

NO2ID Parliamentary Briefing on the UK Borders Bill

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1. Legislative Context

NO2ID has two clear areas of concern with this Bill:

1.1 This is an identity cards Bill

It is a stepping-stone to the introduction of the 'National Identity Scheme' – we consider it significant that this is now the Government's preferred technology/terminology, rather than 'ID cards', subsequent to the passage of the Identity Cards Act 2006 ("ICA 2006").

Indeed, apart from a few provisions introduced to paper over the recent foreign prisoner scandal, and some (for the current Government, routine) increases in the powers of officials and patching of other recent over-hasty legislation, ***assembling part of the ID scheme appears to be the central function of this Bill in the Government's legislative strategy.***

It also illustrates how – as NO2ID warned – slippery were the promises that ID cards would only be made compulsory under new primary legislation. Many commentators on the Government side took that to mean a new Identity Cards Bill, properly consulted upon and introduced as such, reintroducing the same powers of compulsion removed from ICA 2006. ***Here we have primary legislation directly compelling people into the scheme on a selective, potentially discriminatory, basis.***

And it introduces ***the first glimpse of ID cards that are effectively compulsory-to-carry.*** Once issued, biometric visas and cards under this Bill would act as the key document that immigration officers could demand of anyone.

"Claptrap" was originally a hackneyed oratorical effect without substance designed to draw applause. Much of the Bill is legislative claptrap. Being "tough on foreigners" is an easy way to smuggle into law, and to put into practice, techniques and systems that the Government has quite clearly indicated it intends to extend to us all.

1.2 It is a data-sharing Bill

Second, the Bill, in common with most recent legislation, contains ***extensive provisions for compiling official database dossiers on individuals and businesses through interrogation and data-sharing.*** While any form of investigation requires information, the cross-referencing and sharing of information (including some that would otherwise be absolutely confidential) would permit and facilitate fishing expeditions, rather than following specific suspicions of a crime.

This is a component of the database state element of Government vision, which as "Transformational Government" lays out forms ***part of the broader motivation of the ID Scheme: numbering citizens makes it easier to share and mine information about them.*** The logical consequence of that vision is a Governmental all-seeing eye, with ever increasing scope for intervention in individual lives.

2. Practical Consequences

2.1 Weakened rule of law and increased official discretion

The Bill contains very great scope for discretion both in regulation and by officials in the exercise of their powers. It creates new means for arbitrary or oppressive behaviour. It undermines important principles of law by seeking to permit powers (e.g. cl.8(2), cl.36) to be used for purposes other than those for which they have been granted.

2.2 Damage to privacy and confidentiality

The Bill carries forward the current administrative fashion for data-sharing in several ways. In particular it breaks down two very important categories of privacy. The highly personal information collected in assessing immigration status is provided to be shared for other official purposes – such purposes to be specified by statutory instrument, and thus liable to be arbitrarily extended without debate. The use of personal taxation information for immigration purposes is also extended – again, the last time being in 2005 – contributing to the erosion (also happening in parallel legislation) of the privacy of tax affairs.

2.2 Economic damage to the UK

Ministers have alluded repeatedly (and correctly) in recent years to how immigration is good for the economy as it provides skilled and productive workers. They forget skilled and productive workers generally have a choice whether to immigrate or stay here. If immigration processes are bullying and intrusive, if in-country they are treated as suspects who must always account for their whereabouts, then some certainly – perhaps many – will go elsewhere. Likewise tourists, and the value of tourism.

There would also be considerable compliance costs. New immigration procedures, retroactively applied to existing residents will take time out of their working lives. New, fiercer immigration procedures applied to employers will force them to expend resources on adapting and enhancing compliance procedures and perhaps purchasing Government verification services. It will probably make them (particularly smaller employers, where the endogenous growth and new ideas are) more risk averse about taking on all employees, particularly those from ethnic minorities.

Of course the latter is inherent in the Home Office strategy for foisting ID procedures on all of us all the time. But those to suffer first and most will be those lower economic classes who cannot easily produce ID documents. Other things being equal, this scheme will cause unemployment among people who “look foreign”.

2.3 Reputational Damage to the UK

This country enjoys a historically-based reputation as one of the world's freest, most open and most tolerant. Foreign visitors are already surprised by the extent of surveillance here, which they don't expect. If they are personally subject to police-state style scrutiny, then they will take more notice – and Britain will gain a reputation as an unfriendly, oppressive country.

2.4 Direct costs of the scheme

It is complicated; it involves new, untried, technology, and will slow handling of millions of visitors and hundreds of thousands of foreign residents more than fractionally, incurring at least as much again in administrative time as it costs businesses and individuals. The costs are plainly many tens of millions, if not hundreds of millions. How many? How do we know it is worth it? What are the gains for the country?

2.5 Obfuscation of ID Scheme costs

The Government has repeatedly offered the circular argument that “70% of the costs of the ID Scheme would be incurred anyway” because of its changes to the passport system – almost all of which are being made only *because* they form part of the ID Scheme. This is more of the same.

Just before Christmas it was announced that the Register under the ICA 2006 would be divided into separate-but-integrated parts kept in separate departments. Here we have an opportunity for much of one of those parts, the creation and piloting of the biometric technology, to be written off as an “immigration” expense, not part of the ID Scheme budget at all...

3. Clause by Clause

cl.1-4 No comment

cl. 5 This recapitulates the provisions in the Identity Cards Act 2006 in slightly modified form so that it can be applied under compulsion to non-EEA foreigners. While powers of frank compulsion were removed from the ICA 2006 as a “compromise” during its passage (and NO2ID has pointed out before that the ID Scheme is designed to be only pseudo-voluntary even for British Citizens), compulsion into the scheme is reappearing here less than a year after the promises that it would be subject to a general election.

It should be noted:

ICA 2006 6(1) in effect defines a biometric visa as an ID card. ID cards potentially issued under this new legislation would be part of the system created by ICA 2006 – nothing more would be required to integrate them into the legal structure, even if the Home Office might find the administrative and technological task more difficult.

There is nothing to prevent regulations made under this section being used discriminatorily against particular classes of foreign residents or visitors. (The song and dance being made about the application of biometrics in the *Sri Lankan* trial perhaps indicates the particular line of claptrap the Government may be tempted to pursue.) The logic of the broader system, however, requires it be made universal, which is a huge job. Regulations under 5(1) by introducing new classes of biometric information to be supplied could easily make it impossible for existing residents (say without fingerprints, or fingers) to comply, removing their residence rights retrospectively.

cl.6 Explicitly, in 6(3) provides for those under 16 to be put on the system, and implicitly requires them to carry the card.

cl.7 It is highly undesirable to give the Secretary of State unfettered discretion (as 7(2)(e) suggests) to decide the consequences of failing to comply.

cl.8(2) Why? The only function of this subsection is to enable a broad data-sharing agenda. It is a most dangerous principle, setting aside the fundamental legal principle of *ultra vires*. Such delegated legislation would directly contradict data-protection law and principles. And there is nothing to prevent it overriding common law confidentiality.

Information collected for immigration purposes frequently includes highly sensitive information about personal history and family circumstances. It is a shocking suggestion that such information should be made normally available for other official purposes, whatever those purposes may be. Note 8(4) even overrides the privacy protections of this section 8, if the sensitive information is required for other purposes. 8(2) and 8(4) together make 8(3) worthless.

cl.9-14 Parallel precisely the penalties provisions under ICA 2006 and are open to the same objections of the ouster of natural justice and punishment under presumption of guilt.

cl.15(1)(g) Gives unnecessary discretion to the Department.

cl.16-35 Are, as far as we understand them, outside the scope of the NO2ID campaign.

cl.36-38 We note that this clause gives scope for blanket sharing of HMRC information, not just release of information in relation to specific information. This is highly dangerous to privacy.

Regardless of the penalties for wrongful disclosure, information sharing massively increases the scope for private information to be disclosed, and decreases the likelihood of the source of disclosure to be traced and punished. Pointing to penalties, as ministers do in such circumstances, is to miss the point. Penalties cannot protect privacy, only institutional safeguards can do that.

cl.39 Patches the 2002 Act.

cl.40-end Are, as far as we understand them, outside the scope of the NO2ID campaign.