

# LIBERTY

PROTECTING CIVIL LIBERTIES  
PROMOTING HUMAN RIGHTS

**Liberty's response to the Home Office  
Document:**

**“National Identity Scheme Delivery Plan  
2008”**

**June 2008**

## **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

<http://www.liberty-human-rights.org.uk/publications/1-policy-papers/index.shtml>

## **Contact**

Gareth Crossman

Director of Policy

Direct Line: 020 7378 3654

Email: [GarethC@liberty-human-rights.org.uk](mailto:GarethC@liberty-human-rights.org.uk)

Jago Russell

Policy Officer

Direct Line 020 7378 3659

Email: [JagoR@liberty-human-rights.org.uk](mailto:JagoR@liberty-human-rights.org.uk)

## Introduction

1. In March the Home Office published a document entitled “National Identity Scheme Delivery Plan 2008”.<sup>1</sup> This document sets out how the Government will deliver the National Identity Scheme (the “**Scheme**”), how the Scheme will work and be operated. When the document was initially published it was widely reported as a climb-down by Government.<sup>2</sup> Liberty is not convinced. We consider the Delivery Plan to be a re-branding exercise for the same flawed product.
2. Not surprisingly the high-profile loss of personal data relating to 25 million people at the end of last year caused enormous public concern. It is not, therefore, surprising that the Government felt the need to re-brand the ID card scheme and the National Identity Register (the “NIR”) given the huge amounts of personal information it will ultimately hold. It is clear that the Government still proposes to create a compulsory NIR, albeit that the route to and timetable for compulsion would be slightly altered.
3. We do not answer the specific questions raised in the document. Instead, we take this opportunity to reiterate Liberty’s concerns about the profound privacy implications of the NIR. We also explain why these are not alleviated by the changes to the proposed delivery plan.

## The National Identity Register and Personal Privacy

4. In the Home Secretary’s foreword to the document she comments:

“I recognise the sensitivities that surround the use of personal identity information. We will work closely with the National Identity Scheme Commissioner, the Information Commissioner, privacy experts and others on how to make the Scheme function in the interests of its users.”

The Home Secretary’s comment suggests that the engagement of the “Information Commissioner” and privacy experts in the roll-out of the Scheme alleviates or removes the privacy concerns raised by it. This is far from the case. No amount of engagement

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<sup>1</sup> Identity & Passport Service 2008, ISBN 978-1-84726-624-8

<sup>2</sup> The *Daily Mirror*, for example, reported “Identity Cards Scrapped as Smith sees sense in U-turn”, 6 March 2008

with privacy experts can alleviate the privacy concerns which are inherent in the National Identity Register (the “NIR”) itself and the legislation underpinning it, most notably the Identity Card Act 2006 (the “Act”) and the UK Borders Act 2007.

5. The privacy implications of the Scheme are profound. The proposed system will result in what the Information Commissioner Richard Thomas, when giving evidence to the Home Affairs Select Committee, described as a ‘very significant sea change in the relationship between the state and every individual in this country’.<sup>3</sup> It symbolises a shift in the approach of the state towards the collection of information, a move away from a society where information is not shared unless necessary, towards one where it will be shared unless there is a reason not to.

6. The privacy implications of the NIR flow from the information to be held, the powers to access that information and the data trail that will follow from accessing the register:

- The information that will be held initially covers some quite basic information such as name, current and previous addresses, date of birth. It also contains more intrusive data such as current and previous residential status and numbers allocated for identification purposes. Identifying information may also be held on the NIR, including a photograph, a signature, fingerprints or other biometric information. While the scope of information has been initially limited it is likely to expand.
- The Act creates a wide-ranging regime allowing access to the NIR without consent by a wide range of named public bodies and agencies. It also allows information to be provided to private sector bodies with a person’s consent in order to assist with verification. This will enable information to be passed to private bodies such as banks in order to verify identity.
- The Act allows for a record to be made of every occasion where information in the NIR is provided to anyone, details of the person to whom the information has been given and ‘other particulars’ relating to each occasion this is done. As the NIR is rolled out, a growing number of both public and private sector bodies will provide an interface to the NIR. This means that a detailed record of everyone’s

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<sup>3</sup> <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmhaff/130/4060805.htm>

movements, what services they have accessed at what time, and so on, will be collated. This will create an imprint of our existence going way beyond that currently created.

7. The Act is also riddled with reserved powers allowing the Secretary of State to extend the scope of the NIR by parliamentary order. This means that whatever the limitations imposed in the Act concerning what information is contained on the NIR entry, who is entitled to access that information and so on, these can increase dramatically over time.<sup>4</sup> We believe that ID cards are likely effectively to become the means by which identity is established. This will particularly be the case with the use of broad powers of stop and search without suspicion, available throughout London on rolling authorisation since 2002 under Section 44 of the Terrorism Act 2000. Coupled to this is a concern that identity cards will be used as a means of internal immigration control.

8. Not surprisingly the high-profile loss of personal data by HMRC last year led to wide public concern about the security of personal information held by government. This was described by the official opposition as the “nail in the coffin” of the NIR and the Scheme.<sup>5</sup> Shortly after the losses, one poll showed that 73% of the public did not trust the Government to hold their personal data.<sup>6</sup> A major aim of the document is to seek to allay these concerns with respect to the Scheme. It promises “technology” and “non-technological safeguards to provide the highest levels of protection for an individual’s personal data”.<sup>7</sup> Liberty does not deny that steps have been taken in an attempt to make the NIR secure. It is not, however, possible to make any system absolutely watertight. In Liberty’s view the risk of data loss (by mistake or misadventure) creates a good practical and political reason for restricting the retention of personal data to that which is really necessary.

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<sup>4</sup> It is interesting to note how by 1950 the functions of the war time identity card scheme had mushroomed from the original three purposes (conscription, rationing and national security) to 39 different functions.

<sup>5</sup> “Lost in the post - 25 million at risk after data discs go missing”, *The Guardian*, 21 November 2007

<sup>6</sup> “Poll tracks anger over data loss”, *The Times*, November 23, 2007

<sup>7</sup> Cf paras 21 & 22

9. In the document, the Government reiterates the same weak justifications for the Scheme as were made as the ID Card Bill passed through Parliament. It is argued that the Scheme will help fight terrorism and unlawful immigration, deal with crime and fraud, and improve access to public services. For example, the Foreword states how:

“This Delivery Plan sets out the case for the importance of identity cards for our national security, and identifies how their introduction from next year can increase public protection in sensitive areas of our society.”

Most of these justifications do not stand up to public scrutiny. It is, for example, worth pointing out that even after the 7 July 2005 attacks in London, the then Home Secretary, Charles Clarke, accepted that ID cards would not have prevented the bombings. Tony McNulty, formerly the minister in charge of the scheme, in the autumn of 2005 admitted that they had ‘oversold’ the benefits of the scheme at a meeting of the Fabian Society.

10. Possibly the strongest argument in favour is that entry on the NIR and possession of an identity card will improve access to public services. Even the scheme’s most entrenched opponents could not disagree that a single identifier, which will be the point of entry, contact and verification, could be of assistance in gaining access to a range of public services from NHS, to state benefits, to libraries, and so on. However this hardly featured as a justification when the Government was selling the scheme. So why was the focus on keeping us safe rather than getting better public services? One practical argument is that access to better public services can only be a convincing justification for a voluntary scheme allowing people to ‘opt in’ if they so wish. However, the need for a commercially viable scheme meant there needed to be a take up rate that guaranteed a set number of people ever year.

### **Compulsion not choice**

11. On reading the document one might be forgiven for thinking that the Scheme is optional. In the Foreword, for example, the Home Secretary comments:

“I want as many people as possible to enjoy these twin strengths of the National Identity Scheme – improved protection and greater convenience. And I want

them to be able to choose how they participate in the Scheme as well, so that they can enjoy its benefits as quickly as possible.”

Later, she states “I want individuals to have as much control and ownership of their own data as possible”. The document also refers throughout to “increased choice” and “opportunities” arising from the revised delivery plans.

12. In reality, compulsion remains a key part of the Scheme, necessary to ensure that the Scheme is financially viable. A major aspect of the document is to explain how the Government would move towards compulsion over the next 4 years.<sup>8</sup>

### ***Compulsion of non-EEA Nationals***

13. Non-EEA nationals will be the first people to be subject to compulsion. The document explains: “From 2008 we shall start to issue the first identity cards in the form of biometric immigration documents to foreign (non-EEA) nationals.”<sup>9</sup> Later the paper talks of “delivering the scheme” to non-EEA nationals subject to immigration controls. Again, this suggests that ID cards for foreign nationals will be a service which is offered, rather than a compulsory requirement which non-EEA national are unable to refuse. The paper also clarifies that “[i]t is intended in due course to designate biometric immigration documents under the Identity Cards Act 2006, after which any foreign national applying for such a document will be enrolled on the NIR.”<sup>10</sup> There is a clear political rationale for starting the roll-out towards compulsion with non- nationals. It appeals to heightened public concerns about immigration and is an attempt to warm the public up for wider compulsion later on.

14. Liberty has serious concerns about the legislation under which these biometric immigration documents will be issued, the UK Borders Act 2007.<sup>11</sup> In particular, we are concerned about the fact that the detail of the scheme is provided in secondary legislation and about the absence of restrictions on the information that may be held and

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<sup>8</sup> The document also explains that entry on the NIR and an ID card will be offered to young people voluntarily from 2010.

<sup>9</sup> Executive Summary, page 7

<sup>10</sup> Para 41

<sup>11</sup> See Liberty’s parliamentary briefings on the UK Borders Bill: <http://www.liberty-human-rights.org.uk/publications/1-policy-papers/14-previous-bills/2007.shtml>

how that information can be used. Liberty's major fear over the creation of biometric immigration documents is, however, that they have the potential to be used as a form of internal immigration control. Immigration officials frequently apprehend people on public transport.<sup>12</sup> Once the documents have been brought in it is easy to see how people who do not 'look like' EEA citizens will be regularly asked to establish their status. Those who do not originate from the EEA come from any number of countries and a variety of ethnicities. We are, however, concerned that it will be predominantly black and minority ethnic people who are required to satisfy immigration officers of their status. The creation of the biometric immigration document has the potential to be racially divisive.

### ***Compulsion and Employment***

15. The second step towards compulsion will be for "people working in sensitive roles or locations".<sup>13</sup> The document states that "[f]rom 2009, we want people working in specific sensitive roles or locations and their employers to start to benefit from the high level of identity assurance that the scheme will provide".<sup>14</sup> The first target will be those working in airports. The document states "[w]e are working closely with the Department of Transport and in consultation with the air transport industry and trades union to develop the best strategy for the start-up and implementation of the issue of identity cards in this sector".<sup>15</sup> It is argued that this will make pre-employment checks easier, quicker and cheaper for the industry. This second step towards wider compulsion appeals to understandable public concerns about security.

16. The announcement of this proposal was met with anger from trade unions representing those working in the airline industry.<sup>16</sup> One would, of course, hope that identity checks were already being made for those performing security-sensitive jobs in airports. Such identity checks do not require the individuals concerned to be registered on the NIR. There are indeed many other ways of vetting the identity of actual or potential employees. Linking compulsion to employment "in sensitive roles or locations"

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<sup>12</sup> Cf Guardian, 15 September 2004 '1,000 illegal migrants arrested in swoops' Alan Travis

<sup>13</sup> Page 17

<sup>14</sup> Para 43

<sup>15</sup> Para 44

<sup>16</sup> Airport workers' ID card 'insult', BBC News Website, 17<sup>th</sup> March 2008:  
[http://news.bbc.co.uk/1/hi/uk\\_politics/7301424.stm](http://news.bbc.co.uk/1/hi/uk_politics/7301424.stm)

is also open-ended and is certainly not limited to the airline industry. This route towards compulsion could, in time, be expanded to encompass teachers, carers, social workers, those working with dangerous materials (e.g. in laboratories, with chemicals or with explosives) or in sensitive places (e.g. power stations, military bases).

### ***Passport***

17. Until the final parliamentary stages of the ID Card Bill there was a power allowing the Secretary of State to require registration of groups of individuals identified by an order made in Parliament. This was removed as part of a 'compromise' in order to ensure the Bill was passed by the House of Lords. The Government did, however, insist on keeping the power to require people to register when applying for other 'designated' documents. The passport was identified as being the appropriate document as it guarantees that most of the population will need to renew (and therefore register on the NIR) every ten years. The document suggests that this route to wider compulsion will not happen until 2011/2012, after the next general election. This will ensure that nearly 10% of the population would be required to register annually.<sup>17</sup>

### **Jago Russell, Liberty**

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<sup>17</sup> The document does states that "primary legislation" will be needed to allow for people to choose to receive either an identity card and/or passport. Para 60