

**EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (RESTRICTIONS ON EMPLOYMENT)
(AMENDMENT) ORDER 2009**

2009 No. 2908

1. This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 This order amends the Immigration (Restrictions on Employment) Order 2007 (the “2007 Order”) by adding ID Cards issued under the Identity Cards Act 2006 to the list of documents set out in the Schedule to that Order. Documents included in the Schedule can be produced to an employer and in doing so, subject to the employer fulfilling all other requirements in the 2007 Order, will provide the employer with an excuse from a civil penalty for employing a person subject to immigration control who is prohibited from working under the Immigration, Asylum and Nationality Act 2006.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Identity Cards Act 2006 (“the Act”) received Royal Assent on 30th of March 2006.

4.2 Five instruments subject to the affirmative resolution procedure were passed by Parliament in June and July 2009. A further four other instruments subject to the negative resolution procedure were laid before Parliament in September 2009.

4.3 Collectively, these instruments will enable the first phase of the National Identity Service to be implemented, which will involve a limited initial rollout of ID Cards to a number of volunteers from the general public and selected airside workers, starting with those at Manchester and London City airports.

4.4 A commencement order was signed on 22nd September 2009 which enabled a limited number of IPS and Home Office personnel to apply for an ID card from 20th October 2009. Employees of Manchester Airport Group working airside at Manchester Airport will be able to apply for an ID card from 10th November 2009. Employees of London City Airport who hold an airside pass for that airport will be able to apply as of 24th November. This will shortly be followed by another commencement order to enable members of the public living in the Greater Manchester airport to volunteer to apply for

an ID card. Rollout will then extend to other volunteers across the North West in 2010.

4.5 ID Cards issued under the Identity Cards Act will be issued to British citizens and British subjects with the right of abode. This card also serves as a travel document for travel throughout the EEA and Switzerland. An alternate ID card may also be issued to EEA and Swiss nationals as well as limited numbers of British citizens. This card is not travel enabled.

4.6 ID Cards serve as evidence of right to work, and hence this order will incorporate these new documents into the Schedule to the Immigration (Restrictions on Employment) Order 2007. The Schedule to the 2007 Order provides lists of documents that can be produced to an employer and in doing so, subject to the employer fulfilling all other requirements in the 2007 Order, will provide the employer with an excuse from a civil penalty pursuant to section 15 of the Immigration, Asylum and Nationality Act 2006 should the individual employed not have the right to work in the UK.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister of State, for the Home Office, Phil Woolas has made the following statement regarding Human Rights: “In my view the provisions of the Immigration (Restrictions on Employment) (Amendment) Order 2009 are compatible with the Convention rights.”

7. Policy background

What is being done and why

7.1 The Identity Cards Act 2006 establishes a statutory framework for issuing biometric ID cards together with the creation of a secure and reliable National Identity Register to hold the identity information about individuals in the United Kingdom. This is part of what is now termed the National Identity Service and will lead eventually to a point at which anyone who is aged 16 or over and is resident in the United Kingdom may apply for an ID card.

7.2 This amending order will allow an employer to accept an ID Card issued under the ID Cards Act 2006 as evidence of the individual’s right to work in the UK.

7.3 Article 3 amends the Immigration (Restrictions on Employment) Order 2007 so that should an ID Card be produced as evidence of the individual’s right to work, the prospective employer must ensure that both sides of the card have been copied for retention purposes. (The Immigration (Restrictions on Employment) Order 2007 already requires both sides of a card which cannot serve as a travel document to be copied, as per Article 6(f)).

7.4 Article 4 adds an ID card issued under the Identity Cards Act 2006 to the list of documents in List A which can be provided to an employer as evidence of the right to work.

8. Consultation Outcome

8.1 The changes made to the Immigration (Restrictions on Employment) Order 2007 are limited to including ID Cards issued under the ID Cards Act 2006 to the list of documents providing employers with an excuse from the imposition of a penalty if at a later stage it transpires an employee was working illegally. The changes reflect the issuing of ID Cards, on which there has been extensive consultation.

8.2 The secondary legislation to support the issuing of ID cards was set out for consultation in November 2008. A summary of the consultation has been published and placed on the Identity and Passport Service website (at <http://www.ips.gov.uk/identity/index.asp>).

9. Guidance

9.1 Extensive guidance on the effect of the amendments and the appearance of ID Cards will be included on the UKBA and IPS websites.

The UK Border Agency will be writing to stakeholders to advise them of the amendments at the time this Order is laid.

The Identity and Passport Service has engaged with business stakeholders through events, meetings and forums, as well as direct engagement with larger organisations and direct communications to the Small and Medium sized Enterprises sector to ensure that all businesses in the Greater Manchester area are ready to accept the ID card from launch.

10. Impact

10.1 An Impact Assessment has been published to cover the regulatory and other impacts of the secondary legislation currently proposed under the Identity Cards Act including this Order (at <http://www.ips.gov.uk/identity/index.asp>). This Impact Assessment examines the impact on the public, private and third sectors.

10.2 The Impact Assessment includes 3 separate sections – Costs and Benefits, Equality, and Other Reviews (including competition, small firms, legal aid, sustainable development, rural proofing and privacy).

- The Costs and Benefits assessment concludes that the introduction of identity cards and the roll out of the National Identity Service will return a net benefit of £6 billion over a 30 year period.

- The Equality assessment focuses on the impact on people who will be affected by the introductory phases of the National Identity Service in relation to race, gender, gender identity, religion or belief, sexual orientation and age.
- The Other Reviews concluded that there was little additional impact. The privacy review acknowledged concerns expressed and set out safeguards that are in place or will be put in place to address those concerns.

10.3 There will not be any significant impact on the private or voluntary sector as a result of the changes made to the Immigration (Restrictions on Employment) Order 2007.

11. Regulating small business

11.1 The Legislation will not impose any additional burden on small businesses.

12. Monitoring and review

12.1 The Government will continually evaluate the arrangements that are in place to ensure employers are fully informed of the effect and implications of the changes as part of ongoing stakeholder dialogue.

13. Contact

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