



Draft Bill & Identity Cards

19th September 2008

In July 2008, the Government published the draft (partial) Immigration and Citizenship Bill. General and background information is provided in the “Draft (partial) Immigration and Citizenship Bill” information sheet.

The draft Bill includes provisions which, if implemented, would have serious consequences for migrants and British citizens relating to identity cards.

Identity cards in the UK

The Identity Cards Act 2006 was enacted on 30 March 2006. This Act empowers the Government to introduce identity cards and a national database for all those who are residing in the UK – British citizens and migrants. If identity cards are introduced, the Act will empower the State to require the production of an identity card for the purposes of immigration control.

The UK Borders Act 2007 was enacted on 30 October 2007. This Act empowers the Government to introduce biometric identity cards and a database for all migrants who wish to come to or stay in the UK. Biometric registration has begun to be introduced for migrants applying to come to the UK. The Government’s current intention is that identity cards will begin to be introduced from November 2008 for migrants in the UK who are applying to extend their stay in the UK.

ILPA information service

funded by JRCT
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Information sheets provide general information only.

ILPA members listed in the directory at www.ilpa.org.uk provide legal advice on individual cases. ILPA does not.

Government promises about identity cards

On 28 June 2005, during the passage of the Bill which became the Identity Cards Act 2006, Charles Clarke MP, Home Secretary, promised that there would be no requirement to carry an identity card. He also said that the introduction of identity cards would not increase police powers to stop people in the street. He said nothing about immigration officers in this respect.

On 5 February 2007, during the passage of the Bill which became the UK Borders Act 2007, Liam Byrne MP, Minister for Borders and Immigration, said that there was no intention to stop people in the street to ask them to produce an identity card, or other documentation, so as to prove their nationality. He said that doing this would be an arbitrary exercise of power.

Powers provided by the draft Bill

The draft Bill includes provisions which are not consistent with the promises the Government has made.

Clause 25 would empower an immigration officer (or other Home Office official) to examine someone in order to establish whether the person was British or not. The official could do this at any place in the UK. The power is not limited to immigration controls at the point of arrival to or departure from the UK.

Clause 28 would empower the official to require the person to produce an identity card.

Clause 53 would empower the official to detain the person until the examination is completed. This means until the official has been satisfied. The person may, therefore, be detained until an identity card has been produced.

These powers apply to anyone who has entered the UK – whether they are British or not. On the face of the provisions, the only people who would be exempted would be British citizens born in

the UK who have never left the UK. However, it is difficult to think how these powers could be exercised in a way that was able to take account of this distinction.

Effectively, therefore, these powers would do the reverse of what the Government promised. Anybody in the UK could be required to carry an identity card. It would not be a breach of the law to fail to carry a card. However, someone who did not carry his or her identity card would be at risk of being stopped and detained until such time as the card was produced.

Criminal prosecutions

Although these provisions would not make failing to carry an identity card a criminal offence, the provisions do include significant offences.

Clause 101(1) provides that someone who fails or refuses to submit to an examination commits a criminal offence. This could result in imprisonment for up to 51 weeks.

Clause 121(1) provides that someone who obstructs or resists an official carrying out an examination commits a criminal offence. This could result in imprisonment of up to 51 weeks.

Refusing to produce an identity card could fall within either of these offences.

What to do if you object to these powers

The draft (partial) Immigration and Citizenship Bill is currently under consideration by two select Committees. Further information is available in the “Draft (partial) Immigration and Citizenship Bill” information sheet.

The Government intends to introduce the full Bill to Parliament in early 2009. At this stage, it is possible to influence the Government to change the provisions in the draft Bill before it introduces the full Bill.

Individuals or organisations can lobby their individual constituency MP about the contents of the draft Bill now. This can be done by writing to the MP or arranging to see him or her at the MP’s constituency surgery. The MP may be able to bring pressure on the Government in order to persuade the Government to change the provisions in the draft Bill. If the Government do not change these provisions before introducing the full Bill, the MP will have an opportunity to vote against the provisions in the Bill as it passes through Parliament.

To find out who is your local MP, you can use the search facility at:
http://www.parliament.uk/about/how/members/mps_contact.cfm

If you know who your local MP is, you may find further information about how to contact him or her at:
<http://www.parliament.uk/directories/hciolists/alms.cfm>