



**NO2ID submission to the
Joint Committee on Human Rights:**

Draft (Partial) Immigration and Citizenship Bill 2008

**NO2ID
Box 412
19-21 Crawford Street
LONDON
W1H 1PJ**

**020 7793 4005
office@no2id.net**

<http://www.no2id.net>

This submission prepared by Phil Booth (national.coordinator@no2id.net), Elizabeth Norman (legal.affairs@no2id.net) and Guy Herbert (general.secretary@no2id.net).

A. Introduction

Basis for this submission

1. This submission to the Joint Committee on Human Rights (JCHR) has been prepared by members of the UK campaign against ID cards and the database state, NO2ID. It follows the call for evidence issued by the JCHR by press notice on 31st July.
2. NO2ID volunteers have examined the provisions and practical implications of the draft Bill, discussing it with and – where appropriate – taking advice from legal experts, organisations representing sections of society that may be particularly affected, and concerned individuals. This submission therefore represents a distillation of the views from a significant and informed sample of the public.

About NO2ID

3. NO2ID is a UK-wide, non-partisan, cross-party campaigning organisation opposing 'ID cards' (now more accurately identified as the National Identity Scheme) and the database state. NO2ID has no position on the merits or otherwise of immigration and does not campaign for or against immigration controls per se.
4. NO2ID was founded in 2004 in response to the Government's stated intention to introduce the compulsory registration and lifelong tracking of UK residents by means of a centralised biometric database, and was constituted as an unincorporated association in September 2004. The campaign brings together individuals and organisations from all sections of the community and seeks to ensure that an informed case against state identity control is put forward in the media, in national institutions and among the public at large.
5. NO2ID is supported by Parliamentarians and members of all parties and more than 140 organisations, including trades unions, political parties, local authorities, NGOs and special interest groups have made formal statements supporting the campaign. More than 55,000 individuals have registered their support.
6. NO2ID is funded by membership fees, occasional merchandise sales and fundraising events, as well as grants from the Joseph Rowntree Reform Trust Ltd, the Andrew Wainwright Reform Trust Ltd and individual and corporate donations.

Aside from our small London-based office, the campaign is staffed entirely by volunteers and we have a large, established and active network of local groups across the UK.

B. Scope of this submission

7. NO2ID does not have expertise or any particular position on immigration law *per se*. NO2ID is concerned with any legislation that provides for the labelling and numbering of British residents in order to collect information about them. We have consistently argued that mass surveillance alters the relationship between citizen and state. Though it appears to be being sold as an “immigration” measure, we note that it is admitted in the title and implicit throughout the draft that this bill is intended to alter the liberties of citizens as well as other residents.
8. We also note that though this draft Bill is offered up as codification and “simplification”, it radically alters even the basic terminology of a highly technical and highly contested area of law that has been the subject of an Act a year, more or less, for a decade; and that it seeks to repeal and replace in their entirety no fewer than 10 Acts of Parliament including the UK Borders Act 2007, much of which has yet to be brought into effect. As a result its effects are likely to be complicated and hidden. Our comments in this submission should not be taken as more than a preliminary indication of the danger areas in the proposals.
9. NO2ID notes that this is only a partial Bill and that further topics are “not yet drafted”. That these include “powers (of arrest, entry, search, etc.); *data-sharing*; *biometrics*; asylum support and access to public funds” [*our emphasis*] is of extreme concern to the campaign. As with the UK Borders Act 2007¹, we see a concern with data-sharing and biometrics as being allied to a general administrative fashion and larger administrative plans and that little attempt is made to justify them as specifically necessary in this connection.

¹ See NO2ID’s briefing on the UK Borders Bill, February 2007
<http://www.no2id.net/IDSchemes/NO2IDUKBordersBillBriefingFEB2007.pdf>

10. That even early drafts are unavailable for scrutiny of such fundamental powers, and the ones through which the liberties and human rights of British residents and visitors will be most directly affected is surprising in what is also presented as a codification measure. Is it intended that these powers should be significantly different from the existing ones in similar legislation? The radical changes of principal incorporated in the clauses that have been presented suggests it may be. **We sincerely hope the Committee will call again for evidence when these clauses are eventually published.**
11. We wholeheartedly support the Committee's previous conclusions² concerning the danger presented to Article 8 rights by the unprecedented collection and sharing of personal data, and the problem of applying the administrative provisions of the National Identity Scheme in a non-discriminatory fashion (Article 14). NO2ID suggests that these conclusions apply with equal force to the collection and sharing of personal information on the pretext of administering citizenship or immigration status.
12. Official documents leaked in January 2008 confirm it is the intention of the Home Office to use "various forms of coercion" to register people during the early years of the National Identity Scheme. We take the government's recent promotion of residence visas for non-EEA nationals, issued under the UK Borders Act 2007, as "ID cards for foreign nationals" to illustrate a use of misdirection in the legislative process (that Act having been itself promoted as modernisation of visas), as well as a disturbing appeal to xenophobia.
13. NO2ID believes that these statements and behaviour alone warrant the most careful scrutiny of legislation and regulations drafted in this area. A "simplification" process that introduces sweeping powers which affect the rights of virtually the entire population one way or another deserves no 'benefit of the doubt'. The government has shown that it will in practice take the widest possible interpretation of its powers. In the case of this Bill, those powers would be very wide indeed.

² Fifth Report of the Session 2004-2005, 26 January 200, HL 35/HC 283

C. Specific Concerns

The effect on British citizens

14. NO2ID believes the draft Bill represents a massive change to common law rights and culture disguised as codification. It includes provisions which, if implemented, would have serious consequences not only for people from other countries living in or visiting the UK, but also British citizens.
15. Clause 1 appears to reverse the fundamental principle that British citizens are entitled to enter the UK, since it makes the **right of entry** of British citizens to the UK wholly dependent on the proof provided by a valid passport or ID card. It declares a freedom of movement for British Citizens solely in order to undermine it in subclause (2). In essence the Home Office would be able to lock you out of the country merely by choosing to invalidate documents that it controls absolutely – though Committee members might consider casual incompetence or fraud more likely, the effect for the individual would be the same.
16. Furthermore, any failure of your documents would place you in precisely the same position as a foreign national. This, under clause 22, would mean that a problem with your passport³ could mean you are deemed not to have “entered” the UK and could therefore either be returned (to where?) or kept in immigration detention without remedy.
17. Another, potentially even more fundamental, change is introduced by clauses 1(3) & (4) in that any person who claims to be a British citizen is **required to prove this by production of a passport or identity card**.
18. When might they be required to prove it? Clause 25, for example, provides that any individual, whether British or not, and whether they actually wish to enter the UK or not, could be **forced to submit to a medical examination** at the whim of the Home

³ The microchips embedded in the new ‘biometric e-Passports’ have only a 2 year manufacturer’s warranty, despite the ten year lifetime of the passport.

Secretary. This power would be exercised by the Secretary of State giving notice to the person, but there is neither sign of a reasonableness requirement nor regulation of those officials who exercise these powers to identify themselves, give written explanation of the reason the person was stopped, etc.

19. Clause 26 would similarly mean that officials could check whether a person is British on the way out of the country, despite the assertion in section 1 that British citizens are “free” to enter, leave or stay in the UK. The Bill as drafted seems to provide for an unquantifiable amount of hassle and official oversight in the exercise of this freedom.

Hotel registration

20. Clause 30 would empower the Home Secretary to require hotels and other lodgings to keep records of people, “whether or not they are a British Citizens”, and require them – on pain of a £5,000 fine or year in prison – to provide the information to an as-yet-unspecified list of people such as the Secretary of State considers “expedient”.
21. This represents an extraordinary intrusion into private life, and begs all sorts of questions about what the definition of ‘staying’ might cover, who one could also have in one’s room without registering, etc. The broader effects of this particular section clearly have nothing to do with either immigration or citizenship.

Employment

22. Clause 154 may appear to be intended to prevent illegal working but, in practice, it could require all British citizens to provide proof of their entitlement to work by means of a ‘designated’ document. This would effectively require all UK citizens to produce an identity card or other document of the Home Secretary’s choosing to their employers, and could therefore be used as a means of indirect compulsion into the national identity scheme. Lack of an ID card or passport could mean a practical inability to gain legal employment.

23. Given the significant increase in the civil penalties for employing an illegal worker, one likely side effect of this is some employers being reluctant to employ British workers of “foreign” name or appearance or foreign national workers “just to be on the safe side”.

Effective compulsion to carry and show ID cards

24. On 28 June 2005, during the passage of the Identity Cards Act 2006, the Home Secretary, Charles Clarke MP, promised that there would be no requirement to carry an identity card⁴. He also said that the introduction of identity cards would not increase police powers to stop people in the street. He said nothing with regard to other officials, including immigration officers.
25. On 5 February 2007, during the passage of the UK Borders Act 2007, the Minister for Borders and Immigration, Liam Byrne MP, said that there was no intention to stop people in the street to ask them to produce an identity card, or other documentation, so as to prove their nationality. He said that doing this would be an arbitrary exercise of power⁵.
26. The draft Immigration and Citizenship Bill therefore includes provisions which are not consistent with the reassurances the government has previously given:
- Clause 25 would empower an immigration officer or other Home Office official to examine someone in order to establish whether they were British or not. The official could do this at any place in the UK, since it is applicable under 1(b) “if P has entered the United Kingdom” The power is not limited to immigration controls at the point of arrival to or departure from the UK. There is no criterion of reasonable suspicion or reasonableness of any kind. The official could be a police officer or any other person to whom the Home Secretary chose to grant the relevant power (cl.24).

⁴ Hansard, 28 Jun 2005 : Column 1157

http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo050628/debtext/50628-08.htm#50628-08_spnew5

⁵ Hansard, 5 Feb 2007 : Column 596

<http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070205/debtext/70205-0007.htm#0702053000652>

- Clause 28 would empower the official to require the person to produce a “valid identity document”, which we note is different from proof of nationality, entitlement to residence, or even identity. One would expect an identity card to be deemed a “valid identity document”, but the implication here is clear: the Home Office will seek to decide what documents will be valid⁶.
 - Clause 53 would empower the official to detain the person until the examination is completed, meaning until the official has been satisfied. The person might therefore be detained until an identity document was produced. There are clearly human-rights implications in arbitrary detention for questioning, and identification, which this amounts to.
27. These powers apply to anyone who has “entered” the UK – whether they are British or not. As currently drafted, the only people who would be exempt would be British citizens born in the UK who have never left the UK. However, it is impossible to see how in practice these powers could be exercised in a way that could take account of this distinction.
28. Effectively, therefore, these powers would do the reverse of what the government has promised. **Anybody in the UK could expect to have to have to carry an identity card or other approved “identity document” and produce it on demand for a class of officials.** It would not be a breach of the law to fail to carry a card, but someone who did not carry his or her identity card would be at risk of being stopped and detained until such time as the card was produced.
29. We note that, although these provisions would not make **failing to carry** an identity card a criminal offence, they do include significant offences:
- Clause 101(1) provides that someone who fails or refuses to submit to an examination commits a criminal offence, which could result in imprisonment for up to 51 weeks;

⁶ It would not be surprising if that class were to converge over time with documents that had been designated under s4 of the Identity Cards Act 2006, each of which would be equivalent to an identity card, being itself registered in an individual’s entry on the national identity register.

- Clause 121(1) provides that someone who obstructs or resists an official carrying out an examination commits a criminal offence, which could again result in imprisonment for up to 51 weeks.

Refusing to produce an identity card or other prescribed document if one had one could fall within either of these offences.

D. Further information

30. We have tried to indicate some human rights problems we believe ought to be examined by the Committee and which form part of NO2ID's particular remit. This submission is not intended to be an exhaustive list of such problems. We will naturally provide what further information we can and would be happy to suggest expert witnesses if requested.

NO2ID, 31st October 2008