



HOUSE OF LORDS

Select Committee on the Constitution

3rd Report of Session 2005–06

Identity Cards Bill

Report with Evidence

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Identity Cards Bill

INTRODUCTION

1. An Identity Cards Bill was introduced into this House on 21 February 2005, but was dropped after it had received its Second Reading on 21 March 2005. Our report on that Bill¹ is reproduced at Appendix 1. The Bill now before the House was introduced on 19 October. It is in all significant respects the same as the earlier Bill and is, in essence, an enabling measure, conferring numerous powers on the Secretary of State to make regulations to permit aspects of the scheme to come into operation. The ultimate aim is to make it compulsory for everyone to be included in the Register and to have an identity card. A note provided by the Home Office of the main drafting differences between the former and the current Bills (as introduced into the House of Commons) is at Appendix 2. Appendix 3 contains a letter from our chairman to Baroness Scotland of Asthal dated 27 July 2005 and Baroness Scotland's reply to that letter, dated 19 September 2005. While we are grateful for her reply, we consider that we should bring to the attention of the House our continuing concerns. In this report, we summarise the substance of our earlier report, and draw attention to matters that in our view need to be considered while the current Bill is before the House.

THE CONSTITUTIONAL SIGNIFICANCE

2. Notwithstanding Baroness Scotland's assertions to the contrary, we continue to believe that the constitutional significance of the Bill is that it adjusts the fundamental relationship between the individual and the State. She argues that the introduction of compulsory registration of births in 1837 in England and Wales did not alter the relationship between State and individual, but it manifestly did because, for the first time, the State began keeping records of what had previously been private information shared voluntarily with family friends and in many cases the church. Baroness Scotland implies that the existence of the National Identity Register will come in time to be as widely accepted as the compulsory registration of births. But we nonetheless continue to believe that it is important to ensure, irrespective of the Bill's merits or the benefits claimed for it (issues which are beyond our remit), that the scheme is conducted upon a strong legal basis and that adequate safeguards are in place to protect individuals from excessive intrusion into their affairs by institutions of the State, or indeed by others—in other words, to “future proof” it against the potential for abuse of the registration scheme by officials of the State claiming to act in the public interest. This is all the more important when the scheme envisaged will record in a single data-base more information about the lives and characteristics of the entire adult population than has ever been considered necessary or attempted previously in the United Kingdom, or indeed in any other western country.

¹ 5th Report, 2004–05, HL Paper 82

THE REGISTER

3. The primary concern is to ensure an adequate legal and constitutional infrastructure for the maintenance of a National Identity Register, with appropriate separation and limitation of powers. We believe that serious consideration needs to be given by Parliament to the question of whether it is acceptable that maintenance of the register should be a responsibility of the Secretary of State, as provided for in Clause 1(1).
4. There are no exact precedents for a National Identity Register, but under the National Registration Act 1939 the Registrar-General was responsible for administering the scheme of identity cards used during and after the Second World War. Today, the Registrar-General (or, in Scotland, the Registrar-General for Scotland) is statutorily responsible for registering births, marriages and deaths and, under the Census Act 1920, has a duty to carry out the ten-yearly census. The fact that the Registrar General was given and continues to enjoy independent status reinforces our belief that the same principle should apply to the custodian of the new register. Another example of the separation of powers is the long-standing rule, governing the Commissioners for Customs and Revenue that Treasury Ministers should not intervene concerning a tax-payer's personal affairs: such a rule necessarily limits their access to private information on individuals.
5. In her letter, the Minister of State relies for support by way of analogy on the existing schemes for passports and driving licences. In our view these are not apt analogies. In the case of passports, they and the information in them are issued under the royal prerogative and are not covered by statute law at all; for this reason, the scheme gives no guidance as to the safeguards against abuse that would be provided today if Parliament were to legislate on the subject. In our view, the purposes to be served by the National Identity Register are very much broader than the relatively narrow question of who should be permitted to drive particular classes of vehicle on the roads. A further distinction is that neither the scheme of passports nor that of driving licences will require every adult member of the population at a future date to provide the requisite information, since an individual is not obliged to apply either for a passport or a driving licence.
6. In contrast to the examples set out in paragraph 4, the Government intend that in the case of identity cards the register should be maintained by an executive agency, reporting to the Secretary of State and with a remit entrusted to it by him. This intention has been confirmed in the letter from Baroness Scotland dated 19 September 2005. However, the current Bill contains no provision requiring the Secretary of State to establish such an agency, and no provision summarising the essential features of the proposed relationship between the agency and the Secretary of State. It would therefore be possible by administrative action alone for a future Government to replace the executive agency with a different structure, for instance by civil servants working directly to the instructions of the Secretary of State. **We recommend that, because of the scale, complexity and sensitivity of the enterprise now proposed, Parliament should consider the case for amending the Bill to provide for the creation of a new entity (whether registrar, commissioner, commission or other agency), with the duty to maintain the Register in accordance with the primary legislation made by Parliament and the secondary legislation made by the Secretary of State. The Secretary of State's duties in relation to the**

appointment and funding of such an entity should also be stated in the Bill. In our view, such provision would have the great benefit of strengthening the legal basis for the maintenance of the Register and would help to prevent the misconception arising that the contents of the Register are the property of the Secretary of State, and can be accessed by the Secretary of State or his civil servants at their pleasure. We do not accept that amendments to the Bill of the kind we have suggested would, as Baroness Scotland suggests, weaken the responsibility of the Government for the national registration scheme.

OVERSIGHT OF THE SCHEME

7. While the Bill proposes, in clause 24(1), the creation of a National Identity Scheme Commissioner, it does not provide in terms for the independence of his office. Nor does the Commissioner have power under the Bill to receive complaints from individuals about the way in which the Secretary of State (or other authority responsible for maintaining the Register) has handled their affairs. The Bill simply provides for the Commissioner to supervise and oversee the operation of the scheme, to hold office in accordance with the terms of his appointment, and to make an annual report to the Secretary of State. We welcome the fact that clause 25 in the current Bill (compared with the Bill in the previous Parliament) strengthens the duties of the Secretary of State in two respects in regard to reporting to Parliament. However, we note from the letter of Baroness Scotland dated 19 September 2005 that she does not agree that the Commissioner need be independent of the Secretary of State; her view is that the Commissioner will be there to provide *the Secretary of State* with reassurance that the identity cards scheme is operating correctly. We consider that this view fails to take account of the need for the *public at large* to be assured that the Register is being maintained in accordance with the law and the wishes of Parliament, not merely that the scheme accords with the wishes of the Government of the day. **We recommend that this provision be strengthened in three ways: first, the Commissioner should be stated to be independent of the Secretary of State; second, his powers should be extended to include such matters as investigation of complaints; third, he should be able to report directly to Parliament.**
8. In her letter of 19 September 2005, Baroness Scotland has provided some information regarding the present provision of expert advice to the Government by the Biometrics Assurance Group and by an Independent Assurance Panel. However, **we again draw attention to the suggestion in our earlier report (paragraph 10) of the desirability of creating an independent expert advisory or consultative committee or commission to exercise informed judgment regarding development of the National Identity Scheme.** The work of such an advisory body would of course take account of the existence of other advisory and consultative arrangements within Whitehall, but we suggest that it could play a valuable role as a forum drawing upon a wide range of experience that would go beyond scientific and administrative matters in considering the progressive development of the registration scheme.

TIMING

9. The Bill has been drafted in such a way as to secure legislative authority now for the ultimately mandatory goals of the scheme, even though there is no certainty as to when that might be. Implementation would be dependent on the “super-affirmative” procedure created by clause 7. While, clearly, the “super-affirmative” procedure is to be preferred to a simple affirmative motion, it is manifestly inferior, in constitutional terms, to primary legislation. We reiterate our earlier conclusion (paragraph 12) that it would be preferable to separate the two phases in order that the compulsory phase would have to be introduced by primary legislation. This would enable Parliament to ensure that the legislation fully reflected experience gained, especially about safeguards, during the voluntary phase. **We therefore recommend that the Bill should be amended to secure that the extension of the scheme to the entire population would require further primary legislation.**

APPENDIX 1: TEXT OF HL PAPER 82 (SESSION 2004–05), PUBLISHED
17 MARCH 2005

INTRODUCTION

1. The Identity Cards Bill has already been scrutinised by two parliamentary Committees—pre-legislatively by the Home Affairs Select Committee of the House of Commons² and the substantive Bill by the Joint Committee on Human Rights (JCHR).³
2. It is not our purpose to duplicate that earlier work. Our terms of reference are “to examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution”. In scrutinising proposed legislation, our primary task is to ensure that the legislative process does not have inadvertent or ill-considered consequences for matters of constitutional significance.
3. Both supporters and critics of the Bill agree that it is, in essence, an enabling measure. Like many other framework or skeleton bills, it confers numerous powers on the Secretary of State to make regulations to enable aspects of the scheme to come into operation. Ministers acknowledge that the ultimate aim of the scheme set out in the Bill is to make it compulsory for everyone to be included in the Register and to have an identity card at an indeterminate date in the future, perhaps not for two full Parliaments.
4. The constitutional significance of the Bill is that it adjusts the fundamental relationship between the individual and the State. Notwithstanding the merits or otherwise of the proposals, commentary on which is outside our remit, it is important to ensure that adequate safeguards are in place to protect individuals from excessive intrusion into their affairs by institutions of the State, or by others. In replying to the Government response to its 4th report, the JCHR has reiterated its concerns about the scale of the information required, adequate protection under Articles 8 and 14 of the European Convention on Human Rights, and safeguards over the information that might be disclosed⁴. Our own concerns are not founded on the Convention, but rather on the fact that the Bill seeks to create an extensive scheme for enabling more information about the lives and characteristics of the entire adult population to be recorded in a single database than has ever been considered necessary or attempted previously in the United Kingdom, or indeed in other western countries. Such a scheme may have the benefits that are claimed for it, but the existence of this extensive new database in the hands of the State makes abuse of privacy possible. In the rest of this report, we identify ways in which our concerns may be assuaged.
5. The common thread in our suggestions is that Parliament should not leave a scheme of such significance and complexity to the Secretary of State alone to develop, bring into operation and maintain. The legislation should make it clear that the information held on the Register is not the “property” of the

² 4th Report, 2003–04, HC 130, vols I and II. The Government response can be found in Cm 6359 of October 2004.

³ 5th Report, 2004–05, HL Paper 35/HC 283 and 8th Report, 2004–05, HL Paper 60/HC 388.

⁴ 8th Report, 2004–05, HL Paper 60/HC 388, pages 7–16

Secretary of State, who would in practice be the Home Secretary. We consider that the role of the Home Secretary should be confined to overseeing the development of the scheme (including its financing), and that the Home Secretary's primary task should be, subject to the approval of Parliament, to make the many regulations within which the Register will operate. We also advocate the creation of an advisory or consultative committee (or commission), and propose that the Bill be limited to what has been termed the voluntary phase of the scheme.

THE REGISTER

6. Notwithstanding the statement in clause 1(3) of the Bill that the primary statutory objective is to provide individuals with "a convenient method ... to prove registrable facts about themselves to others", the Bill's primary significance lies in the creation of a national scheme for registering the identities (and associated personal details) of all persons within the United Kingdom who are over 16, other than foreign nationals who are here for less than three months. The Bill's title is therefore misleading, and it might more accurately be described as the *National Identity Register and Identity Cards Bill*. When the scheme is fully in place, the role of identity cards themselves will be secondary to the database of information recording the personal history on a life-long basis of every individual in the Register. It will be possible, once all the biometric information is recorded, for the authorities, by scanning anyone who is or should be on the register, to check their identity and access the information about them without recourse to the identity card itself.
7. The primary concern, therefore, is to ensure an adequate legal and constitutional infrastructure for the maintenance of a National Identity Register, with appropriate separation and limitation of powers. Clause 1(1) declares that "It shall be the duty of the Secretary of State to establish and maintain a register of individuals." We do not believe that maintenance of the register should be a responsibility of the Secretary of State. It should, rather, be the responsibility of an independent registrar, with a duty to report directly to Parliament.
8. We understand that the Government's intention is that the register should be maintained by an executive agency, reporting to the Secretary of State and with a remit entrusted to it by the Secretary of State. However, no reference to this intention appears in the Bill. In our view, the scale, complexity and sensitivity of the enterprise make it essential that Parliament should create a new entity (whether registrar, commissioner, commission or other agency), with the duty to maintain the Register in accordance with the primary legislation made by Parliament and any secondary legislation made by the Secretary of State. No exact precedent exists for a National Identity Register, but in the case of Customs and Excise and Inland Revenue, which have the status of "non-ministerial public departments" and possess much information relating to individuals and their activities, it has long been the rule that Treasury Ministers should not intervene concerning a tax-payer's personal affairs: such a rule necessarily limits their access to such information. Comparison may be made with the Census Act 1920, which confers a duty on the Registrar-General to carry out the ten-yearly census in accordance with the Act, Orders in Council and regulations made by the Secretary of State. The Registrar-General (in Scotland, the Registrar-General for Scotland) has statutory responsibility for registering births, marriages and

deaths; and under the National Registration Act 1939, the Registrar-General was responsible for administering the scheme of identity cards used during and after the Second World War.

OVERSIGHT OF THE SCHEME

9. The Bill proposes, in clause 24(1), the creation of a National Identity Scheme Commissioner to supervise and oversee the operation of the scheme. The Commissioner is to hold office in accordance with the terms of his appointment, but the Bill does not provide for the independence of his office. Nor does the Commissioner have power under the Bill to receive complaints from individuals about the way in which the Secretary of State has handled their affairs. The Commissioner must make an annual report to the Secretary of State on his functions for laying before Parliament, although the Secretary of State may in the public interest exclude material from the copy of the report so laid (clause 25(4)). We believe this provision might be strengthened, to general advantage, in three ways. First, the Commissioner should be independent of the Secretary of State; second, his powers should be extended to include such matters as investigation of complaints; third, he should be able to report directly to Parliament.
10. We also suggest for consideration the creation of an expert advisory or consultative committee or commission to exercise informed judgment regarding development of the National Identity Scheme. The aim would be to provide a forum bringing together representatives from the police/intelligence community, statisticians and registration experts, and civil society generally (meaning groups concerned with civil liberties and privacy, racial and religious groups, corporate and individual users' interests, and perhaps the media). Such a forum would be particularly valuable in the "voluntary" phase of implementing the scheme, helping to ensure both its practicality and the adequate protection of individual liberties. It would help both to reflect and inform public opinion.

TIMING

11. As noted in paragraph 3 above, the long term objective of the scheme set out in the Bill is to make it compulsory for everyone to be included in the Register and to have an identity card. Ministers have made it clear⁵ that their intention is to secure legislative authority now for the ultimately mandatory goals of the scheme. But the scheme will inevitably take a long time to come fully into operation, and will be dependent on the "super-affirmative" procedure created by clause 7, involving a resolution of each House, following a period of more than 60 days during which a report explaining the draft order has been laid in Parliament. Such an order (or orders) could extend the obligation to apply to be entered on the Register to the entire population.
12. Such a procedure would not be necessary if the present Bill were limited to introducing the "voluntary" phase of the scheme, leaving its extension to the entire population to be authorised by further primary legislation in the light of experience gained. It should be noted that the technology envisaged by the scheme is not yet tried and tested, and that estimates of the cost and charges to be made to individuals can only be speculative. Experience may lead to the

⁵ See House of Commons, Standing Committee B, 3rd sitting, 20 January 2005, col 123.

need for significant alterations to the proposals. It is difficult to see the urgency that attaches now to having all the primary legislation in place for future stages of a project that must for the moment be indefinite. Since, as noted above, these measures reflect a significant change in the constitutional relationship between the State and the individual, we consider that the change to a universal and compulsory scheme should not be brought about by secondary legislation, even by a “super-affirmative” procedure. If the scope of the Bill were restricted in this way, the “super-affirmative” procedure proposed need not appear in the Bill; and further primary legislation would be necessary, reflecting the experience gained through the voluntary scheme, when the time comes to contemplate an all-embracing compulsory scheme.

13. We make this report for the information of the House in order to draw attention to matters of principle affecting principal parts of the constitution. We have not sought in this brief report to mention many aspects of the Bill that deserve to receive the close attention of the House on their merits.

APPENDIX 2: DRAFTING CHANGES TO IDENTITY CARDS BILL⁶

1. There have been a number of drafting changes and improvements made to the bill since the last Session. These are as follows:

Clause 1 (minor amendment to add “gender”)

2. Gender is included in the list of personal information which may be held on the National Identity Register {Schedule I paragraph 1(e)} but was not included as a “registrable fact” in Clause 1 and a minor change will now correct this omission.

Clause 2 (additions to be consistent with the statutory purposes and leaving out provision at old subsection 5)

3. A change to the bill has been made so that any additional information placed on the Register, or the making of an entry for someone not entitled to be registered, has now to be consistent with the statutory purposes of the scheme, rather than having a more general power to do so.
4. The previous subsection 5 of clause 2 allowed the Secretary of State discretion to modify the Register. This led to claims that people would ask for corrections to be made to their entries that the Secretary of State could then ignore. In fact, data protection law will place the Secretary of State under a duty to keep accurate information and give a right to the individual to apply to a court for inaccurate information to be rectified. The previous provision was unnecessary and has therefore been removed.

Clause 2 (Affirmative order to vary age of registration) and Clause 41 (consequential changes to make parents responsible for obligations relating to children’s applications)

5. The provision enabling the age of entitlement to registration to be changed from the age of 16 was subject to the negative resolution procedure. This is now made subject to an affirmative order procedure by Clause 2(7).
6. The bill as previously drafted lacked a power to impose obligations and liabilities on parents (or other responsible adults) so that the powers to require registration (with a civil penalty for failure to do so) would be ineffective if it were decided in the future to issue ID cards to under 16’s. A suitable addition has now been made to clause 41 subsection (5).

Clause 13 (changing criminal to civil penalty for failure to surrender ID card)

7. Clause 13 in the previous bill created a criminal offence of failure to notify that an ID card has been lost or stolen or to surrender an ID card when required to do so. Although there has to be a strong incentive for people to report lost or stolen cards and to surrender a card if issued in error, it has been decided that a civil financial penalty should be sufficient to mirror similar penalties used to enforce other parts of the scheme. This is now provided for in clause 13(6).

⁶ Provided by the Home Office to House of Commons Standing Committee D on 5 July 2005

Clauses 19 and 22 (linking provision of information without consent to the public interest statutory purpose)

8. The Bill now states explicitly that any secondary legislation allowing provision of information from the Register without consent under clauses 19 or 22 (e.g. to a government department or other public authority) must be necessary for one of the public interest statutory purposes set out in the Bill at clause 1(4). This would not affect the provision of information already written on the face of the Bill, for example to the security and intelligence agencies which is already linked to their own functions. The bill has also been updated so as to refer to the newly merged Revenue and Customs in clause 19.

Clause 23 (change to affirmative resolution procedure)

9. In order to provide additional parliamentary scrutiny to the provision of information from the Register without consent the regulations under clause 23, which will establish the rules to be applied to the provision of such information, are now subject to the affirmative rather than negative resolution procedure in subsection (6).

Clause 24 (minor changes to the responsibilities of the National Identity Scheme Commissioner)

10. Changes to the Bill have removed the provision that would have limited the National Identity Scheme Commissioner from reporting on the operation of the civil penalty regime or from reporting on his own remit, as set out in Clauses 24 and 25 of the Bill.
11. It was not intended that the Commissioner should have powers to oversee the current business of the UK Passport Service in advance of the introduction of ID cards. The bill now excludes from the Commissioner's remit the provisions in Clause 39 which relate only to passports.

Clause 25 (reports of the National Identity Scheme Commissioner)

12. Clause 25 has been amended so that all of the National Identity Scheme Commissioner's reports (not just annual reports) are laid before Parliament and to limit any issues that could be excluded from a report from the Commissioner to matters affecting national security or criminal investigations and thus removing the previous reference to matters prejudicial to the "functions of any public authority".

Clauses 32 and 45 (updating to take account of the SOCAP Act)

13. There has been some minor updating of the bill at clauses 32 and 45 to take account of the passage of the Serious Organised Crime and Police Act 2005.

Clause 37 and 38 (fees)

14. Minor additions to Clause 37 (subsection 6) and Clause 38 (subsection 4A(c) and 4C) to provide for greater flexibility in the way that fees for passports and ID cards may be set.

Schedule I (previous addresses)

15. The provision has now been removed in Schedule 1 which listed previous addresses as one of the categories of personal information that, not only may be held on the Register, but also could be provided from the Register with consent (i.e. it would have allowed an organisation to verify a person's previous addresses as well as current address with the consent of the individual). This has now been removed as it is not necessary to allow for previous addresses to be disclosed (for example when someone produces an ID card to access a private or public service).

APPENDIX 3: CORRESPONDENCE ON THE IDENTITY CARDS BILL

Letter from the Chairman to Baroness Scotland

1. The Constitution Committee, which I chair, has been considering the Identity Cards Bill, which was introduced in the House of Commons on 25 May, received its second reading on 28 June 2005 and has recently been before Standing Committee D. It is broadly the same as the bill that was before the House of Lords in the last Parliament, on which we reported on 17 March (HL Paper 82, Session 2004-05). My purpose in writing is to seek clarification of certain aspects of the Bill which attracted our attention then and which, because they have been retained, still cause us concern. So far as we are aware, these concerns have not been raised during passage of the Bill through the House of Commons. But it is indeed probable that these concerns will be raised in the House of Lords. Your response will help us decide whether a further report is necessary when the Bill reaches this House.
2. As we said in March, the constitutional significance of the Bill is that it adjusts the fundamental relationship between the individual and the State, and we believe it is therefore important to ensure both that the scheme is conducted on a strong legal basis and is seen by the public at large to be so conducted, and that adequate safeguards are in place to protect individuals from excessive intrusion into their affairs. This is all the more important since the scheme envisaged will record in a single data-base more information about the lives and characteristics of the entire adult population than has ever been considered necessary or attempted previously in the United Kingdom, or indeed in any other western country.

THE REGISTER

3. The primary concern, on the assumption that the case for a National Identity Register is established, is to ensure an adequate legal and constitutional infrastructure for the maintenance of the Register, with appropriate separation and limitation of powers. We believe that serious consideration needs to be given to the question of whether it is desirable that maintenance of the register should be a responsibility of the Secretary of State, as provided for in Clause 1(1) of the present Bill. We consider that there is a strong argument to be made for the view that the Secretary of State should not in law be the Registrar and that the duty of maintaining the register should be located at arm's length from Government. There are indeed no exact precedents, but under the National Registration Act 1939 the Registrar-General, not the Secretary of State, was responsible for administering the scheme of identity cards used during and after the Second World War. Even today, the Registrar-General (or, in Scotland, the Registrar-General for Scotland) is statutorily responsible for registering births, marriages and deaths and, under the Census Act 1920, has a duty to carry out the ten-yearly census. In each of these roles the Registrar-General enjoys autonomy from Government. Another example of the separation of powers is the long-standing rule, governing the Commissioners for Customs and Revenue, ensuring restriction of access by Ministers to private information on individuals.

4. Although there is nothing to this effect in the Bill, we understand that the Government may be envisaging maintenance of the register by an executive agency, reporting to the Secretary of State and with a remit entrusted to it by him. We would welcome clarification of the Government's intentions in this respect. Our present view is that, because of the scale, complexity and sensitivity of the enterprise, a new statutory entity or agency should be created, answerable to Parliament, with the duty to maintain the Register in accordance with the primary legislation made by Parliament and any secondary legislation made by the Secretary of State. In forming this view, we have taken into account that very many significant aspects of the scheme for a national identity register are to be authorised in future by regulations to be made by the Secretary of State. The creation of a statutory registration agency would in our view help to secure that all public authorities, including central government departments, should be perceived as being bound to observe the law in relation to such matters as access to the register and the use of the information that it contains.

OVERSIGHT OF THE SCHEME

5. While the present Bill proposes, in clause 24(1), the appointment of a National Identity Scheme Commissioner, it does not provide for the independence of his office. Rather, the Bill provides only for the Commissioner to keep under review the arrangements for the scheme maintained by the Secretary of State and the operation of the scheme in other specific respects (subject to matters that are excluded from review by clause 24(3)), for the Commissioner to hold office in accordance with the terms of his appointment, and to make annual and other reports to the Secretary of State. It is noteworthy, too, that the Commissioner has no express power or duty under the Bill to receive and act on complaints from individuals about the way in which their affairs in relation to the National Identity Register have been handled by Government or other public authorities. In our earlier report, we advocated that this provision be strengthened in three ways: first, the Commissioner should be independent of the Secretary of State; second, his powers should be extended to include such matters as investigation of complaints; and, third, he should be able to report directly to Parliament. We have noted with interest that clause 25 of the present Bill has been amended in two respects to strengthen the duties of the Secretary of State in regard to reporting to Parliament, but we would nonetheless welcome your views on the above points made in our report.
6. In this connection, we would be grateful for your view on our suggestion (in paragraph 10 of the report) that an expert advisory or consultative committee or commission be created, to exercise informed judgment regarding development of the National Identity Scheme. While future policy developments in the Scheme will in general require to be implemented through the making of regulations that will be subject to Parliamentary scrutiny, the opportunity for such scrutiny necessarily arises only after crucial policy decisions have been made. One purpose of the proposed advisory or consultative body would be to provide an informed forum able to participate in the formative stages of future policy-making.

TIMING

7. Finally, we expressed reservations over the way the Bill had been drafted so as to secure legislative authority now for the ultimately mandatory goals of the scheme, even though there is no certainty as to when it might be possible to establish these goals. The present Bill is framed in the same way, and implementation of the compulsory scheme would be dependent on the “super-affirmative” procedure created by clause 7 of the Bill. While, clearly, that has merit compared with a simple affirmative motion, it is manifestly inferior to primary legislation as a means of enabling Parliament to give full consideration to the further implications of such a far-reaching proposal. We wish therefore to bring to your attention our earlier conclusion (in paragraph 12 of our report) that it would be preferable for the compulsory phase of the register to be introduced by primary legislation at a future date. Parliament could then ensure that the further legislation fully reflected experience gained as regards the operation of the scheme and the effectiveness of safeguards, during the voluntary phase.

27 July 2005

Reply from Baroness Scotland

Thank you for your letter of 27 July 2005, about the Identity Cards Bill.

I have also noted with interest the report of the Select Committee on the Constitution of 17 March (HL Paper 82, Session 2004-05) on the earlier identity cards bill and hope that this response will provide clarification of the points raised in that report as well as in your letter.

I'm afraid that I do not accept the argument that this legislation will change radically the relationship between the state and the individual. The relationship between the state and the individual did not change in 1837 when it was made compulsory for every birth in England and Wales to be registered and recorded nationally, nor when similar provisions were introduced in Scotland in 1855 and in Ireland in 1864. The information to be held on the National Identity Register will not include highly sensitive personal information such as financial, medical or tax records. It will include biometric information to identify an individual (much as a photograph is used currently in a passport) as well as basic identity information such as an individual's name, address date of birth etc—most of this information will already be known to government, for example in the existing records held by the UK Passport Service which already covers around 80% of the British population.

THE NATIONAL IDENTITY REGISTER

I am conscious of the need to conduct the identity cards scheme and the national identity register on a strong legal basis. However, I do not agree with your view that responsibility for operating the register should not be for the Secretary of State. I consider that, just as with the issue of passports or driving licences, the responsibility for the issue of identity cards and maintaining the supporting national identity register should be a direct responsibility of government.

We have made clear that it is our intention to create a new executive agency, incorporating the functions of the existing United Kingdom Passport Service and the current Identity Cards Programme and working closely with the immigration and nationality directorate of the Home Office. It is intended to establish this new agency after the Identity Cards Bill receives royal assent and for the new agency to

be responsible for planning the establishment of the National Identity Register and the issue of Identity Cards starting, on current plans, from 2008. The new agency will be a Home Office agency (as is the UK Passport Service) and will be answerable to the Home Secretary and through him to Parliament.

The Bill specifies what information may be held on the National Identity Register in clause 3 and schedule 1 and includes personal information such as name, address and date of birth, photograph, signature, fingerprints and other biometric information as well as nationality and immigration status.

The Secretary of State may amend the contents of Schedule I of the Bill but this can be done only if it is consistent with the statutory purposes of the scheme and needs to be approved by both Houses of Parliament.

Personal information not relevant for identification purposes and so not consistent with the statutory purposes (such as tax information, medical records and criminal records) cannot therefore be held on the Register without the Government passing fresh primary legislation.

Private sector organisations will only be able to check an individual's identity by consent and only a subset of the information held can be verified by consent, for example it does not allow for previous addresses to be verified by the private sector. Organisations wishing to check identity will need to be accredited and checking identity is not a licence to trawl through a person's record. It will just validate a card or allow other limited information held on the Register to be validated or provided with the individual's consent. There are specific safeguards in clause 18 to stop private sector organisations demanding a card on a compulsory basis before it becomes compulsory to register with the scheme itself and get an ID card.

Organisations delivering public services will be able to be provided with information from the Register to help identify someone applying for the service where it has been made a condition that an ID card is produced. However, that condition can only apply to the payment of benefits or the provision of free public services after it has been made compulsory to register and obtain an ID card.

Police, Security and Intelligence Agencies, Her Majesty's Revenue and Customs as specified in the Bill will be able to confirm or be provided with information without an individual's consent for their statutory functions or specific purposes as specified in the Bill.

Government departments or public authorities may be provided with information from the Register without consent but only if prescribed in regulations approved by Parliament. So it will always be clear which organisations can be provided with data in this way. The Bill also allows regulations to set rules as to how information can be provided in these circumstances, again this will be an open, transparent process.

The Bill contains tough criminal sanctions for those who might abuse the scheme. There is a specific offence of unauthorised disclosure of information held on the scheme (max penalty 2 years) and a maximum penalty of 10 years for those found guilty of tampering with the Register (e.g. creating false records).

We are content that the scheme and the Bill are compatible with our obligations under the European Convention on Human Rights (ECHR), 21 out of 25 Member States have ID cards (some even have a requirement to carry the card) and all of them are bound by the ECHR. Many of them are also moving towards incorporating biometrics in their schemes.

Other complementary legislation also provides important safeguards. The scheme must comply with the Data Protection Act and we have set out how we comply with all its principles. The scheme will comply with the Disability Discrimination Act and our commitment here is clear given that we used a booster sample of people with disabilities in the recent biometric enrolment trial. The scheme must also comply with the Race Relations (Amendment) Act in terms of how cards are issued to minority ethnic groups—again we have published the results of specific research on their needs (<http://www.homeoffice.gov.uk/comrace/identitycards/publications>). Public authorities using the card scheme must also do so in a non-discriminatory way as they are also bound by this legislation.

OVERSIGHT OF THE SCHEME

I consider that the creation in the bill of a new post of National Identity Commissioner to oversee the operation of the identity cards scheme and the register as well as the use of ID cards provides the right level of oversight. I do not agree that it is appropriate to create an entirely independent officer. Indeed the commissioner will be there to provide the Secretary of State with reassurance that the identity cards scheme is operating correctly as well as providing reports that will be published and laid before Parliament. The Commissioner will have a duty to issue an annual report (Cl.25(1)) and the Secretary of State in turn has a duty to lay this or any other report from the Commissioner before Parliament (Cl.25(3)). The National Identity Scheme Commissioner may at any time make a report to the Secretary of State as he sees fit, including any comments on the operation of the scheme and the Register. These must also be laid before Parliament. The provision of information to security agencies would be scrutinised by the Intelligence Services Commissioner and the courts clearly provide the appropriate appeal routes in relation to criminal offences and civil penalties. Whilst the Secretary of State has a power to prevent publication of any matter contained in the report he can only do so if he considers it to be prejudicial to national security, or the prevention or detection of crime. The Secretary of State must also inform Parliament via a statement if he has excluded any matters from the report tabled.

You have also suggested the formation of an expert advisory committee to inform the development of the scheme. However, you may not be aware of the expert advice that we have already put in place.

The Government's Biometrics Assurance Group will review biometric aspects of the Identity Cards Programme. Sir David King, the Government's Chief Scientific Adviser, will chair the Biometrics Assurance Group which is being established as a panel of internationally eminent specialists in biometrics and related technologies. It will link with the Home Office Centre of Expertise in Biometrics led by the recently appointed Home Office Chief Biometric Officer Marek Rejman-Greene.

In addition an Independent Assurance Panel has been formed to cover Project Management, Finance, Procurement and the other aspects of the Programme not covered by the Biometric Assurance Group. It will be chaired by Alan Hughes, a former Chief Executive of First Direct Bank. The rest of the panel is made up of people with a similar level of expertise and experience in their field. The Chair, of the Independent Assurance Panel also serves as a non-executive member of the Identity Cards Programme Board.

TIMING AND THE MOVE TO COMPULSION

The Government has always been clear that the Identity Cards scheme will eventually become a compulsory scheme, subject to the Government being satisfied that everything was in place to enable the scheme to work successfully. When the time is right for a move to compulsion, the so called “super-affirmative” resolution procedure will allow an appropriate level of scrutiny of the report laid and agreed before any order leading to compulsion. We consider that, it is right to give Parliament the opportunity to debate the scheme now in the clear knowledge that this bill would allow compulsory registration to be introduced. Of course, if Parliament was not satisfied in the future with any proposal to move to compulsion by way of the super-affirmative order procedure, then it would always be open to Parliament to reject such an order if the view at the time was that further primary legislation was needed.

Please let me know if the Constitution Committee has any other points on the identity cards bill which require an answer in writing or if there are any points you might wish to raise when the Bill is debated in the House of Lords.

I am happy to arrange a briefing from officials if you would consider that of use.

19 September 2005