

**All Party Parliamentary Group for Children
Child Impact Statement**

**Identity Cards Bill (HC Bill 8)
Second reading Monday 20 December 2004**

<http://www.publications.parliament.uk/pa/cm200405/cmbills/008/2005008.htm>

1 Child Impact Assessment - process

Child Impact Assessment involves the analysis of proposed legislation to determine its likely effect on children and young people. Following UK welfare legislation and international conventions, a child is defined as being under 18.

The Children's Legal Centre and the National Children's Bureau (NCB) have been funded by the Nuffield Foundation over two years (October 2004-September 2006) to undertake child impact assessment of up to four Bills per year. Special consideration will be given to Bills that directly affect children, but where children are not specifically considered.

Child impact assessment will analyse proposed legislation using the framework provided by the UN Convention on the Rights of the Child, the European Convention on Human Rights as incorporated into the Human Rights Act 1998, and the five outcomes for children established under the Children Act 2004.

2 Overview of the ID Cards Bill

The purpose of the Identity Cards Bill is to provide a legislative basis for identity cards in the UK. This will be achieved through the establishment of a National Identity Register; providing powers to issue ID cards; powers to check biographical details with other databases (to maintain accuracy of the Register); powers for identity checks to be carried out, and for other uses of information on the Register; creation of new identity fraud offences; powers for the Secretary of State to require individuals to register (and civil penalties for failing to do so); powers for access to specified public services in the future to be contingent on proving identity. The Bill also lists what information would be held about an individual and safeguards for the protection of this data. This legislation applies to people aged 16 and over (although this could be changed by the Secretary of State through secondary legislation), and will not initially be compulsory.

3 Relevant Human Rights considerations

Under the UN Convention on the Rights of the Child (UNCRC) Article 8 States parties must respect the **right of the child to preserve his or her identity**, without unlawful interference, and if a child is deprived of some or all elements of his or her identity, States parties must provide appropriate assistance and protection with a view to speedily re-establishing identity.

Article 16 UNCRC and Article 8 European Convention on Human Rights (ECHR) provide children with the right to **respect for private and family life** without unlawful interference. Article 14 ECHR prohibits discrimination – this may be applicable for asylum seeking children. With regard to using an identity card to access public services, Article 24 provides that 'states parties shall strive to ensure that **no child is deprived of his or her right to access healthcare services**'.

4 Contribution to achieving the Outcomes for Children and Young People

Under the Children Act 2004 both the Children's Commissioner and the arrangements made by children's services authorities to promote cooperation with a view to improving the well-being of the children in the authority's area must relate to

the five outcomes for children and young people. These first appeared in *Every Child Matters* and have been translated into legislation (s.2(3) and s.10(2)(a) Children Act 2004) as:

- a) Physical and mental health and emotional well-being
- b) Protection from harm and neglect
- c) Education, training and recreation
- d) The contribution made by them (children) to society
- e) Social and economic well-being

It is difficult to relate these five outcomes to the young people affected by this Bill.

5 Impact on children of the Identity Cards Bill

- **Age** - This Bill contains the power to extend ID cards to children under 16 through secondary legislation (cl.2(7)) – there is no explicit rationale for including under-18s in the proposals
- There is a **lack of clarity about the purpose of the National Identity Register**. Powers contained within the Bill allow for the possibility that the database could be used for purposes as yet undisclosed and for groups of young people as yet undefined. This conflicts with international obligations to establish safeguards for children and young people and treat them differently from adults. It could also undermine parental responsibility and parental authority
- For 16 and 17 year olds (and for all children if the powers of the Bill are extended) there will be a **duplication of information** on the National Identity Register and on the information sharing indexes to be established by the Children Act 2004
- The powers for the Secretary of State not to **correct data** unless he feels it is appropriate to do so may contravene children's rights under data protection law and international conventions (cl.2(5))
- Provisions in this Bill exclude asylum seekers from being included on the Register until they have formal residency in the UK (cl.2(3)). Identity cards may be required to access public services (cl.15), and this may discriminate against **unaccompanied asylum seeking children**, who are a particularly vulnerable group of young people.
- **Use of cards to access public services** – this may have a disproportionate impact on children because of the greater dependence by them and their parents on public services, for example child benefit, further education and healthcare
- **Lack of clarity about the use of ID cards in practice** – nothing in the Bill should be construed that an individual must carry the card at all times (cl.15(3)(a)); however it could be required to access services, or produced to prove identity if a person is stopped and searched.
- **For 16 and 17 year olds and for low-income families the costs may be prohibitive**

5.1 Age

Cl.2(2)(a) provides that the National Identity Register will contain information on individuals aged over 16. Cl.2(7) provides that the Secretary of State may by order amend the age specified in the above clause, meaning that the provisions of this Bill could potentially apply to everyone in the UK from birth. The accepted definition of a child in the UK is up to 18 years, with some exceptions for particularly vulnerable groups such as care leavers or children with learning difficulties.

5.2 Existing statutory databases – multiple processes affecting children

As the Bill stands, the National Identity Register will apply to 16 and 17 year olds, although it may in the future be extended to apply to children from birth or any age specified by the Secretary of State.

There are two databases holding information about children that will overlap with the new Register:

- The Connexions Card database established under s.117 Learning and Skills Act 2000 – this is for 13-19 year olds and may be enhanced by a smart card proposed in the forthcoming Youth Green Paper
- Information sharing indexes to be established under s.12 of the Children Act 2004.

Under s.12 Children Act 2004 the Secretary of State (for Education) has the power to establish information sharing indexes (databases) that will hold data on all children aged 0-18 years, record details of the professionals working with the child, and allow professionals to record a 'cause for concern' about a child. Data that will be held includes: name, address, gender, date of birth; a unique identifying number; name and contact details of a person with parental responsibility; details of educational setting; details of primary medical care provider, and information of any other description (but not medical or case records) that the Secretary of State may specify. This database provides a record of services that a child has accessed by providing details of the professionals working with that child.

Some of the data (mainly the biographical information) to be held on the information sharing indexes is also to be held on the National Identity Register. However, Schedule 1 states that the National Identity Register will also include place of birth, previous addresses, photograph, signature, fingerprints and other biometric data, nationality, entitlement to remain (and terms and conditions of that leave), and any other ID numbers such as passport numbers, National Insurance Number, driver licence number, ID card number, immigration numbers etc. It could also contain security information (such as a password) and records of provision of the information from the Register to others.

It has not yet been specified how long data will be kept on the Children Act information sharing indexes. Data on the National Identity Register will be kept in perpetuity as long as it is consistent with the statutory purposes of the recording of information (Cl. 3(4)). The fifth data protection principle states that data must 'not be kept longer than necessary'.

This will lead to a significant duplication of data and an increased potential for abuse of process, particularly if the information is used as a means of determining access to services. The third data protection principle states that data must be 'accurate, relevant and not excessive'.

What is the relationship between the proposed National Identity Register and the information sharing indexes to be established under the Children Act 2004, and with other databases such as the Connexions Card?

5.3 Ensuring that data is correct

Clause 2(5) provides that the Secretary of State may modify the Register at any time to correct information that he believes is inaccurate or incomplete. However he is not under a duty to correct information, unless he considers it appropriate to do so.

The Data Protection Act 1998 provides that individuals have a right to access their data, and take action to rectify, block, erase or destroy data relating to them which is inaccurate (incorrect or misleading as to any matter of fact). Article 8 UNCRC also provides the right of the child to preserve his or her identity without lawful interference and for the State to provide assistance and protection to re-establish identity. **The powers for the Secretary of State not to correct data unless he feels it is appropriate to do so may contravene children's rights under data protection law and international conventions.**

5.4 Asylum-seeking children

Clause 2(2)(b) states that individuals are entitled to be included in the Register if they reside in the UK or are preparing to enter the UK. Clause 2(3) provides that regulations may exclude people who are not entitled to stay in the UK, or who have not lived in the UK for the prescribed period. The effect of these clauses read together is the potential to exclude asylum seekers from the Register.

In contrast, clause 2(4) provides for data about an individual who is not entitled to be register on the database, and who may not have applied to be placed on the Register, to have information recorded about them where this information is available. The explanatory notes state that this is to record details of failed asylum seekers, so that if that person applies to enter the UK again under a different identity the Register record will show that person's status as a failed asylum seeker.

For all asylum seekers there will be a period of time between entering the country and becoming entitled to be entered on the Register once they have leave to remain. Many unaccompanied asylum seeking children are given exceptional leave to remain (ELR) until they are 18. At age 18 they may return to their country of origin or become the responsibility of the National Asylum Support Service. **What is the status of unaccompanied asylum seeking children in relation to the Register and in particular if an identity card becomes necessary to receive public services?**

5.5 Access to public services

Clause 15 provides for a power to make public services conditional on identity checks with the individual accessing the service producing an identity card, other evidence of registerable facts about himself or both. Clause 15(2) specifies that this will not apply to payments made under any enactment (e.g. benefits payments), and public services that have to be provided free of charge (e.g. emergency healthcare). However there is an exception to this for people who have been required to register by the Secretary of State under Clause 6.

Clause 16(4) provides that before any regulations can be issued on making public services conditional on identity checks, consultation must take place with members of the public likely to be affected. Clause 17 allows public service providers to check the register. Public service is defined in clause 43(2)(a) as any service to an individual by a public authority, which has the same meaning as s.6 Human Rights Act 1998 (clause 43(1)). **In the context of this Bill the meaning of public services authority requires further clarification.**

These proposals may have a disproportionate impact on children because of the greater dependence by them and their parents on public services, for example child benefit, further education and healthcare. If the powers in the Bill are extended to children under 16, there is even greater reliance on public services for example immunisations and childcare.

5.6 Use of the card in practice – compulsory or voluntary?

There is a lack of clarity about the use of identity cards in practice. Clause 15(3)(a) states that nothing in the Bills should be construed as meaning that the card should be carried at all times. However it may be required to access public services (clause 15(1)), or produced to prove identity if a person is stopped and searched (as the Register can be used to prevent and detect crime (clause 20)).

5.7 Issues for low income families

The Bill provides that the Secretary of State can require certain classes of individuals to apply to be entered on the Register through secondary legislation (clause 6(1)). Clause 4 gives the Secretary of State power to designate certain documents. This would have the effect that when a person applies for a designated document (e.g. a passport), he would also need to submit an application for an identity card.

Both of these provisions, and any eventual requirement for every individual (who meets the requirements for entry onto the Register) to have an identity card, will have an impact on low-income families.

Clause 6(4) provides for a civil penalty of a fine of up to £2500 if a person who is required to apply to be entered onto the Register does not do so within a prescribed time-scale. Clause 6(5) provides that a person who is required to register and does so, but fails to provide sufficient information required by the Secretary of State to ensure the application is accurate and complete, can be liable for a fine of up to £1000.

Currently, the cost of applying for a British passport is £42 (for adults aged 16 and above, and £25 for children); for a driving licence £38. In the Regulatory Impact Assessment published with the Bill 'the current best estimate for an indicative price for a adult passport/ID card package for UK citizens valid for 10 years would be £85. The actual amount charged to a person will depend on future policy decisions on charging'. The RIA states that the Government still wishes to explore 'whether and to what extent offering cards at a lower cost, for example to people on lower incomes, should be met by higher charges for other parts of the scheme'.

For some young people aged 16 and 17, and families on low incomes it may not be possible to afford the costs of applying for a passport/driving licence and an identity card. This has the potential to deny some young people access to the opportunities of overseas travel and learning to drive. At the extreme end for those on very low incomes who are required to register this could be a significant outlay with the threat of a £2500 fine for failure to comply. Young people aged 16 and 17 are unlikely to be able to afford to pay such a fine.

16 December 2004

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