



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Written Evidence on the Identity Cards Bill, Committee Stage, House of Commons, June 2010

Summary

The Commission would like to see all of the identity card schemes introduced by the last UK government scrapped. Three schemes were introduced: the 'National Identity Card' for British Citizens, the 'Identification Card' for Irish and most other European citizens, and the 'Foreign National Identity Card' for migrants from mostly outside Europe. These identity cards were all to be linked to a vast information database known as the National Identity Register. The Commission was concerned that the schemes would unfairly impact on privacy and lead to racial discrimination.

This is a briefing paper for MPs on the Identity Cards Bill recently introduced by the new Government (from May 2010). This new law would scrap the National Identity Register and identity cards for British, Irish and most European citizens. The Commission welcomes this, but also argues for the 'Foreign National Identity Card' to be scrapped.

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,¹ providing legal advice and representation in human rights proceedings,² and advising on whether a Bill is compatible

¹ Northern Ireland Act 1998, s.69(1).

² *Ibid*, s.70.

with human rights.³ In all of that work, the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies. In accordance with its mandate, the Commission also delivered advice to government on the content of a Bill of Rights for Northern Ireland on 10 December 2008.⁴

2. The Commission has taken a position that the National Identity Register and identity card schemes set out in the Identity Cards Act 2006 and relevant sections of the UK Borders Act 2007, should be withdrawn. In addition to concerns that the schemes unduly infringe the right to privacy, the Commission's main concern has been that the schemes will exacerbate racial discrimination. The Commission has also been concerned that the application of the scheme in Northern Ireland carried serious risks of differential impacts on the (British) unionist and (Irish) nationalist communities.
3. The Commission has developed a body of work in relation to human rights compliance of the identity card schemes and the National Identity Register. This work is set out in detail in its research paper, *More than just a Card*, available from the Commission's website.⁵ This paper includes consideration of the human rights standards relevant to the identity card schemes. It details international standards and experience in relation to racial profiling (the form of racial discrimination involving the use of ethnicity rather than focusing on individual behaviour for singling out individuals)⁶, and, more

³ *Ibid*, s.69(4).

⁴ *Ibid*, s.69(7).

⁵ *More than just a Card, Intrusion, exclusion and suspect communities: Implications in Northern Ireland of the British National Identity Scheme* (Belfast, Northern Ireland Human Rights Commission, 2009). Available: http://www.nihrc.org/index.php?page=specialfocus&from=0&focus_id=8&Itemid=1.

⁶ 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", (Declaration and Programme of Action (the Durban Declaration) adopted at the *World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance* Durban, 31 August - 8 September 2001, A/CONF.189/12 [72]). Other high risk scenarios for racial profiling include entitlements to public services

broadly, concerns relating to racial stereotyping and the development of a culture of suspicion. As this paper is readily available from the Commission, its observations and conclusions will not be further elaborated on here; however, its findings inform our response to the present Bill.

4. Three separate groups were ultimately categorised for separate identity card schemes. Of particular relevance to Northern Ireland was the decision in November 2008 to provide for a separate identity card to those who wished to exercise rights under the Belfast (Good Friday) Agreement to identify as Irish.⁷ The first card was therefore the full 'National Identification Card' for British citizens; the second card was the 'identification card' aimed at Irish as well as other EEA nationals. The third scheme is the 'Foreign National Identity Card' introduced for non-EEA migrants under the UK Borders Act 2007.
5. There are a number of differences between the scheme for non-EEA migrants and those for British, Irish and other EEA nationals. In particular, the level of compulsion for registration in the non-EEA migrants scheme is absolute and children are also subjected to its provisions.⁸ The scheme for non-EEA migrants is backed by a severe sanctions regime in relation to compulsion to register, to maintain data and to use the card in particular circumstances,⁹ including civil penalties (fines) and immigration sanctions.¹⁰ There is also the

and immigration control, where it has been that ID checks on the basis of racial profiling breach the internationally recognised human right to non-discrimination to which the UK is party (see *Rosalind Williams Lecraft v Spain (Human Rights Committee)* Communication No. 1493/2006 UN Doc CCPR/C/96/D/1493/2006, 30 July 2009).

⁷ *National Identity Scheme Delivery Plan 2008: A Response to Consultation* Home Office, November 2008, p14.

⁸ Rather than over-16s as presently provided for in the EEA schemes.

⁹ The *Code of Practice, Compulsory Identity Cards for Foreign Nationals* Home Office consultation document, February 2008, indicates duties to report lost, stolen, altered or damaged cards, when information has become false or misleading or incomplete, and a requirement to "comply with any other requirement specified in the biometric registration regulations"; it also refers to "the requirement to use the card in particular situations", but these circumstances are not set out in the document. Section 5(1) of the UK Borders Act 2007 provides powers for Ministers to make regulations requiring the use of the ID card for non-EEA migrants, and requiring disclosure of personal information for immigration purposes or other "specified" circumstances where a "question arises" about a person's status in relation to nationality or immigration.

¹⁰ Immigration sanctions are the 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

sanction of not issuing an ID card thereby preventing access to services and other matters dependent on its possession.

6. The Commission very much welcomes the provision that the present Identity Cards Bill, as introduced, will repeal the Identity Cards Act 2006 and hence both the identity card schemes for British and Irish/EEA nationals. The Commission is concerned, however, that the Bill does not repeal the third scheme for 'foreign nationals' which, regardless of how it is again renamed or rebranded, remains in practice an identity card scheme for non-EEA migrants.
7. The continuation of an identity card scheme for non-EEA migrants, in the absence of schemes for EEA nationals, may exacerbate the risks of racial profiling in a range of circumstances. Employers, law enforcers and public authorities in particular circumstances will be ultimately required, *or otherwise expected* to examine identity cards from persons who are non-EEA nationals but not those who are EEA nationals. The question is, how are such persons going to be able to tell who is a non-EEA national and who is a British, Irish or otherwise EEA national? Therefore, who should be required or otherwise expected to have and produce the 'Foreign National Identity Card', and who should it be acceptable to expect no or another form of identification from? 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.¹¹
8. Government has indicated that the ID card scheme for non-EEA nationals is a requirement of EU law.¹² 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.¹³ Government should, however, explain to

sign up to the scheme (*Code of Practice, Compulsory Identity Cards for Foreign Nationals* Home Office consultation document, February 2008).

¹¹ Including the ECHR, International Covenant on Civil and Political Rights (ICCPR) and International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

¹² Hansard, Damien Green MP Identity Cards Bill, 2nd reading: House of Commons 9 June, 2010: Column 433.

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

the Committee which powers, purposes and sanctions (including those empowered under future secondary regulations) provided for under the relevant sections UK Borders Act 2007 are over and above the requirements of EU law, and how such provisions are compliant with the ECHR and other UK human rights obligations.

9. The Commission therefore welcomes the repeal of the schemes for British, Irish and other EEA nationals, but would urge Parliament to amend the Identity Cards Bill to provide for repeal and removal of all National Identity Scheme identity cards, including the 'Foreign Nationals Identity Card'.

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