

**LIBERTY**

PROTECTING CIVIL LIBERTIES  
PROMOTING HUMAN RIGHTS

## **Identity Cards Bill**

### **Liberty's briefing for Report Stage in the House of Lords**

**January 2006**

## **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](http://www.liberty-human-rights.org.uk/resources/policy-papers/index.shtml)

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## **Introduction**

1. This short briefing is written in support of several of the amendments put down Lord Phillips and Baroness Anelay that will remove the elements of the bill to ensure that the carrying of identity cards is not compulsory. If passed, these amendments will reflect the commitment made in the Labour Party Manifesto of 2005 which said ‘We will introduce ID cards, including biometric data like fingerprints, backed up by a national register and rolling out initially on a voluntary basis as people renew their passports.’<sup>1</sup>

2. Liberty remains opposed to the bill and we have written at length as to concerns raised by the government’s proposals and why we believe the scheme is unnecessary and a hugely expensive mistake. We do not intend to cover this ground again but will focus on the reasons why it is appropriate for further legislation to be passed before any move to compulsion can take place. If the bill is passed there are still a great number of practical, logistical and procedural issues that will need to be addressed. While Liberty’ criticism of the bill has concentrated on the legal and social issues of principle many commentators have expressed doubts about the cost and feasibility. These issues will remain after the bill is passed. It is therefore appropriate for Parliament to be entitled to consider all aspects of the scheme at a future date. At present there is a super affirmative resolution currently required under Clause 6 that must precede the requirement of any group to register. This means future parliamentary debate will focus on whether there are grounds for a particular group of people to be compelled to register. While it is important that Parliament to be able to do this, such a narrow debate will be unable to assess the way in which the scheme has progressed since the passing of the original bill. The Government has made great claims for the NIR and Identity card scheme. There must be scope for it Parliament to hold the Government to account on these

## **Amendments**

3. Lord Phillips and Baroness Noakes have tabled amendments (Number 123 and other consequential amendments) requiring that a cost estimate from all Government

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<sup>1</sup> [http://www.labour.org.uk/fileadmin/manifesto\\_13042005\\_a3/pdf/manifesto.pdf](http://www.labour.org.uk/fileadmin/manifesto_13042005_a3/pdf/manifesto.pdf) at Page 52

departments be approved by the Commons before any move to compulsion. We would urge support for this. Parliament is being asked to pass the ID Cards Bill on the basis of very limited information, particularly with respect to the estimated costs to the public of implementing the proposals. The Government's refusal to provide adequate information has made it impossible for Parliament adequately to perform its vital constitutional role in scrutinising the Government's legislative proposals. Parliamentarians are, in effect, being asked to vote with their eyes closed.

4. The undefined financial cost of the proposals has been a concern of Liberty and others since the Bill was introduced in draft in early 2004.<sup>2</sup> For example, despite having been given a privileged insight into the assumptions underlying the Government's initial cost estimates, the Home Affairs Committee concluded: "Cost information ... is of vital importance where expenditure is funded from the public purse and of particular relevance with regard to public sector IT projects which have a poor history and cost-overruns. The failure ... to provide any detailed information on estimated costs and benefits significantly weakens the basis for pre-legislative scrutiny and the public consultation exercise. This secrecy is all the more regrettable since the case for an identity card system is founded on whether its benefits are proportionate to the problems it seeks to address: a proper cost-benefit analysis is an indispensable part of this."<sup>3</sup>

Despite similar views being expressed repeatedly both within and outside of Parliament,<sup>4</sup> requests for the additional information that Parliament needs to scrutinise this Bill have been consistently rejected. The Government has stuck by its much-disputed assertion that providing additional information would compromise its commercial position.

5. The legislative process requires Parliament to choose whether or not to make new laws proposed by the Government. An informed decision about the ID Cards Bill requires parliamentarians to assess the strength of the benefits claimed for this Bill by

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<sup>2</sup> Cf. Liberty's consultation response to the draft ID Cards Bill, para 28 (available on <http://www.liberty-human-rights.org.uk/>)

<sup>3</sup> 4<sup>th</sup> Report of 2003-04, HC 130, vol. 1, paras 212-213

<sup>4</sup> Cf. Baroness Noakes' Amendment No. 259A, debated in Committee in the Lords, HL Deb, 19 Dec 2005, col 1543 ff

the Government and to weigh against these, not only the constitutional and civil liberties implications of the proposals, but also their likely financial cost to the public. The Government, by refusing to divulge the necessary information, has made this important balancing act impossible and, in so doing, has prevented Parliament from performing its proper constitutional role in the legislative process.

6. Clause 4 allows for the process of designation of documents by the Secretary of State. Even without a compulsory scheme it will be appropriate for documents to be designated to allow for people to apply for registration should they wish. It is however appropriate for this to be done by way of the amendable super affirmative process contained Clause 7 (Amendment 37). Otherwise parliamentarians given a list of documents, which they may generally endorse, but which contains one or more of which they do not agree, will be unable to remove the unacceptable document without rejecting the list as a whole.

7. One of the most important amendments is to change the requirement in clause 5 (2) obliging anyone applying for a designated document to enter on the register (Amendment 38). A simple change from 'must' to 'may, if the individual so chooses' will remove the mechanism which would allow the Government to force registration of people applying for designated documents. We imagine designated documents will initially include passports and driving licences. However, as Clause 4 allows the Secretary of State to determine by regulation exactly which documents will be designated, there is every chance that this will be an extensive list to ensure compulsion at an early stage. This is not exactly disingenuous, the Government having clearly stated its eventual intention to introduce a compulsory card. However, it means that many of those who do not intend to apply for a card while it is still in the 'voluntary' stage will find it themselves effectively 'forced' to apply. Removal of this obligation will mean that the bill will more accurately reflect the promise of initial introduction of a voluntary card. If clause 6 is removed, so the Secretary of State is unable to require registration, a failure to also remove 'must' from clause 5 would still allow widespread compulsion.

8. In order to make registration on the NIR voluntary it is necessary to remove clause 6 (Amendment 46) and alter Clause 7 so that it introduces a super affirmative

procedure for only designations under clause 4 (Amendments 47 and 48). As these are straight forward deletion amendments we do not intend to comment in greater detail other than to re-iterate that removing the ability to force compulsion is an entirely appropriate action for parliament to take given the continued lack of analysis of the social, financial and technological consequences of the scheme. Given that proposals for an entitlement card were first published three and a half years ago in July 2002, we believe Parliament still remains painfully unaware of the long term implications of the scheme.

9. One of the most important aspects of the scheme, whether it is voluntary or compulsory, is the audit trail left by access to the register. This trail will essentially divide into two strands. Situations where the person consents to provision of information on the register (such as when they might be accessing public services) and those where they do not consent (such as when the police or security services wish to access an individuals entry). Amendment 33 provides that in situations where the person has consented, the particulars should not be recorded (unless they wish it to be recorded). However, in any situation where consent has not been given this should be recorded. The rationale behind this amendment is that if a record is kept every time a person voluntarily uses their cards, a detailed record of their habits and movements can soon build up. As the purpose of the NIR is to provide a means of identification it would not be appropriate to also allow it build up so much detailed information on those entered on the register. Therefore this information should not be recorded.

10. Conversely, when access takes place without consent it is certain to be by one of the state agencies authorised by clauses 19 to 23. As Liberty has commented throughout passage of the bill, the grounds for access are exceedingly broad. In particular the security agencies authorised under Clause 19 (2) need no justification for access to the register so long as it falls within the statutory duties of that agency. Because of this it is extremely important that there is some degree of accountability imposed by ensuring that any such access be recorded. In particular, it would be extremely difficult for the National Identity Scheme Commissioner to effectively carry out his functions under Clause 24. While the Commissioner will not keep under review specific access by the security services (Clause 24 (3) (d)) he does have a general duty under 24 (2) (c) to review the arrangements made by persons to who

information is provided. It is clearly desirable in a democratic society that some record of any state access to information be recorded even if there is no public access to that record.

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