

## **The Identity Cards Bill - the Information Commissioner's Perspective**

### **Background**

The Information Commissioner has described the proposed ID Card scheme as a significant sea-change in the relationship between State and Citizen. He has talked about the dangers of "Sleep-walking into a Surveillance Society". The Commissioner has already voiced a number of concerns in response to the government's consultation exercise on the draft Identity Cards Bill and subsequently in evidence to the Home Affairs Committee. He has stated previously that he is neither for nor against an identity card scheme in principle. The primary concern is that any scheme must involve minimum intrusion into peoples' lives and be Data Protection compliant. This relates to such matters as:

- not collecting or using any more personal information than is necessary for the specified purposes;
- ensuring that the personal information is relevant and not excessive;
- ensuring that it is accurate and kept up to date;
- keeping it secure.

It would not be appropriate for the Commissioner to become directly involved in the Parliamentary scrutiny and consideration of the Bill. However, this position paper summarises the Commissioner's perspective and highlights a number of issues with the aim of informing the forthcoming debate.

### **Current Proposals**

The Information Commissioner welcomes some positive progress in a number of areas where he has previously expressed concern. In particular there is no longer any attempt to restrict an individual's right of access under the Data Protection Act 1998 to certain 'audit' or 'data trail' information. Other areas where there have been welcome clarifications include:

- The aims of the scheme and purposes for which it will be enacted are now on the face of the Bill (Clause 1)
- Introducing a restriction on unwarranted demands for access to the National Identity Register (Clause 18)
- Abandoning dual function cards
- Increasing the remit of the National Identity Scheme Commissioner (Clause 24(2))
- Signalling the abandonment of proposal for the parallel Citizens Information Project Population Register.

However, even though there has been progress in many of these areas there remain a number of concerns about these and other aspects of the proposals. The Commissioner's concerns are largely centred upon the proposed National Identity Register - its administrative and technical arrangements, the amount of information contained in it, the purposes for which it can be used now and in the future, and who may have access to it and for what purposes. The concerns fall into a number of areas:

- the extent of the information to be held on the National Identity Register;
- the technical and administrative arrangements;
- the breadth of organisations with access to the Register;
- gaps in the oversight arrangements;
- the need for Privacy Impact Assessments;
- the removal of safeguards upon the move to compulsion.

### **Information to be held on the National Identity Register**

The concerns here include:

- the nature and extent of the information contained on the National Identity Register database;
- retention of certain information once identity has been established;
- the creation of the data trail of checks against the Register - with indefinite retention by government of this powerful picture of how its citizens live their lives.

The information potentially to be contained in the National Identity Register is extensive and disproportionate burdens are placed on individuals to keep this up to date. The continued relevance of all such particulars once identity has been verified upon enrolment is not clear. For example how does the acquisition of a second home after enrolment affect an individual's identity (Schedule 1(1)(g))? These, and other such details, seem excessive, not relevant and unnecessarily intrusive.

There is particular concern about the government's intention that much of the practical day to day verification checking will be done on-line to the Register. This greatly increases the amount of information stored centrally about the circumstances where an individual's identity has been verified (Schedule 1(9)). It still remains unclear who in the private sector and, to some extent the public sector, can check identity using such an on-line transaction (rather than locally by checking using a stand alone card reader). An even more comprehensive picture of how people go about their business will be built up day by day, identity-check by identity-check. The Commissioner must question whether there is a pressing justification for such an intrusion into people's lives.

For example, preventing illegal working is one of the stated aims of the scheme (Clause 1(4)(d)), but it is not clear how prospective employers will check on applicants for jobs. Will this involve on line verification? As has happened with criminal record checks, more cautious employers may well check on all applicants rather than just successful ones. If so this will mean that details of the check will be recorded in all applicants' data trail in the National Identity Register irrespective of whether they actually secured employment.

## **Technological and Administrative Arrangements**

The technological and administrative challenges increase with the majority of checks taking place on line, the resulting compilation of an extensive data trail and the indefinite retention of information by virtue of Schedule 1(5). There are formidable technical and organisational challenges in enrolling individuals and maintaining their entries in an adequate manner.

The consequences should the technology or administration fail are substantial. There could be very serious detriment to some individuals – far more serious than the financial losses arising from many “computer errors”. Cases have previously arisen where mistakes of “official identity” have led to loss of liberty.

The technical and administrative arrangements need to be of the highest standard given the purposes of the identity scheme and the nature of the personal information held. The scheme will become the gold standard for identity verification, and there are real risks attached to the presumed authority of an official ID card.

The Information Commissioner will need to pay particular attention to the operational arrangements to ensure that these comply with the Data Protection Principles concerning fair processing, data quality, retention, access and security. Measures to ensure the integrity and security of information must be addressed fully before any operations commence rather than later in a piecemeal or ‘bolt-on’ fashion.

## **Organisations that may check the Register**

Clause 19 allows a wide range of access to data from government departments and others. This appears to be disproportionate. Providing Chief Officers of Police with access to biometric and other data from the National Identity Register merely because it is in connection with the prevention and detection of crime is too low a threshold. At the least, details such as fingerprints should be subject to a more stringent test, involving prejudicing the detection of serious crime.

The problems would be substantially exacerbated if it becomes the norm for a myriad of organisations – including commercial bodies - to check the Register for a plethora of purposes completely unconnected with those public interest objectives set out on the face of the Bill (Clause 1(4)). The citizen’s “consent” for such activity may be less than fully informed and freely given. Any “with consent” on line verification checks of the Register should be limited solely to those public interest purposes set out in the legislation. The Secretary of State’s ability to accredit bodies undertaking such checks (Clause 14) should be restricted to those checking for the limited purposes set out at Clause 1(4) of the Bill.

## **Oversight and Audit Arrangements**

The expansion of the role of the proposed National Identity Scheme Commissioner is welcome but does not go far enough. The powers stop short of providing sanctions against those who transgress, save for reporting this to the Secretary of State or Parliament. There are also no formal duties in relation to complaints from aggrieved

individuals who may be suffering detriment as a result of administrative or other failings.

The Information Commissioner's own powers under the Data Protection Act to undertake audits should be extended to cover the Identity Card scheme - a power similar to that enjoyed by other European Data Protection Commissioners. An audit should not have to depend upon the consent of the Agency running the scheme.

### **The need for Privacy Impact Assessments**

There are still many important questions that remain unresolved and left for secondary legislation. Without knowing and understanding the full magnitude of what is being proposed it is difficult to be certain about the consequences of what is being proposed. For example the information appearing on the face of the ID card, the number of biometric features to be captured, the eventual variety of designated document authorities and the process for enrolling individuals are all left open. As much detail as possible should be set out in the primary legislation.

In any event, the government should be under a duty to commission and publish the results of Privacy Impact Assessments as these details come forward in secondary legislation. Privacy Impact Assessments (PIA) are a common feature in other countries, including the USA where its E-Government Act requires a PIA before each new electronic government initiative.

More generally, a requirement or expectation that a Privacy Impact Assessment should be used before any extension of the scheme would mitigate the well-rehearsed risks of "function creep"

### **Removal of safeguards on the move to compulsion**

The government has made clear that it is bringing forward the scheme with the full intention that a scheme be made compulsory in time. It is important to recognise that the safeguard at Clause 18 which prohibits any requirements placed on individuals to produce their ID card to establish their identity will be superseded if and when Clause 6 is activated and individuals are compulsorily required to register. This will mean that individuals may be required to produce their card in any circumstances irrespective of the nature of the transaction taking place. Provisions should be left in place to permit for alternative forms of identification to be shown.