



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Response to the National Identity Scheme Delivery Plan 2008 Consultation

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 advising on legislative and other measures which ought to be taken to protect human rights,² advising on whether a Bill is compatible with human rights³ and promoting understanding and awareness of the importance of human rights in Northern Ireland.⁴ 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.
2. The Commission welcomes the opportunity to respond to the consultation by the Home Office issued in March 2008 on the Delivery Plan for National Identity Register Identity Cards (hereafter NIR Identity Cards). The Commission would request written feedback on the points we have raised and in particular on the questions raised for clarification.
3. The Commission's response is informed by international standards. This includes the ECHR and the right to respect for privacy and family life under Article 8(1) and the qualifications of the same under Article 8(2), at times read alongside Article 14 on the prohibition of discrimination. Other international

¹ Northern Ireland Act 1998, s.69(1).

² *Ibid*, s.69(3).

³ *Ibid*, s.69(4).

⁴ *Ibid*, s.69(6).

standards, to which the UK is a party, have also informed our response, including the International Covenant on Economic, Social and Cultural Rights (Articles 7, 9, 11(1) and 12(2)), the International Covenant on Civil and Political Rights (Article 12(2)) and other instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination and the Council of Europe's Framework Convention on National Minorities.

4. The Commission opposes the specific NIR Identity Card scheme set out in the Identity Cards Act 2006 and relevant sections of the UK Borders Act 2007.⁵ The Commission feels the scheme unduly infringes on the right to privacy and that the legitimate aims set out for the scheme do not stand up to scrutiny, will be counter productive and/or are disproportionate. Furthermore, it is the Commission's position that the impacts of the NIR Identity Card system will be discriminatory particularly for Irish citizens in Northern Ireland and minority ethnic groups, especially Muslims and migrants. While the present consultation does not seek information on our full range of concerns we are happy to outline them on request.

5. Many of the concerns we have regarding the present scheme, for example, the impact on minority ethnic groups, are the case across the UK. A key issue for Northern Ireland is the situation of Irish Citizens regarding NIR Identity Cards. Northern Ireland is unique in the UK context in that a large proportion of its population are not British nationals. We note the conclusions of the British-Irish Inter-Parliamentary Body report⁶ into the impact of British ID Cards, which state:

- the potential implications from an Irish perspective, which are unique to the Irish-British situation, were not considered in any great detail prior to the enactment of the British ID Cards legislation.

- the introduction of British ID Cards, in tandem with other initiatives such as e-Borders, have the potential to affect significantly the operation of the Common Travel Area that exists between Ireland and Britain.

⁵ While recognising that many more limited identity card schemes do raise human rights issues, the Commission does not oppose identity card schemes *per se*. There is no international standard to this regard. The Commission does, however, oppose the specific NIR Identity Cards scheme and wishes to see this withdrawn.

⁶ *Report on the Implications for the Common Travel Area of the introduction of British ID Cards*, British-Irish Parliamentary Body Committee on Sovereign Affairs, April 2006, available at: <http://www.biipb.org/biipb/committee/comma/11902.htm>.

6. Without prejudice to our general opposition to the NIR ID Card scheme, this submission will focus on highlighting specific human rights concerns of individual proposals set out in the consultation document.

Barriers to meaningful consultation on the proposals

7. The National Identity Scheme Delivery Plan consultation document differs markedly from the many other Home Office consultation documents to which we have recently responded. Much of the information in the document does not present delivery plan proposals but reads as a marketing or public relations document for the scheme. This includes consumer-oriented sub headings, such as “how the proposals will benefit you”, and shaded boxes which market the scheme but do not set out any delivery proposals.
8. In the remaining space where proposals are outlined for consultation, there is often limited information on these. Indeed, some proposals are unclear, incomplete, ambiguous and at times misleading.⁷ This impedes meaningful analysis of, and comment on the proposals, including in a number of the areas we have identified as having potential for interference with human rights.
9. Government is clearly entitled to promote its policies, however contentious the claims made. However, the appropriateness of using an official consultation document as the vehicle to do so, and whether this meets the standards of Cabinet Office Code of Practice on Consultation, is questionable. A key criterion of that code concerns clarity about proposals and who may be affected by them.

⁷ Examples of misleading information are:

- Paragraph 18: This subheading in reference to the NIR states: “a small amount of personal data will be securely stored”. Schedule 1 of the Identity Cards Act 2006 in fact sets out over 50 initial registrable facts which can be added to.
- Paragraph 23 states: “information on the NIR will be similar to that stored on passport database today”. While government may be overhauling the passport database to reflect NIR registrable facts, this statement gives the impression that enrolling NIR data is similar to the information required when currently applying for a passport. In fact, the current UK passport application form requires only a fraction of the information listed in Schedule 1.

Given the level of disclosure of information is relevant to an assessment of proportionate interference with the right to privacy clarity on such matters is important.

Voluntary or Compulsory Registration

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.⁸

10. The Commission shares the above conclusions of the House of Lords Select Committee: that the primary concern is the National Identity Register to which the Identity card is an access component. We have a range of concerns regarding the proportionality of the range of data stored, the uses to which it can be put, and the human rights impacts of the same. In addition to these and other concerns, such a scheme being compulsory engages the right to privacy in a way that a genuinely voluntary scheme may not.
11. In our submission to the UK Borders Bill, we have already raised concerns regarding the discriminatory nature of direct compulsion of NIR registration backed by severe sanctions being imposed on many foreign nationals.⁹
12. We are also concerned at any measures that make the continued enjoyment of basic human rights (such as access to services, employment or freedom of movement) dependent on NIR registration. An action compelled by the need to ensure continued enjoyment of human rights is clearly not voluntary. It is clearly inappropriate to threaten continued access to basic human rights in order to coerce registration.

Compulsory NIR registration and Northern Ireland

13. Without prejudice to the many British citizens and others who for reasons of civil liberties will not wish to be compelled to register on the NIR, there are particular sensitivities in Northern Ireland with reference to Irish citizens. We note that the British-Irish Inter-Parliamentary Body recommended that:

- in implementing the ID card proposals [the British government gives] due consideration to the particular sensitivities of residents in Northern Ireland – including their rights under the terms of the Good Friday Agreement¹⁰

⁸ House of Lords Select Committee on the Constitution, *Identity Cards Bill - Report with Evidence*, TSO, March 2005, para 6.

⁹ We have also responded in detail on this matter to the recent Home Office consultation exercise on Compulsory Identity Cards for Foreign Nationals.

¹⁰ *Report on the Implications for the Common Travel Area of the introduction of British ID Cards*, British-Irish Parliamentary Body Committee on Sovereign Affairs, April 2006, available at: <http://www.biipb.org/biipb/committee/comma/11902.htm>.

14. As Government will be aware, it is the birthright of most people in Northern Ireland to be British or Irish citizens (or both) and to identify and be accepted as Irish or British or both. It is a human rights principle that no disadvantage should result from exercising that right. Many of those who express their national identity as Irish and take Irish citizenship are likely to be resistant to having to carry British identity cards and, by extension, register on the NIR. There are no proposals in the delivery plan for addressing this issue.
15. The delivery plan does present, and invite comment on, a proposal of compulsory registration and identity card possession for those working in airports and, subsequently, other (as yet undefined) locations. Persons working in sensitive areas of our airports have presumably already been subject to stringent vetting, including verification of their identity. Among other matters, we would be concerned about the impact of this measure on the right to work without discrimination. Irish citizens and others, who do not wish to carry a British identity card, or be compelled onto NIR registration, could be threatened with employment termination.

The presentation of voluntary options

16. The sections of the Executive Summary, entitled *Increasing Choice* and a *Twin Track Approach*, respectively state:

From 2011/12 individuals who enrol on the NIR will be able to choose whether they have an identity card, a passport or both. Over time, this choice could extend to other document such as the driving licence.

From 2011/12 we shall start to enrol British Citizens at high volumes offering a choice of receiving a separate identity card, passport or both.

...we will begin issuing cards, on an entirely voluntary basis, to those customers where there is the greatest personal benefit to the in their daily lives from having or using an identity card.

Reference to "individuals who enrol", or "choice of receiving an identity card", or "entirely voluntary basis" give the impression that the registration with the NIR scheme is voluntary. However, while unclear, the indication throughout the document is that NIR registration will still be compulsory when renewing passports or other designated documents. There is no indication of a change to this and we would welcome formal clarification on this matter.

17. The proposal to extend “this choice” to other designated documents such as the driving licences “over time” is also incomplete. If government intends to introduce compulsory NIR registration for other designated documents, it should clearly set out which ones and by when, as part of its delivery plan consultation, given the major implications such designations could bring.
18. Once government “begins to enrol British citizens at high volumes” from 2011/2012, what are the proposals for usage of the system from this point onward? For example, any measures to make presentation of an NIR identity card, biometric identity document, or EEA identity card as part of a pre-employment check could be unworkable in Northern Ireland as they would be likely to lead to the mass exclusion of Irish citizens from employment.
19. The Commission also has concerns regarding the cost of NIR registration, or receiving the identity card, on people on low incomes. There is no information in the delivery plan regarding what charges will be levied for any of the proposals outlined.

Role of British Passport as enrolment mechanism

20. The role of British passport application or renewal has long been articulated by government as the primary mechanism to compel NIR registration. While there are some ambiguities, along with a change in timescale and the option of not having to take away the actual NIR identity card on registering, the delivery plan does not appear to change the position that entry on to the NIR will be compulsory when renewing British passports.
21. The Commission is concerned that preventing the issue of a British passport to those who do not wish to register on the NIR will interfere with the rights to freedom of movement of British citizens. These rights are contained in Article 12(2) of the ICCPR, which permits all persons to be free to leave any country including his/her own. We do not feel it is appropriate to coerce British citizens into the scheme through threatening their rights to freedom of movement.

Potential fingerprint verification at borders or elsewhere

22. This further proposal is alluded to in the consultation document but it is not detailed or timetabled. It is mentioned, in paragraph 15, that:

Different services to allow you to prove your identity will be introduced over time ... for even stronger proof of your identity [you could] have your finger prints read [and checked against card] – such as at border control.

23. We would be grateful for clarification as to what is being proposed here in relation to uses of the identity card, who would be subjected to it, and by when? In particular:
- Are there plans to implement such controls through spot checks or other operations on the land border between Northern Ireland and the Republic of Ireland? If this is not ruled out, how will Irish citizens¹¹ cross the border?
 - Could this include internal border control?¹² If this is not ruled out, it will involve effective compulsion to obtain a NIR Identity card or biometric passport to travel between two parts of the UK.

The paragraph indicates that there scenarios other than border control where such checks are envisaged. These proposals should be set out.

Disclosure of information to third parties on registration

24. There is also ambiguity regarding the disclosure of information to be provided to third parties. Paragraph 49 states:

We want to reduce the volume of paper applications to help make applying easier for people. In some instances we may do this by electronically checking information you have provided for us with information held by other public and private bodies.

The Commission would ask for clarification on which information and which agencies or private organisations this proposal relates to.

Crosby recommendations

¹¹ Irish Citizens could be resident in either jurisdiction, not have British identity cards and do not require passports within the Common Travel Area.

¹² That is, travel between Northern Ireland and Great Britain as currently practised through operations in ports and airports in Northern Ireland and Scotland.

25. The consultation paper makes a number of references to the importance of the Crosby review into identity management, published alongside the consultation documents.¹³ The Commission notes, however, that there appears to be little in the proposals that address the 10 principles which Crosby recommends should guide the scheme; in particular, those that relate to human rights, such as the principle that the amount of data stored should be minimised.

Security of NIR data

26. There have been a number of high profile incidents recently where government, or those acting on its behalf, has lost personal data. We note the conclusions of the Parliamentary Joint Committee on Human Rights, that:

Recent breaches in data protection by Government Departments do not encourage us to feel confident about the security of data collected as part of the National Identity Register project.¹⁴

27. We welcome safeguards on the security of systems that are likely to reduce the risk of accidental disclosure of data, misuse or abuse of the information. This includes measures like those set out in paragraph 22. Further analysis of the effectiveness of such measures and, in particular, the risks associated with subcontracting a range of aspects of the process can only be evaluated by the provision of detailed information.
28. We note the proposal, in paragraph 35, to set up a panel involving members of the public and others to advise on specific aspects of the scheme. This singles out “the best way to ensure an individual has control over their personal information held on the NIR and how they can correct or repair mistakes”. Notwithstanding the merits of this or any other proposal to develop this important area, it is a matter of concern that, at the present time, where the scheme is commencing, there is still no clarity as to the level of control an individual will have over their own data.
29. We have observed that there are a range of opinions from security experts as to the most secure format for databases.

¹³ Sir James Crosby, *Challenges and Opportunities in Identity Assurance*, HM Treasury, March 2008.

¹⁴ House of Lords, House of Commons Joint Committee on Human Rights, *Data Protection and Human Rights*, Fourteenth Report of Session 2007-08, TSO, March 2008, para 47.

We note, from Appendix B, that there appears to have been a shift away from a sole database for NIR data. It is proposed that the biographical data (under the separate Identity Cards Act 2006) will be held on the Department of Work and Pensions Customer Information System (CIS) which is used to hold tax and benefit records. Financial information is not listed as one of the current direct registrable facts under the Act. Given that NIR biographical data will now be part of the same financial information database, it would be important to consider how separation of the information will be ensured.

Communication on the scheme

30. Question 2.1 specifically asks for views on what kind of information about the National Identity Scheme the public may need, along with how and where the information about the scheme may be communicated to the public and others.
31. The public should be honestly informed about the full range of implications of the National Identity Register scheme. This includes information on the full range of powers government has taken through the Acts in relation to the scheme and, therefore, the full range of implications the scheme may have in the future. Care should also be taken to ensure that promotion does not lead to confusion that NIR registration is voluntary when measures designed to promote direct or indirect compulsion are being outlined.
32. An example of this could be the proposal to offer identity cards to young people in 2010. The young people to whom the card is being marketed should be honestly informed of what they are submitting themselves to in taking up NIR registration.¹⁵ This could be provided along with information on a range of government approved alternative forms of identification that are much less intrusive (e.g. Northern Ireland Electoral Cards, Home Office-backed proof of age cards).
33. While again not questioning governments' entitlement to promote its policies, efforts to market the scheme should avoid playing on public fears and, in particular, those that could enhance racist stereotyping. As referenced in our previous submissions, any portrayal of migrants as unscrupulous individuals coming to the UK to defraud the

¹⁵ This would include matters of heightened relevance to young people; e.g. the implications and sanctions if address details are not updated each time these change.

generosity of the state not only fails to reflect reality, but also can lead to a climate of hostility against migrants and perceived migrants that can manifest itself in racist incidents. Such promotion also needs to be sensitive in avoiding creating a culture of suspicion against those who do not wish to carry ID Cards or be registered on the NIR register.

May 2008

**Northern Ireland Human Rights Commission
Temple Court, 39 North Street
Belfast BT1 1NA
Northern Ireland
Telephone: (028) 9024 3987
Textphone: (028) 9024 9066
Fax: (028) 9024 7844
Email: information@nihrc.org
Website: www.nihrc.org**