect of a £2,500 fine (repeated on each occasion on which notice to register is not complied with). Those compelled to register will be subject to the fine of £1,000 for failing to renew their identity cards on time. These proposals demonstrate the Home Secretary’s determination to deal harshly with all those who do not ‘volunteer’ for registration.

9. If the Home Secretary requires it, those required to be issued with identity cards can include anyone entering the UK. Under Clause 8 (4) a card may be issued to anyone not normally required to carry a card but about whom prescribed registrable facts have been entered on the Register. These facts, such as name, address and so on, will be required from all those passing through customs. Under Clause 2 (2) all those of a prescribed description proposing to enter the UK are entitled to be entered on the register. The consequence of these two clauses is that the Secretary of State may pass regulations requiring non nationals who are not applying for immigration or refugee status to carry identity cards.

10. Clauses 11-13 relate to maintaining the accuracy of the Register. This is largely achieved through obligations on individuals to notify of changes in relevant information. It does not, however, create any obligation to audit the information

² The Anti Terrorism Crime and Security Act 2001

³ Asylum and Immigration (Treatment of Claimants etc) Bill

contained on the Register. The Government has a poor record on accuracy of information held on databases, demonstrated most recently by the Criminal Records Bureau, which was shown to hold numerous inaccurate details of convictions. Whilst inaccurate information in the CRB can be discovered through the issuing of a Criminal Conviction Certificate, inaccuracies on the National Identity Register could remain undetected indefinitely. In addition to the obligations on individuals, Liberty believes a duty to ensure entries are accurate should be written onto the face on the Bill. This could be achieved by requiring details of the entry to be sent to those on the Register on an annual or bi-annual basis.

11. Clause 12 places an obligation upon all those on the Register to inform of any relevant change of circumstance affecting an entry on the register. A failure to do so can result on a fine of £1000. Whilst some details will remain relatively static, others, such as address can change quite frequently. This could place a considerable burden on those who live in insecure, or simply frequently changing, accommodation. As the Secretary of State can also require a fee to be paid for any modification to an entry on the Register (Clause 37 (b)) the potential cost of the identity card to those who move house frequently (and who may be least able to afford such cost) is considerable.

12. Liberty is very concerned that regulations can require that failure to notify the Secretary of State that an identity card has been lost, stolen or damaged will be a criminal offence. This is wholly disproportionate, and could criminalise a lack of awareness of a third party's actions. It is quite conceivable that the holder may not be aware of something 'in or on it having become unreadable or otherwise unusable' (Clause 13 (9) (c)). Whether or not a prosecution occurs, it cannot be right that a person has committed an offence if their card is damaged even if they are unaware of the fact. At the very least a defence should be written into the Bill that the holder was unaware of the damage, or had other reasonable excuse, otherwise the offence is strict liability. Equally, we are extremely concerned that someone who has their identity card stolen could themselves be criminalised as a consequence of not reporting the fact.

13. Clause 19 creates a prohibition on a requirement to produce identity cards, but this does not extend to situations including where a person has been compelled under

Clause 6. We imagine this is intended to allow foreign nations or refugees, for example, to be required to carry a card. The practical effect is that those who are compelled by reason of not having registered by the date when the Home Secretary determines that cards shall become compulsory can be required to produce cards while other citizens are not. We do not imagine that the Government intends to impose this two-tier system on British citizens. For clarity's sake this should be made explicit in the Bill.

14. The Home Secretary reserves the power to make regulations authorising disclosure of information on the register, without consent, to the police that goes beyond national security or crime detection and prevention⁴. We appreciate that such an order will have to be approved by Parliament but, as mentioned earlier, are concerned that this does not allow a sufficient level of scrutiny. Exhaustive lists of purposes appropriate to the legitimate accessing and sharing of information are frequently contained in legislation⁵. It is far preferable that the purposes be written onto this Bill. This will allow certainty and proper debate.

15. Power to disclose without consent is further extended, theoretically without limit, in Clause 23. Regardless of the fact that approval is required for regulation we remain extremely concerned that the Home Secretary has effectively written himself a blank cheque. As stated previously, regulation cannot be amended, but will either stand or fall.

16. We are pleased to see that a National Identity Scheme Commissioner will be appointed under Clause 25. However, it appears this role will be limited to reviewing and reporting to the Prime Minister on the exercise of the power to disclose without consent. The Prime Minister has a broad power to suppress details (Clause 26 (4) (d)), meaning that the manner of reporting is far from independent. Liberty believes that the Commissioner's remit should cover the Home Secretary's other powers, as well as register accuracy, the use of penalties and broader issues such as interaction with the Citizen Identification Project database.

⁴ Clause 20 (3). Access records under Paragraph 9 can only be obtained if connected to the detection or prevention of serious crime.

⁵ For example, in the Schedules to the Data Protection Act 1998, as legitimate purposes under Article 8 of the Human Rights Act 1998 or in section 22 of RIPA 2000.

17. Ideally the role of the Commissioner should extend to overseeing the operation of the registration and identification scheme as a whole. If it is envisaged that the Secretary of State will make repeated extensions to his powers through the passing of regulation it would be helpful if the Commissioner could report on the use of such powers. This will allow Parliamentarians to assess whether further extensions are justified.

18. We have no comment on the range of offences relating to the possession of false identity documents or documents relating to others with the intent of using these to establish identity. However, we query whether the lesser offences of being in possession of identity documents that are false, improperly obtained or that relate to someone else are entirely necessary. If the document has been improperly obtained it is likely that an offence will also have been committed under Clause 30 (providing false information). If the document belongs to someone else then we imagine an offence of handling stolen goods would have been committed. If the document has been found, but the person has not taken steps to return them to the owner (whether this would amount to a reasonable excuse is questionable) we do not think the criminal law is appropriate.

19. We have mentioned earlier the consequential costs arising from the national identity scheme are likely to be considerable. Clause 37 envisages a wide range of situations, including issue, modification and application for disclosure, where fees may be charged. While arguments over the direct and indirect costs of the scheme are not within the scope of a submission on the structure of the Bill, it is telling that the Home Secretary envisages the necessity of frequent charging to balance against the high costs of setting up and maintaining the Register.

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