

Memorandum submitted by the Northern Ireland Human Rights Commission

Identity Documents Bill

The Commission has developed a body of work on the National Identity Register and identity card schemes set out in the Identity Cards Act 2006 and UK Borders Act 2007.¹ In addition to concerns that the schemes would unduly infringe the right to privacy, the Commission's main concern has been that the schemes will exacerbate racial discrimination and that their application in Northern Ireland carried serious risks of differential impacts on the (British) unionist and (Irish) nationalist communities.

The Commission welcomes the provisions in the Identity Documents Bill to repeal the Identity Cards Act 2006 and hence the National Identity Register and the 'National Identification Card' for British citizens and 'Identification Card' aimed at Irish and other EEA nationals. The Commission is however concerned that the Bill does not address the much renamed and rebranded third ID scheme introduced for most non-EEA nationals under the UK Borders Act 2007.²

This scheme was marketed as the 'Foreign National Identity Card' by the previous Government. Its retention has been supported by the present Government on the basis that the documents are a requirement of EU law.³ It is the case that the UK has voluntarily opted into EU regulations such as those laying down a *uniform format* for residence permits for 'third country' nationals.⁴ However, in implementing the measures the Home Office clearly stated that the: ... [UK Borders Act 2007] provisions go further than the EU regulation.⁵

¹ See: 2009 research paper, 'More than just a Card' and other materials at: http://www.nihrc.org/index.php?page=specialfocus&from=0&focus_id=8&Itemid=1.

² UK Borders Act 2007, sections 5-15 on Biometric Registration applying to any person 'subject to immigration control' defined in section 15 as a person who under the Immigration Act 1971 requires leave to enter or remain in the UK, whether or not such leave has been given.

³ Hansard, Damien Green MP Identity Documents Bill, 2nd reading: House of Commons 9 June 2010: Column 433.

⁴ Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (see also amending Regulation (EC) No 380/2008 of 18 April 2008).

⁵ Compulsory Identity Cards for Foreign Nationals: UK Borders Act 2007 Consultation on the "Code of Practice about the Sanctions for Non-Compliance with the Biometric Registration Regulations", Home Office, February 2008, para 3.10.

At the time of the passage of the 2007 Act, the Commission voiced concerns that the provisions on identity documents effectively meant that “the Secretary of State will be empowered to make regulations potentially forcing any non-EEA national to provide unlimited information for unlimited purposes”. This included purposes that have nothing to do with immigration.⁶

The previous Joint Committee voiced similar concerns that this part of the Act “contains extremely open-ended powers capable of being exercised in ways which interfere with Article 8 rights, but there is very little detail on the face of the Bill enabling us to assess the likely compatibility of the new powers with Article 8”, noting that important details were absent, including “purposes for which such information may be used, which will apparently include use for purposes which do not relate to immigration, such as access to state benefits”.⁷

The Committee therefore may wish to ask Government to explain which powers, purposes and sanctions under sections 5-15 of UK Borders Act 2007 and their associated regulations are over and above the requirements of EU law and assess how such provisions are ECHR compliant.

The widely shared concerns that the identity card schemes for British and Irish citizens unduly infringed the right to privacy (ECHR Article 8) equally apply to the scheme for non-EEA nationals. The scheme for non-EEA nationals actually went beyond a number of the provisions in the schemes for British, Irish/other EEA nationals, also engaging Article 14.⁸

Article 14 is also engaged by the continuation of an identity card scheme for non-EEA nationals in the absence of those for EEA nationals. This itself may exacerbate the risks of racial profiling (the form of racial discrimination involving the use of ethnicity rather than focusing on individual behaviour for singling out individuals) and more broadly, racial stereotyping and the development of a culture of suspicion. Employers, law enforcers and public authorities in particular circumstances will be required, or expected, to

⁶ Sections 5(1)(b)(iii) and 8(2)f.

⁷ JCHR Thirteenth Report of Session 2006-07, HL Paper 105 HC 538, page 11.

⁸ There are a number of differences between the scheme under the 2007 Act and the schemes for British, Irish/other EEA nationals that the Identity Documents Bill would repeal. In particular, the level of compulsion for registration is absolute under the 2007 Act and children are also subjected to its provisions. It is backed by a severe sanctions regime in relation to compulsion to register, to maintain data and to use the card in particular circumstances, including civil penalties (fines) and immigration sanctions (variation/curtailment or cancellation of a person’s existing permission to enter or remain in the UK or ‘disregarding’, refusal of an application to stay in the UK, or refusal to enter the UK if a person will not sign up to the scheme). There is also the sanction of not issuing an ID card thereby preventing access to services and other matters dependent on its possession (see Code of Practice, Compulsory Identity Cards for Foreign Nationals Home Office consultation document, February 2008).

examine identity cards from persons who are non-EEA nationals but not those who are EEA nationals. The question is how such persons are going to be able to tell who is a non-EEA national and who is a British, Irish or other EEA national. Who should be required or otherwise expected to have and produce the 'Foreign National' identity document and from whom should it be acceptable to expect no, or another form of, identification? Any practice of singling out persons visibly perceived as being from a minority ethnic background is not acceptable in human rights terms, and measures that lead to any form of racial profiling are likely to constitute unlawful racial discrimination in contravention of international standards to which the UK is party.⁹

In the context of the commencement of the ID scheme for non-EEA nationals before those of the Identity Cards Act 2006, the preceding Joint Committee voiced similar concerns in relation to 'de facto racial profiling', noting that even though there was no requirement that such a document be carried: "...the fact that such a document exists for non-nationals and can be requested to prove entitlement to services makes it highly likely in our view that members of black and minority ethnic communities in the UK will be disproportionately required to prove their immigration status"¹⁰.

The Committee may wish to draw the attention of both Houses once more to the risks of racial profiling if the identity card system provided for in the 2007 Act is not amended.

⁹ In relation to the sphere of law enforcement, the UN World Conference Against Racism defined racial profiling as: "...the practice of police and other law enforcement officers relying, to any degree, on race, colour, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity" (the Durban Declaration, UN Document A/CONF.189/12 paragraph 72). Other high-risk scenarios for racial profiling include entitlements to public services and immigration control. It has been established that ID checks on the basis of racial profiling breach the internationally recognised human right to non-discrimination - see Rosalind Williams *Lecraft v Spain* (Human Rights Committee) Communication No. 1493/2006, UN Document CCPR/C/96/D/1493/2006, 30 July 2009).

¹⁰ JCHR Thirteenth Report of Session 2006-07, HL Paper 105 HC 538, p12.