

IDENTITY CARDS ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Required identity checks

Section 13: Power to make public services conditional on identity checks

92. *Identity Cards – the next steps (Cm 6020)* sets out two objectives for the use of ID cards in relation to public services. These were to simplify checks on eligibility for services and to reduce fraudulent use of services. This section provides a power to make, on a case by case basis, a link between the ID cards scheme and the provision of public services. This power will only be used where power does not exist elsewhere, for example in social security legislation. Section 42(2) defines what is meant by the provision of a public service.
93. *Subsection (1)* provides a power to make regulations which allow or require a person who provides a public service to make it a condition of providing the service that an individual produces an ID card and/or other evidence of his registrable facts. This will give service providers flexibility in deciding what proof of identity is the most appropriate in the particular circumstances and what level of identity check is necessary. The ID card on its own may suffice. Alternatively, someone's identity could be checked against the Register, using for example a biometric, when the card is not present.
94. *Subsection (2)* ensures that regulations made under subsection (1) cannot make it a requirement to produce an ID card or information which can be verified against the National Identity Register in order to receive payments provided under legislation or any service provided free of charge before it is compulsory for that individual to register. This means that an order under section 13 cannot make it a requirement for a person to produce a card, for example to receive social security benefits or free NHS treatment, until it is compulsory for that person to be registered. As noted above, compulsory registration means an obligation to register imposed under future primary legislation.
95. *Subsection (3)* specifically excludes the possibility of an order under section 13 making the carrying of cards compulsory. This includes both the carrying of a card and its production on demand other than for the purposes of an application for a public service.
96. Section 43(2) provides that the powers under this section do not extend to public services provided in Scotland that are within the legislative competence of the Scottish Parliament. If the Scottish Parliament wishes to make production of a card a condition of the provision of those services, it would first have to pass its own Act.

Section 14: Procedures for regulations under s. 13

97. This section sets out the procedure for making regulations under section 13, including in relation to devolved administrations.
98. *Subsection (1)* sets out who may make regulations under section 13. Where the provision of public services is the responsibility of the National Assembly for Wales,

only the Assembly may make regulations under section 13. In Northern Ireland, the power to make regulations under section 13 in relation to the provision of Northern Irish public services is exercisable by such Northern Ireland department as may be designated for that purpose by order made by the Office of the First Minister and deputy First Minister. Where this power is not exercisable by the National Assembly for Wales or a Northern Ireland Department, the Secretary of State may make regulations.

99. *Subsection (2)* states that the 'provision of Welsh public services' means the provision of public services in Wales to the extent that such provision is something which the National Assembly for Wales has functions. And the provision of Northern Ireland public services means the provision of public services in Northern Ireland to the extent that it is a transferred matter.
100. Regulations made under section 13 must be approved by a resolution in both Houses of Parliament in the case of regulations made by the Secretary of State; and in the case of regulations in Northern Ireland, they must be laid before and approved by the Northern Ireland Assembly (*subsection (3)*).
101. Under *subsection (4)*, before any regulations are made there must be steps taken for ensuring that members of the public likely to be affected are informed and consulted on the proposal. *Subsection (5)* provides that this must include the reasons for the proposal and why existing provisions under legislation governing the particular service are not sufficient to create the necessary link; i.e. why the section 13 power is being relied on.
102. *Subsection (6)* requires there to be consultation with interested parties, for example the providers of a public service, before any regulations are made under section 13 if there is an equivalent requirement in other legislation governing that service to consult these interested parties.

Section 15: Power to provide for checks on the Register

103. This section provides a power to the Secretary of State to enable checks to be made of information recorded in the Register by people providing public services. It also gives the Secretary of State the power to regulate identity checks, including an accreditation scheme for user organisations and the equipment they are using.
104. *Subsection (1)* enables the Secretary of State to make regulations allowing the provision of information to a person providing a public service for which regulations under section 13 have been made or in respect of which any other legislation makes it a condition to produce an ID card or any other evidence of registrable facts recorded on the Register. This must be for the purposes of ascertaining or verifying information about an individual applying for the public service.
105. *Subsection (2)* limits the Regulation making power such that information falling under paragraph 9 of Schedule 1 (audit log information) may not be provided under this section.
106. *Subsection (3)* provides that regulations may specify the manner in which applications for checks on the Register are to be made, the persons by whom and the circumstances in which the application may be made, the information that may be provided and how it may be provided.
107. *Subsections (4) and (5)* read together have the effect that the provision of information under this section may only take place where the Secretary of State has made regulations requiring accreditation, and the applicant for information has satisfied the requirements of those regulations. Section 40(7) sets out in more detail what regulations for the approval of a person or of apparatus may include.
108. The regulations are subject to the affirmative resolution procedure (*Subsection (6)*). Before any draft regulations are laid before Parliament, the Secretary of State must take

steps to ensure that members of the public in the United Kingdom are informed and consulted on any proposals (*Subsection (7)*).

109. *Subsection (8)* ensures that “enactment” for the purposes of this section includes an Act of the Scottish Parliament. This means that if a Scottish Act were to make it a condition of providing a service that an ID Card or evidence of registrable facts be produced, the Scottish service provider could apply for a check against the Register.

Section 16: Prohibition on requirements to produce identity cards

110. This section places prohibitions on requiring people to produce ID cards or information from their entries on the Register. It is designed to prevent ‘backdoor’ compulsion by ensuring that organisations only place requirements on people in relation to ID Cards, to the extent that that is permitted by this or other legislation.
111. *Subsection (1)* makes it unlawful to make it a condition of doing anything in relation to a person, e.g. providing him with a service, that that person:
- makes an application under section 12(1) for information from his entry on the Register;
 - makes a subject access request under the Data Protection Act for information from his entry on the Register; or
 - is otherwise required to provide information about his entry on the Register.

There are no exceptions to these prohibitions.

112. *Subsection (2)* makes it unlawful (subject to the exceptions in *subsection (3)*) to make it a condition of doing anything in relation to a person, that that person:
- consents to a check on his entry on the Register being carried out under section 12(1); or
 - produces his ID card.
113. Three exceptions to the *subsection (2)* prohibitions are set out in *subsection (3)*. The first exception is where the relevant condition has been imposed in accordance with regulations made under section 13 (power to make public services conditional on identity checks) or in accordance with provisions of another enactment. The second exception is where the organisation allows for reasonable alternative methods of proving identity, i.e. the requirement is not truly conditional. The third is where the individual concerned is subject to compulsory registration by virtue of future primary legislation.
114. *Subsection (4)* makes clear that the prohibitions in this section may be enforced by the individual in the civil courts.
115. *Subsection (5)* ensures that Acts of the Scottish Parliament are included in the definition of an enactment within this section. Therefore, if the Scottish Parliament decided to pass legislation making the provision of a public service conditional on the production of an ID card, by virtue of *subsection (3)(a)* that requirement would be exempted from the scope of the prohibitions in *subsection (2)*.