EXPLANATORY MEMORANDUM TO

THE IDENTITY CARDS ACT 2006 (APPLICATION AND ISSUE OF ID CARD AND NOTIFICATION OF CHANGES) REGULATIONS 2009

2009 No. 2795

1. This explanatory memorandum has been prepared by the Home Office and the Identity and Passport Service ("IPS") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations outline how applications relating to the National Identity Register and the issue of ID cards should be made and the information that must accompany such application when they are being submitted. They introduce a requirement on an ID card holder to update subsequent changes to certain information held about them on the National Identity Register and report a lost, stolen, damaged, tampered with or destroyed ID card. They also establish the validity of an ID card.

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. This instrument, together with a further nine, will be the first set of orders and regulations made under the Act.

4.2 Alongside this instrument, a further five instruments subject to the affirmative resolution procedure are being laid before Parliament in May/June 2009. They are as follows:

- The Identity Cards Act 2006 (Prescribed Information) Regulations 2009, which prescribe information that must be recorded on an ID card or an identification card and other prescribed requirements and facts.
- The Identity Cards Act 2006 (Information and Code of Practice on Penalties) Order 2009, which prescribes organisations that may be required to provide information to verify information held on the National Identity Register or provided in an application to be entered on Register, as well as the public authorities that may be provided with information from the Register without the consent of the individual to whom the record relates. It also sets out an additional purpose for which a chief officer of the police may be provided with information from the Register and specifies when the Code of Practice on Civil Penalties comes into force.
- The Identity Cards Act 2006 (Provision of Information without Consent) Regulations 2009, which prescribe the Government departments which may be provided with information in connection

with specified functions, as well as who may be provided with information on behalf of those named on the face of the Act, as well as the conditions that must be met before information is provided.

- The Identity Cards Act 2006 (Fees) Regulations 2009 which prescribe the fees to be charged for applications relating to the National Identity Register and ID cards and exemptions to those fees.
- The Identity Cards Act 2006 (Designation) Order 2009, which designates "a criminal conviction certificate" that is applied for by airside workers meaning that certain airside workers will be required to apply for an ID card when they apply for such certificates.

4.3 In addition, four instruments subject to the negative resolution procedure will be laid before Parliament in June 2009 They are as follows:

- The Identity Cards Act 2006 (Entitlement to be Registered) Regulations 2009, which prescribe, in addition to those specified in section 2 of the Identity Cards Act, those people who are entitled to be registered on the National Identity Register.
- The National Identity Registration Number Regulations 2009, which specify the format with which the number must comply.
- The Identity Cards Act 2006 (Civil Penalties) Regulations 2009, which prescribe the manner in which a penalty notice would be issued and the way in which any objection to a penalty may be made.
- The Identity Cards Act 2006 (Provision of Information with Consent) Regulations 2009, which prescribe the way that consent may be given and the particulars that must be provided before any organisation can be approved as suitable for the provision of information with consent, as well as the conditions that must be met before information can be provided.

4.4 These instruments will enable the first phase of the National Identity Service to be implemented, which will involve a limited initial rollout to a numbers of volunteers from the general public and selected airside workers, starting with those at Manchester and London City airports. Section 44(4)a of the Act allows for provisions to be brought into force on different days in relation to different areas or description of persons. The rollout to the relevant descriptions of persons will be implemented by means of commencement orders that will be laid as the rollout of the Service progresses. It is intended the commencement orders will be laid during 2009 that will enable a short operational trialling period, the launch of the Service to airside workers in the aforementioned airports as well as to members of the public resident in Greater Manchester.

4.5 The instruments relate only to provisions for those who are British citizens, British subjects with right of abode in the United Kingdom, EEA nationals or family members of EEA nationals from outside the EEA. There will be additional secondary legislation laid before Parliament in due course to extend the issue of biometric immigration documents (commonly known as identity cards for foreign nationals) under the UK Borders Act 2007. This will

make similar provisions for airside workers who are subject to immigration control, also starting with those at Manchester and London City airports.

4.6 These regulations contain a mixture of provisions which are subject to the affirmative resolution procedure on the first occasion on which they are laid before Parliament and other provisions which are subject to the negative resolution procedure. However, as many of these provisions are very closely interlinked, it has been decided to seek approval for all of these regulations through the affirmative resolution procedure on this occasion. Should these regulations be approved in Parliament, any amended or further versions of these regulations will then be subject to the negative resolution procedure.

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 Minster of State, Home Office, Phil Woolas MP has made the following statement regarding Human Rights: "In my view the provisions of the Identity Cards Act 2006 (Application and Issue of ID Card and Notification of Changes) Regulations 2009 are compatible with the Convention rights."

7. Policy background

7.1 The Identity Cards Act 2006, establishes a statutory framework for issuing fingerprint biometric identity cards together with the creation of a secure and reliable National Identity Register to hold the identity information of everyone issued with an identity card. This is as 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 identity card.

7.2 The National Identity Scheme Delivery Plan 2008, published in March 2008 (see: http://www.ips.gov.uk/identity/downloads/national-identity-scheme-delivery-2008.pdf) set out the plans for introducing identity cards. This included the introduction of identity cards for foreign nationals which started from November 2008 under separate powers contained in the UK Borders Act 2007 (see: http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga_20070030_en.pdf).

7.3 The Act sets out the statutory purposes for the establishment of a National Identity Register and the issue of identity cards. In summary these are to provide a convenient method for individuals to prove their identity to anyone who reasonably requires proof and, at the same time, to provide a secure and reliable method for people to be identified wherever that is necessary in the public interest – that is:–

- in the interests of national security;

- for the prevention or detection of crime;
- for the enforcement of immigration controls or controls on illegal working;
- to secure the more efficient and effective delivery of public services.

7.4 The Delivery Plan also made clear that the first identity cards issued to British citizens and European Economic Area nationals would be issued by IPS under the Identity Cards Act 2006, starting in autumn 2009. These will be issued to critical workers at airports from 2009 and also to a limited number of volunteers with a focus on young people from 2010. Finally, from 2012, identity cards will be issued in high volumes alongside passports with applicants being enrolled on the national identity register and being given the option of a passport or identity card or both documents

7.5 However, these particular regulations are intend to facilitate the processes necessary for the operation of the Service for the initial phases of the National Identity Service from 2009 to 2011/2. Such processes will need to change as larger volumes are enrolled from 2012 onwards. For example, as outlined in the document "Introducing the National Identity Scheme" (see: http://www.ips.gov.uk/identity/downloads/introducing_the_national_identity_scheme.pdf), it is planned that the majority of applications from 2012 could be submitted online or via an "assisted application" route delivered in association with high street partners. We will lay additional regulations before Parliament in the coming years to seek approval for such measures.

7.6 In the initial phase, it is intended that applications for entry on the National Identity Register and the issue of ID cards will be received both from two groups (following an operational trialling period). They are:

- British citizens and British subjects with right of abode who are existing passport holders and are resident in the Greater Manchester area, starting in October 2009.
- British citizens, British subjects with right of abode, European Economic Area (EEA) nationals and non-EEA family members of EEA nationals who hold airside passes for Manchester and London City airports, starting in October 2009.

7.7 There are two ways in which an application for an individual's first ID card can be triggered:

- An individual can seek to apply of their own volition for an ID card. In this case, Section 6(6)a of the Identity Cards Act requires that this application should also be accompanied by an application by the individual to be entered in the National Identity Register.
- An individual may be required to apply because they have applied for a "designated document". Subject to Parliamentary approval in secondary legislation, Section 4 of the Identity Cards Act provides a power to "designate" official documents issued by Government departments. Section 5(2)a of that Act means that the effect of this designation is that when an application for that document is made by an individual, an application to be entered on the National Identity Register must be submitted by that individual before they can be issued

with that document. Furthermore, when they make such applications, Section 6(7) of the Identity Cards Act also requires that an application for an ID card is made as well.

7.8 Thus, in the case of both application types, an application for an individual's first ID card is considered in legislation to involve two applications – one relating to the entry in the National Identity Register and one relating to the issue of an ID card – and the Identity Cards Act allows for a number of separate provisions in secondary legislation relating to each application (e.g. with relation to the manner in which it is made). These provisions would theoretically enable a number of different ways in which the National Identity Service could be delivered.

7.9 However, in practice, a unified application process with common requirements will be implemented so that the individual must only make one application to serve the needs of both an application for entry in the National Identity Register and an application for issue of an ID card. Nevertheless, as these applications are still considered separate in terms of the legal provisions of the Identity Cards Act, this means that a number of these regulations introduce apparently identical provisions so that the same processes and requirements for applications for entry on the National Identity Register and the issue of a first ID card can be introduced.

7.10 Once an individual is registered on the National Identity Register, there are two further triggers for an application for a replacement identity card:

- An individual seeks to get a replacement ID card of their own volition. In this case, Section 6(6)b of the Act requires that their application for a ID card is accompanied by an application that confirms (with or without changes) their entry in the National Identity Register.
- An individual is required to apply for a replacement ID card because they have applied for a designated document and they no longer hold a valid ID card. In such cases, Section 6(7) requires that individual to apply for a replacement ID card and Section 6(6)b requires that such an application must be accompanied by an application that confirms (with or without changes) their entry in the National Identity Register.

7.11 Thus, as with initial applications for a first ID card, such applications are considered in legislation as two separate applications – one relating to the National Identity Register and another relating to the ID card – and these regulations reflect that. However, once more, in practice, these applications will be handled in a unified application process with common requirements. This requires just one application to be submitted by an applicant that will serve both purposes.

7.12 In practice, the process introduced by these regulations means that an applicant needs do the following to submit such applications:

- Attend an appointment at an Identity and Passport Service office that handles applications for identity cards;
- Submit an appropriate application form at their appointment and include the fee for making an application where relevant. Details

regarding the relevant fee are found in the Identity Cards Act 2006 (Fees) Regulations 2009 and;

- In the case of those making an application as part of applying for a designated document, include the application reference number of that application in their ID card application and, as part of their application for a designated document, state that they are making an application to be entered in the Register and be issued with an ID card.

7.13 The information that must be provided when submitting applications relating to the National Identity Register and associated applications for ID cards is also outlined in these regulations. These requirements closely reflect those in place for UK passport applications today which aim to ensure that an individual's identity and nationality can be properly assured. Where it proves impossible for an individual to provide a piece of information with their application as required under these regulations, there are provisions to allow for that requirement to be waived. In those cases, the application could then still be submitted. Where alternative or further details are necessary to obtain assurance of the information to be held on the National Identity Register about that individual (e.g. about their identity or nationality) after an application has been submitted, powers under Sections 5(4) and 10(3) of the Identity Cards Act can be used to require that individual to provide that information.

7.14 The National Identity Service aims to deliver a secure and reliable means of proving identity and the maintenance of accurate and up-to-date records on the National Identity Register is central to delivering that goal. These regulations introduce requirements on individuals to notify the Secretary of State of changes to certain personal details as listed in regulations 13 to 15. Such changes should be notified within a 3 month period. In practice, an individual will be able to notify changes in the following ways:

- by calling the Identity and Passport Service. During that call, the individual's identity will be authenticated using security questions and answers they provided as part of their initial application for an ID card.
- by attending an appointment at an Identity and Passport Service office that deals with identity card applications and submit the notification on an appropriate application form.

7.15 Where the notification relates to a change that is not printed on the card (e.g. a change of address, the most common change), it will usually be possible to fully complete the notification over the telephone. Where the notification relates to a change to information that is held on the card (e.g. change of name or gender), it will be necessary to make an appointment to complete the notification at an appropriate Identity and Passport Service office and to get more robust assurance of the individual's identity by verifying their biometrics against those held on the National Identity Register. This process is aligned with the process for obtaining a replacement ID card.

7.16 Regulation 16 also introduces a requirement to notify the Identity and Passport Service within a month of an individual who has been issued with an ID card knowing, or having reason to suspect, that their ID card has been lost, stolen, damaged, tampered with or destroyed. Subject to adequate verification

of the individual's identity, this notification can be made in the following ways:

- by calling the Identity and Passport Service. During that call, the individual's identity will be authenticated using security questions and answers they provided as part of their initial application for an ID card;
- by attending an appointment at an Identity and Passport Service office that deals with identity card applications and submit the notification on an appropriate application form or
- if overseas, by attending an appointment at an United Kingdom embassy or consulate

7.17 A deliberate failure to comply with such requirements may result in the individual being subject to a civil penalty. Subject to Parliamentary approval, the details of how civil penalties may be imposed are outlined in a Code of Practice to be introduced by the Identity Cards Act 2006 (Information and Code of Practice on Penalties) Order 2009 and in the Identity Cards Act 2006 (Civil Penalties) Regulations 2009.

7.18 Regulations 17 and 18 relate to the design of the ID card itself. These set the validity period of an ID card at 10 years.

8. Consultation Outcome

8.1 A draft of these Regulations formed part of the 12 week consultation on draft secondary legislation under the Identity Cards Act which was contained in the document" Identity Cards Act Secondary Legislation – a Consultation", published on 21st November 2008. (see: http://www.ips.gov.uk/identity/downloads/NIS_Legislation.pdf).

8.2 In response to the findings of the consultation, these regulations were amended to make clearer provisions to address the needs and concerns of the transgender community and to finalise provisions that permit the issue of ID cards to airside workers who have no place of residence in the United Kingdom. Further details of how the National Identity Service is dealing with the needs of the transgender community can be found in guidance written in association with community representatives. It is available on the Identity and Passport Service website (see: http://www.ips.gov.uk/identity/downloads/09-03-10agenderStatementv4.pdf)

8.3 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 Building on existing practice for passport applications, guidance on the application process will be made widely available to customers in the application pack that accompanies an application form for an ID card as well as being made available on the Identity and Passport Service website and in general information leaflets. Guidance documents will be subject to customer

experience and "Plain English" testing prior to publication. Furthermore, specialist material will be made available to assist with applicants who are airside workers, applicants who have any particular requirements and for applicants who are members of the transgender community.

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 these Regulations (at http://www.ips.gov.uk/identity/index.asp).

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 natal 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.

11. Regulating small business

11.1 As part of the impact assessment mentioned above, an initial small firms impact assessment was conducted. It found that in the initial rollout phases of the service, the small volumes of cards in circulation means that the overall impact on the small business community will be negligible and would primarily fall on small firms employing airside workers. An assessment conducted with employers at Manchester and London City found that there was minimal impact thanks to the fee waiver for the first 18 months for airside workers. The results underlined that small firms do not want the application process to be unduly bureaucratic or cause further delay but would welcome steps whereby the identity card was used as a means to streamline existing pre-employment checks.

12. Monitoring and review

12.1 The Identity and Passport Service already conduct research with its customers and the wider public to assess the quality of its application processes and guidance for passports. It is intended to re- evaluate the .research we currently use for our existing customers, build on best practice

and re-engineer it as appropriate in the light of the introduction of the National Identity Service.

12.2 The first eighteen months of the scheme for airside workers will be treated as an evaluation period. At the end of this period, Government and industry will jointly evaluate the arrangements which have been put in place for identity cards to be issued to airside workers, consider the benefits which have been achieved in terms of both security and efficiency and develop a list of actions to improve the operation as it is extended nationally. The initial aviation industry partners – in particular Manchester Airport Group and London City Airport – will be amongst the participants in this evaluation. At this point, the fee waiver will be reviewed as part of this analysis.

13. Contact

13.1 Colin Foley at the Home Office, Identity and Passport Service, Tel:020 7035 8025 or email: colin.foley@ips.gsi.gov.uk can answer any queries regarding the instrument.