

Identity Cards Bill 2005

Preliminary Briefing Paper for New MPs



Summary

- 1 The Identity Cards Bill, introduced in the last Parliament and reintroduced after the Election, legislates for the introduction of measures that would severely compromise individual privacy and security and which would incur vast, unquantified costs. The benefits, if any, would accrue solely to the state. A large proportion of the population would be significantly inconvenienced by intrusive, socially divisive, and unjustified state identity control.
- 2 The Bill would create powers for any future Home Secretary arbitrarily to extend surveillance and control of the population by regulation. Once the system is in operation, the civic existence of individuals will be determined by executive order.
- 3 The Bill is almost entirely enabling legislation. Furthermore, the Government has a mandate neither for the nationalisation of personal identity, nor for the far more limited institution of an identity card.
- 4 When the Bill was put through Parliament last session, it was rushed, with no hint as to why. There has — still — been insufficient discussion of the very complex and far-reaching effects of such a system for any proposals on the subject to be acceptable without a full national debate. This briefing outlines a few of the problems.

Introduction

- 5 NO2ID is a diverse group of people and organisations¹ — politically of all parties and none — who stand against the Government's attempts to introduce ill-justified, intrusive and arbitrary control of personal identity. We have deep objections to the Government proposals for "identity cards".
- 6 We believe that the Government proposal to create a national identity scheme — which includes an identity card as perhaps its *least* important element — would fundamentally change the nature of the relationship between citizen and state. It would also undermine our familiar expectations about privacy in our everyday lives.
- 7 We believe that it everyone's fundamental right to assert who they are, who they choose to be, without being checked against an approved list; that citizens should not need the permission of the state to exist.
- 8 The Government has claimed that ID cards and the proposed National Identity Register (NIR) will prevent illegal immigration, unlawful employment, benefit fraud and abuse of public services. It has, however, failed to provide any detailed cost/benefit analyses, or evidence. The costs of identity-related crime quoted have sometimes been vastly overstated².
- 9 Government sources have equivocated on "security" issues and conflated national and personal security. It is asserted — without evidence — that ID control will be valuable against terrorism. Yet ID cards were rejected as a disproportionate reaction to serious national security threats during the Cold War and the IRA's mainland bombing campaign. An urgent threat is cited, but the system is not yet specified, and may be introduced gradually over the next 10 years, 2012 being the earliest projected date for universal compulsory use.
- 10 We note that it is technically possible³ to produce systems of secure authentication of identity without requiring constant reference to a central identity database or creating an audit trail of everyone's entire life. This would have numerous advantages. However, the Home Office proposals are incompatible with such models. They are founded in a conception of population management and monitoring that looks to administrative convenience in obtaining everyone's personal information for access, directly or indirectly, by all branches of Government, and any body authorised by Government.
- 11 We are keen to see public and parliamentary discussions of the complex issues surrounding personal identity and privacy. Not only has the Government failed to make a case for its system (for which it has no real electoral mandate), but it has misdirected the attention of the public and parliament to "ID cards"; and sought to stifle serious questions by simply ignoring them.

The Identity Cards Bill: Legislative process

- 12 The Home Office openly admits in the Regulatory Impact Assessment⁴ that the bill avoids "constraining the design of the scheme". In practice the Bill reserves to the Home Secretary the right to change the functions and content of the system *ad lib*. The lack of specification in relation to a Bill with such far-reaching implications is worrying, particularly when security problems with the implementation can be critical to any project, not least one of this size.

¹ A list of supporting organisations can be found at <http://www.no2id.net/supporters/>

² The Cabinet Office report, *Identity Fraud: A study* (July 2002) is most often cited. Annex B, which breaks down the headline figures, is fascinating for the numerate sceptic.

³ See, for example, the description by David Birch in the March 2005 issue of *Prospect*.

⁴ Section 1(b)(7)



- 13 The Identity Cards Bill was designed as enabling legislation; deliberately vague, it leaves all substantive details to regulation. The Bill redefines the constitution, creating a flawed 'super-affirmative' process for approving secondary legislation. This device appears to have been created solely for political expediency: in order to avoid having to introduce unpopular measures, including compulsion, via primary legislation. The "super-affirmative" process fails to provide any means for amending a resolution. It is all or nothing.
- 14 Consultation on the Draft Bill was lengthy, but nonetheless derisory. Objections and questions from a variety of well-informed bodies and individuals were all but ignored, the Home Office's response in almost every case consisting of repeating the unsubstantiated assertions giving rise to the original queries. A similar approach was taken to the previous consultation on "entitlement cards", where the Government's confusing public presentation of the balance of the response gave rise to parliamentary questions⁵.
- 15 Before the election, the Bill was forced through the Commons in great haste, crushing opportunities for scrutiny and debate. It's worthy of comment that the timing of the Bill (and the election, of course) was entirely within the Government's control. The Government failed to satisfy the questions raised by MPs, causing Her Majesty's Opposition to withdraw its support for the Bill.
- 16 The Home Secretary's response to the Joint Committee of Human Rights was published too late for it to inform the Third Reading debate, and several reports — including those of the UK Passport Service and CESG⁶ on the suitability of biometric technologies — will still not be available for some months yet.
- 17 It is extraordinary that a vast programme of which most substantive details have yet to be decided, and whose implementation is due to be spread over several years, is suddenly treated with the utmost urgency.

Key points

Profound effects on our way of life

- 18 It is noticeable the Regulatory Impact Assessment and Race Equality Impact Assessment published with the Bill concede that the impact on all residents of Britain will be serious, but make very little attempt to quantify that impact. Instead they outline wish-lists for expansion of the scheme.
- 19 Clause 15(3) of the Identity Cards Bill specifically rules out compulsory carrying, and the need to show a card to claim public services for those not compelled to register. The way was left open to make ID cards compulsory by stealth, however, by "feature creep".
- 20 Indirect compulsion, where entry on the National Identity Register is ostensibly voluntary but is a condition of obtaining some ordinary document or service, is built into the plans for the scheme. Initially one will not be able to renew a passport, driving license, or other "designated document" without joining the Register. This is intended to bring at least 80% of the population on to the database within 10 years. Once registered one is subject to the full rigour of compulsory notification of all changes in one's details to the authorities.
- 21 By making, say, a Television License or credit card a designated document, the Home Office could compel almost the entire population either to register or change their way of life, yet still pretend registration is "voluntary". No part of the Identity Cards Bill would have prevented such designation — indeed clause 4 of the Bill would enable the Home Secretary to designate any kind of document "by order", requiring minimal parliamentary oversight; that this has changed to be an affirmative order is hardly a great improvement.

⁵ *Hansard*, House of Commons, June 17, 2003 : Column 153W

⁶ The Communications-Electronic Security Group, the branch of GCHQ that advises departments on technical matters of Information Assurance.



- 22 Likewise, though the Home Office has made no secret of its desire for a fully compulsory card, carrying a card and presenting it to the police on demand will be effectively compulsory once it is in use for significant numbers of public and private purposes. If ordinary transactions in life may be impossible without it, people will carry it. Few people are prepared to refuse to give police their name and address if stopped. Once such details are given, police may seek to check them. If almost everybody carries an ID card, then not producing one to verify one's name and address may well be regarded as suspicious, and extend the inconvenience of a police stop.
- 23 Such "voluntary compulsion" is plainly politically advantageous, but is repugnant to British social, political and legal tradition. It is an erosion of individual choice redolent of life under authoritarian and totalitarian regimes.
- 24 As the objectives of the proposals are to control and validate our existing interactions with the state, showing ID to officials is to be made part of British life. This in itself is a profound cultural change, not to be lightly undertaken.
- 25 By creating a mechanism for recording and reporting potentially all significant civil acts on behalf of the state, the practical power of the state to intervene in individual lives is greatly increased by this legislation. The present Government apparently welcomes this side-effect⁷, but it has neither made it an explicit goal nor a matter of debate.
- 26 By creating a single source for individual identity and placing it under Home Office control, the system transforms the nature of our relationships with the state — and with others. We are not who we think we are, but whom the Home Office says we are. If all identification and authentication is mediated by the Home Office, that effectively places a monopoly of trust in the Home Office.

Arbitrary Powers

- 27 Almost all of the structure and operation of the National Identity Register and ID cards scheme is left to secondary legislation. However, the treatment of individuals under it will be largely by executive order, without reference to the courts or any appeals process.
- 28 The Secretary of State insisted that the previous bill explicitly ruled out making carrying cards compulsory⁸. However, Charles Clarke stated in the Commons debate on December 20, 2004, 'We are clearly moving towards a compulsory ID card scheme.'
- 29 Regardless of "voluntary compulsion", clause 6(1) would allow the Secretary of State to order a category of people⁹ to register. Administrative convergence, a seeming convenience in which the National Identity Register Number is used by a variety of agencies and organisations as their central reference, would be permitted by clause 1(5).
- 30 The scope of those with potential direct access to the Register is extremely large. The number of institutions identified in the Bill itself is significant, but the way has been left open for this to be broadened further. Moreover, the vague wording of the relevant clauses leaves much scope for later reinterpretation.
- 31 The Bill would pass control of all of the information held on the database from the individual to the state. Clause 19 would authorise the Secretary of State to disclose details from the register to other agencies without the consent of the individual. Provision was also made to allow agencies to notify each other of changes made, without reference to their subject.

⁷ See, for example, the Cabinet Office Performance and Innovation Unit report on *Privacy and Data-Sharing* (2002). The privacy considerations are now ignored, though the enthusiasm for data-sharing survives.

⁸ Clause 15(3)

⁹ Presumably the nature of such a category would be bounded by Wednesbury reasonableness. There was nothing in the 2005 Bill to suggest any bounds to the discretion at all.



- 32 While the Home Secretary awards himself the right to add any person to the Register¹⁰, clause 5 would mean that he has no duty whatsoever to ensure that such data is accurate.
- 33 Clause 2(4) would allow the Secretary of State to enter a person onto the National Identity Register without consent. Those newly applying for a passport, or renewing an existing one, would automatically be entered. Moreover, an identity card could be issued to anyone about whom information that could be recorded on the Register has been taken¹¹.
- 34 An entry would need to be made in the Register for everyone in the UK for over 3 months, of a 'prescribed description' and aged 16 or more¹². But the Secretary of State would be able to change the age requirement by order at any time, requiring those under 16 to register¹³.
- 35 The Bill would also make provision for the Secretary of State to cancel or to require surrender of an identity card, without a right of appeal, under clauses 13(1), 13(3) and 13(4). Given that the object of the scheme is to make an identity card necessary for the exercise of any ordinary civil function, this grants the Home Secretary the power of civic life and death.
- 36 The Bill would introduce several new crimes — including some with no requirement to prove *mens rea* and some that may even be committed unknown to, and beyond the control of, the "offender". The scope of these could be radically broadened in unpredictable ways in secondary legislation.

Limited oversight

- 37 The powers granted to the Home Office would be subject to the most minimal oversight. The Identity Cards Bill makes provision for a National Identity Scheme Commissioner in clause 24, but his scope would be tightly limited.
- 38 Clause 24(3) would restrict matters the Commissioner may keep under review to:
 - the Secretary of State's use of his powers (but not Statutory Instruments);
 - how Designated Documents Authorities make use of their powers;
 - access to the National Identity Register by third parties;
 - the uses to which ID cards are put; and (but only implicitly)
 - the imposition of civil penalties (but not appeals against them); and
 - operation of oversight clauses themselves.
- 39 The Commissioner would be excluded from considering the imposition of fines, anything to do with criminal offences related to identity cards, the use of Statutory Instruments or information provided to the intelligence agencies. He would also have no power to review the adequacy of his own role and powers.

¹⁰ Clause 2(4)

¹¹ Clause 8(4)

¹² Clause 2(2)

¹³ Clause 2(7)



- 40 According to the Bill, the Commissioner would have no power to change the things he finds to be unsatisfactory. The position holder must make an annual report to Parliament¹⁴. However, it is to be submitted first to the Secretary of State, who may censor the report on the somewhat wide basis of if he thinks any matter “would be prejudicial to national security, or the prevention or detection of crime”.
- 41 Whilst the Bill required “every official of the Secretary of State’s department to provide the Commissioner with all such information ... as he may require”¹⁵, no such requirement is imposed on anyone working for a Designated Documents Authority or any of the state’s Executive Agencies.
- 42 Moreover, the Bill would make the individual liable for any errors in the National Identity Register or their own ID card. Yet they will have no control of the information recorded. Government, without liability, would have the power to alter information it deemed inaccurate or incorrect without consulting the individual concerned.
- 43 There is no provision anywhere in the Bill for individuals to appeal against Home Office decisions regarding the recording or release of personal data, let alone for any form of independent determination of fact.

Powers of the Home Secretary

- 44 Clause 3(3) would introduce a presumption of accuracy for the National Identity Register. Meanwhile, the Bill grants the Secretary of State the power to ‘correct’ information that he deems inaccurate or incomplete¹⁶. There is no requirement that the individual concerned be informed or consulted on these changes. The individual would have no right to appeal decisions of this nature taken by the Secretary of State.
- 45 Provision is made in clause 6 granting the Home Secretary the power to compel a group or an individual to register. Their categorisation requires affirmative resolution¹⁷, but the Statutory Instruments will not be subject to amendment, and no Government in the near future is likely to allocate much time for their consideration.
- 46 Once an individual has been compelled to get a card, the protections against third parties demanding the presentation of identity cards no longer apply, even for private services¹⁸, let alone public services. This creates a paradox: if some individuals and not others may be required to produce a card, then some means is required conclusively to determine into which category an individual falls.
- 47 The Bill would also allow that, without parliamentary oversight, the Home Secretary may provide information from the National Identity Register to numerous organs of state, without the consent of the individual. Under clauses 19(1) and 20(1), that same power extends to information being provided to a range of persons — including corporate persons and foreign governments — under clause 22(1) with only the requirement of an affirmative resolution of each House. The wording would permit not only supply to third parties of specific requested details on specific individuals, but allow full access to the database for wholesale surveillance, matching or data-mining purposes.
- 48 Administrative penalties introduced by the Bill are severe. Yet in order to set them aside an individual must take civil action at his own expense, and prove the grounds for any penalty are incorrect. In effect one will be presumed guilty, contrary to British tradition and established human rights principles, and punishment will be determined by the executive, not a court.

¹⁴ Clause 25

¹⁵ Clause 24(4)

¹⁶ Clause 21

¹⁷ Clause 7

¹⁸ Respectively in clauses 18(2)(c) and 15(2)

Cost

- 49 We do not believe that the scheme has been accurately costed, even those parts of the cost falling within the Home Office budget. There is no evidence in the Regulatory Impact Assessment of any attempt at all to evaluate the economic costs or risks to individuals of the Bill; nor any serious approach made to the costs to third parties who will be required to use the system.
- 50 Estimates of set-up costs alone have risen to £5.5 billion, almost doubling, in the last six months, even before one comes to the £18 billion figure recently leaked to *The Observer*¹⁹ from the LSE Report. The additional cost of compliance with the scheme will be burdensome not only to individuals but to all public service providers and the many private firms that will require²⁰ the assurance of Government-approved identity checks.

Cost to the country

- 51 A major issue that urgently needs to be addressed is the cost to the public purse of the scheme, particularly amid reports of heated discussions between the Home Office and the Treasury²¹. A comprehensive cost/benefit analysis has never been carried out. The Government estimated in 2002 that the scheme would cost between £1.3 and £3.1 billion. Despite a refusal to explain any figures in detail, on grounds of commercial confidentiality — whilst, at the same time, deriding leaked figures from the LSE Report as “mad”²² and slandering the LSE because the government cannot yet examine the basis for the estimates —, revised estimates appeared, coinciding with the publication of the Bill in late 2004, predicting a new cost of £5.5 billion over ten years — within the Home Office and its agencies alone.
- 52 The record of Government spending on such ambitious problems is not good. The NHS computer scheme was initially predicted to cost £1 billion, and is now currently the subject of estimates ranging up to £30 billion with no clear end in sight. No IT system has been successfully implemented within budget by this Government or any other yet. This is an uncapped cost that the Government must be brought to account on. Moreover, the experience of a number of other countries considering introducing an ID card scheme, for example, Australia and the Philippines, is that costs have risen sharply toward the implementation stage.
- 53 However, the cost estimates published by the Government do not take into account the broader financial impact on public services and employers. There will be costs incurred for secure scanning equipment and the staff to run it — a cost that has yet to be calculated. Estimates from a number of sources suggest that this will be a further cost of several billion pounds.
- 54 The introduction of ID cards potentially represents a huge financial burden beyond that of the Government's initial costs, for example, in the provision and maintenance of secure connections to the National Identity Register for all those places that might need them. When many of these locations are other organs of state (hospitals, GPs' surgeries, benefits offices and the like), that's more money coming straight out of the public purse.

¹⁹ “ID cards to cost £300 per person”, *The Observer*, May 29, 2005:

<http://observer.guardian.co.uk/politics/story/0,6903,1494944,00.html>

²⁰ The Regulatory Impact Assessment indicates that Know Your Customer requirements will probably require financial institutions, lawyers and others to make use of National Identity Register checks.

²¹ “Ministers discuss cost of ID cards as dissent grows”, *Financial Times*, June 25, 2005:

<http://news.ft.com/cms/s/69ccb944-e515-11d9-95f3-00000e2511c8.html>

²² “Clarke dismisses report on £300 ID cards”, *The Guardian*, June 16, 2005:

<http://politics.guardian.co.uk/homeaffairs/story/0,11026,1507981,00.html>



To the individual

- 55 The financial burden that identity cards represent to the individual could be significant. The legislation makes no commitment to the sums that will be involved, however it does detail when individuals will be required to purchase their cards. Not only will there be the initial cost of the card but, in every instance that information needs to be updated, there may be another charge; for families this problem will be multiplied.
- 56 There has been no consistent position on whether fees for identity cards or changes in details should be income-assessed. This has serious implications for those on low incomes, particularly those who might have responsibility for a number of ID cards, such as those with dependent children.
- 57 The proposals posit that funding will come from fees and fines. Despite the fact that there has been no final costing and that popular opinion is firmly opposed to fees; the current vague situation leaves the population vulnerable to significant charges.
- 58 The proposed legislation specifies that identity cards will be valid for limited periods. How long remains unspecified. There may be mounting financial costs to each person as the initial charge is supplemented by additional fees for every change of detail. Adding to this the price of a new card on a regular basis makes identity cards look very costly to individuals.
- 59 There would not only be a financial cost, but also a time cost to each person who “chooses” — or is required — to get an ID card. Clause 5(5) would grant the Secretary of State the power to order applicants to attend *any* specified place and time to Register, at the individual’s cost, without any requirement that this be reasonable. Registration will be a process taking significant time, and long waits seem likely. Travelling to a regional registration centre from a rural area — particularly in sparsely populated parts of Scotland, Wales and the North — will not be a trivial matter.
- 60 Those who need to update their details regularly, for example tenants who move frequently²³, or those in temporary accommodation, will incur costs each time for their details to be updated²⁴. Failure to do this will mean the individual is committing an offence and is subject to penalty. Yet the system will logically require personal appearance for a biometric check on each occasion.

²³ It is estimated that in London the equivalent of 30% of the population changes address each year.

²⁴ Clauses 12 and 37

Declared purposes

Terrorism

- 61 The Government has claimed the National Identity Register will assist the fight against terrorism. But identity does not establish intentions. The Regulatory Impact Assessment suggests that the Audit Trail will help track terrorists by facilitating surveillance — once it is impossible to rent a room or buy a mobile phone without producing an identity card. Regardless of the acceptability of such mass surveillance, such a model is without any preventative value without the wholesale assumption, and pursuit, of guilt by association.
- 62 It has been widely noted that notorious terrorists have used valid forms of identity. Security experts²⁵ point out, that having a form of identity that is unjustifiably presumed secure actually diminishes security. Moreover, many individuals will still be able to use foreign identity documents that are not easily checked, rendering identity cards irrelevant. On July 3, 2002, in response to a question by Chris Mullin MP, David Blunkett said, “I accept that it is important that we do not pretend that an entitlement card would be an overwhelming factor in combating international terrorism”.
- 63 Privacy International research indicates that there is *no* link between identity cards and the prevalence of terrorism: “Of the 25 countries that have been most adversely affected by terrorism since 1986, eighty percent 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.”²⁶

Illegal immigration and working

- 64 It is claimed that identity cards will prevent illegal immigration and illegal working. But the government has not explained how. Illegal immigrants are generally either smuggled people without valid documents, who usually claim asylum when challenged; or they are people overstaying visas but using otherwise valid identity documents.
- 65 Employers of illegal labour in the black economy already face substantial penalties for failing to obtain proof of entitlement to work. There are only a handful of prosecutions a year. Those who are not interested in checking passport and visa details are unlikely to be moved by another bureaucratic measure.
- 66 It has shamelessly been hinted that in particular ID cards would help the victims of trafficking²⁷. Not only are such people usually kept hidden, but it is common for them to be kept in subjugation and fear — at least partly by the reputed consequences of being identified as ‘illegal’. A more rigorous system of identity checks is at least irrelevant and might even make things worse for such people since it would make it impossible for them to live independently without ID — existing passports often being kept by their minders — and diminish any chance of escape.
- 67 The National Audit Office has suggested that the Government could reinstate visa control at the point of entry for just £27 million²⁸. This is not a small amount, but a fraction of the (so far) predicted costs of the provisions of the Identity Cards Bill to the Passport Agency alone.

²⁵ Bruce Schneier: *Beyond Fear: Thinking sensibly about security in an uncertain world*, Chapter 13 (New York, 2003)

²⁶ Privacy International: Interim Report, April 2004, *Mistaken Identity; Exploring the Relationship between National Identity Cards and the Prevention of Terrorism*.

²⁷ Charles Clarke MP writing in *The Times*, December 20, 2004

²⁸ *Visa entry to the United Kingdom; The Entry Clearance Operation*, Report by the Comptroller and Auditor General, June 17, 2004



Benefits fraud

- 68 Identity cards have also been proposed as a means of reducing benefit fraud. However, it is recognised that benefit fraud is seldom a matter of identity, which is “only a tiny part of the problem in the benefit system”²⁹. Figures are not known, merely estimated at £50 million out of £2 billion fraud. The vast majority of benefit fraud is false declaration in relation to disability, dependents, illness and cash-in-hand work — none of which would be addressed by an ID card.
- 69 It is implausible that the cost of policing the benefits system through the National Identity Register will not be many times the amount of any savings, even before the requirement for developing and staffing identity systems within benefit offices is taken into account. However it seems no figures are available for any of this; the Department for Work and Pensions is unable even to give a number for prosecutions for identity-related fraud³⁰.
- 70 A further cost of attempting to prevent fraud using such a system would be that it would, inevitably, involve denying benefits to some of those rightfully entitled. The homeless or otherwise vulnerable are likely to be those with the most difficulty complying with the requirements to join the system³¹. For those dependent on benefits, errors or failures in the system will naturally be more immediately serious than for those with greater resources.

Potential for discriminatory application

- 71 We do not believe that ID cards and the National Identity Register are necessary or proportionate to the Government’s stated aims. While the stated purposes may be legitimate, closer analysis reveals that the identity components of terrorism, illegal immigration or working and benefit fraud are relatively insignificant. Further, those cheating the present systems can be expected to work around a new one.
- 72 The moves to compulsion may be arbitrary and discriminatory. The Home Secretary may create classifications of individuals to be registered as he sees fit, introducing onerous duties backed by severe penalties for fractions of the population.
- 73 The Home Office has sought to provide “assurances” to various minority groups³² that such powers will not be used against them, but the fact of such assurances underlines the possibility and the Government *cannot* bind any future government in this respect. The present 50 categories of information to be collected in the Register do not include religious or ethnic affiliation, but these could be added by regulation, or inferred by cross-referencing information using a National Identity Register Number with associated data.
- 74 ID cards in practice would provide a pretext for those in authority — public or private — to question individuals who stand out for reasons of personal appearance or demeanour. This is likely to lead to exacerbated tensions and divisions in society. The Chairman of the Bar Council has asked: “is there not a great risk that those who feel at the margins of society — the somewhat disaffected — will be driven into the arms of extremists?”³³
- 75 This problem could arise even without discriminatory application. Those otherwise disaffected and disadvantaged by ordinary errors in the system may regard themselves as singled out for persecution.

²⁹ Parliamentary Under-Secretary at the Department of Work and Pensions, Chris Pond MP in evidence to the Home Affairs Committee, April 2004

³⁰ See *Hansard*, January 17, 2005 : Column 773W

³¹ The Consultation document on the Draft Bill stated that special arrangements would be made for enrolling “vulnerable groups”, which the context suggested meant people not deemed mentally capable of understanding the requirements, but no further details have been forthcoming.

³² An approach was made to the Board of Deputies of British Jews during the consultation process, for example.

³³ Guy Mansfield, QC, quoted in *The Times*, December 13, 2004



- 76 When one of the purported aims is to prevent Islamic terrorism, however, we already know that our ethnic minority communities are feeling singled out by stop and search powers. Independent research³⁴ shows that ethnic minorities suffer disproportionate checks on their ID cards in other European Union countries; many minority and immigrant groups are profoundly concerned that the same would be the same here.

A threat to security: Dangers of third party abuse

- 77 The National Identity Register also *creates* specific new threats to individuals. The requirement that all those registered notify all changes in details, and those details are subject to myriad checks, means it risks creating the means of tracking and persecution through improper use of the database. A variety of persons have good reason to conceal their identity and whereabouts, for example:

- those fleeing domestic abuse;
- victims of “honour” crimes;
- witnesses in criminal cases;
- those at risk of kidnapping;
- undercover investigators;
- refugees from oppressive regimes overseas;
- those pursued by the press;
- those who may be terrorist targets, such as intelligence agents.

- 78 Nothing in the Bill would allow for any of these kind of individuals to mask their identity from the National Identity Register at all, meaning that any leak from the Register (and such leaks are bound to occur from time to time) could instantly put their life in danger.

- 79 By making ordinary life dependent on the reliability of checking an individual against references to him/her within a complex administrative system, the scheme makes small errors and inconsistencies potentially catastrophic. A failure in any part of the system at a check may deny a person access to his or her rights or property or to public services. There's no hint from the government how it will deal with inevitably large numbers of mis-identifications and errors. Since official determinations will be deemed conclusive, the Bill suggests that reality may be held to be in error.

- 80 A single reference point makes one more vulnerable to identity theft than otherwise and makes a stolen identity much more flexible and valuable. The National Identity Register potentially brings together a huge amount of information about each individual. This would make individuals more vulnerable once the database is, inevitably, violated.

- 81 Finally, the physical token that is an identity card will become valuable to criminals. It will be a target for theft. But it will also, as are benefit books and passports, but much more powerfully, become a means of control over an individual, that can readily be seized by an extortionist or a loan shark, or even an abusive partner or a people smuggler.

Practical issues of technology

- 82 The Bill would create an obviously-faulty presumption of accuracy for Government databases. While the State (and therefore many individual officials and programmers) may alter records *ad lib* without responsibility, there is nothing to prevent or correct errors or their propagation and replication through data-sharing.

³⁴ Adrian Beck and Kate Broadhurst: “Policing the community: the impact of national identity cards in the European Union”, *Journal of Ethnic and Migration Studies*, 24(3), pages 413–431, July 1998. See also “France” in Amnesty International Reports 2003 and 2004 or <http://web.amnesty.org/report/2004/fra-summary-eng> and <http://web.amnesty.org/report/2003/fra-summary-eng>



- 83 The onus of keeping personal information correct and up to date would be entirely on the individual data subject, but the data subject need not be informed of any data recorded on him, nor is it explained how conflicting information is to be reconciled, save that the Home Office will have the final say.
- 84 The Bill would provide for and the National Identity Register will facilitate massive, broad data-sharing across Government departments and would make provision for extensive data transfers both to and from the public and private sectors. It is important to note that, as long as it provides an unique reference number as a common index structure, such data-sharing need not involve the National Identity Register itself, so assurances about limited direct access to it are worthless. The problems of irreconcilable records held by different users are not eliminated, but made worse.
- 85 The sheer size of the system and the multiplicity of access points and staff required means it will be significantly less easy to maintain secure integrity and accuracy for the Register than the existing — and notoriously inaccurate — public sector databases. The Government appears to be proceeding on the strange assumption that the universal problems of large databases can be eliminated by definition. It implies (all experience to the contrary) that the biggest ever database will be the most accurate.
- 86 While it is to be welcomed that clause 29 would seek to protect the privacy of subjects by making it a crime to disclose information from the National Identity Register to others without lawful authority, the clause is so broadly drawn that it endangers the security of the Register. It becomes an offence not just to disclose the content of records, but any information learnt in the course of establishing or maintenance of the Register, or the issuing, modification, cancellation, or surrender of ID cards. This creates a criminal sanction on whistleblowers. It makes much less likely exposure of any abuse of or technical defects in the system itself.
- 87 There will be a perverse incentive for Government to minimise publicity for security problems, having established the scheme as a “gold-standard” of identity. This creates a further paradox: without exposure of and correction of errors and abuses, the system will necessarily degrade. The greater the pretence of inerrancy, the less trustworthy the system will be in reality.

Biometrics

- 88 Biometrics are presented as a magic means to make the entire system secure, reliable and foolproof. This is, at best, worryingly naïve.
- 89 While certain structures in our bodies are presumptively (though not provably³⁵) unique, they are not necessarily either stable or standardised. Matching them via digital abstracts is not a straightforward task, and necessarily involves a trade-off between accuracy and cost, and between specificity and reliability.
- 90 Not all biometrics will work for all people. Plenty are missing digits, or eyes, or have physical conditions that render one or more biometrics unstable or hard to read³⁶, it has even been posited that this could put the Government in breach of the Disability Discrimination Act.

³⁵ There was little empirical evidence of the value of fingerprints until the mid-1990s. They had been used for a century on the basis of anecdote and “obviousness”. Simon A. Cole: *Suspect Identities* (Harvard UP, 2001)

³⁶ David Blunkett, for example, might not be usefully iris-scanned. See also *The Identity Project: Interim Report*, LSE, March 2005; more generally, see the British Computer Society Disability Special Interest Group response to consultation on the Draft Bill (July 19, 2004)



- 91 Research has demonstrated that both iris recognition and fingerprinting systems can already be fooled, though there is little commercial/criminal advantage in developing the methods of doing so. For example, research done in Germany has established that iris recognition is vulnerable to forgery³⁷. Similarly, work done in Japan has identified the vulnerabilities of fingerprinting³⁸.
- 92 Leaving aside fraud and unreadable biometrics, all such systems necessarily have error-rates even under ideal conditions. Deployed and used on a vast scale, with variably trained operators and variably maintained and calibrated equipment, will produce vast numbers of mismatches, leading to potentially gross inconvenience to millions.
- 93 The Home Office has suggested that the reason for using more than one biometric measure is to increase the accuracy of matching. However, statistical analysis shows that using more than one biometric is not more certain but is actually bound to *increase* error rates³⁹.
- 94 Once the security of one's biometric is broken or in doubt, the system becomes useless. One cannot change one's fingers or eyes, as one would a password or digital signature. Founding a system on biometrics requires them to be absolutely foolproof, which they are known not to be.

Privacy and security

- 95 It is claimed that the introduction of identity cards and the establishment of the National Identity Register will have beneficial effects on personal security and halt "identity theft". There is no evidence for this assertion — and much to the contrary.
- 96 There is deliberate confusion in the definition of "identity theft" adduced. The Home Office estimates that more than 100,000 people are affected by identity theft in the UK each year and it is Britain's "fastest growing crime". But figures presented by the Home Office rely heavily on broad estimates and include forms of fraud (such as mail order credit card fraud and "missing trader" VAT fraud), that do not rely on personal presentation of false credentials and would not be affected by identity cards.
- 97 The Home Office has not explained how it will prevent registration by identity thieves in the personæ of innocent others. Documentation needed to make an initial identification is already forged on a significant scale. (What happens when you try to register, and discover someone else is already you?) Guarding against claiming identification under a false name is not something that has been addressed so far. Moreover, once an ID card has been issued, the risk of more than one version of the same card will be available through replacement of 'lost' cards or stolen cards.
- 98 A single identifying number that is inevitably linked to all other activities, public and private, actually makes the problem of identity theft far worse. Particularly clear examples of this are Australia's Tax File Number and the US Social Security Number. Indeed, companies in the US are now beginning to stop using the SSN, in order to help prevent identity fraud.

³⁷ International Biometric Group, *Liveness Detection in Biometric Systems* (2005)

³⁸ Tsutomu Matsumoto *et al.*, *Impact of Artificial "Gummy" Fingers on Fingerprint Systems*, Yokohama National University, 2002

³⁹ *Combining Multiple Biometrics*, Prof John Daugman, Cambridge University Computer Lab:
<http://www.cl.cam.ac.uk/users/jgd1000/combine/combine.html>



99 Leading experts in the field⁴⁰ have indicated that it is almost impossible to make a database on the scale of the proposed National Identity Register technically secure or maintain its accuracy. This problem would be exacerbated by the increasing number of access points as more and more services require contact to verify identification. The “audit trail” surveillance function requires a distant access for verification of some detail to cause information to be written to the master records, so every stage of that transaction must be secured for countless millions of transactions over tens of thousands of separate sets of equipment every day.

100 Human security would also be a problem. Constant updates to the records would require thousands, perhaps tens of thousands, of people to have some privileged access to read and alter records. That corrupt or erratic misuse of the National Identity Register could be prevented is highly implausible and — leaving aside mere mistakes, which would leave major consequences for data subjects — the prize of access to the data for foreign governments, terrorists and organised crime would be enormous.

101 There are not only dangers to individuals in this approach. Even if it chooses to define away all liability, Government cannot evade all risk. By making other Government systems depend on the National Identity Register (which must be the case, otherwise it can be circumvented and there is no value in it) all such Government systems are made more vulnerable. Professor Martyn Thomas told the Home Affairs Committee of the House of Commons:

If you create either a single card that has multi-functions or a single database then you are adding to the nation’s critical infrastructure unnecessarily, and by doing that you are making a very large range of services, probably a growing range of services, vulnerable to a single attack, either a deliberate attack or a fault that arises as a consequence of mis-implementation or accident. This seems (and undoubtedly is) an extremely foolish thing to do if you do not need to do it.

⁴⁰ See, for example, remarks by Neil Fisher, director of security solutions at Qinetiq to *Computer Weekly*, February 15, 2005; or the British Computing Society’s response to the Home Office consultation dated July 13, 2004, section 3: “Risks relating to the security and integrity of systems and large databases”.