EXPLANATORY MEMORANDUM TO

THE IDENTITY CARDS ACT 2006 (PROVISION OF INFORMATION WITH CONSENT) REGULATIONS 2009

2009 No. 2575

1. This Explanatory Memorandum has been prepared by the Home Office and the Identity and Passport Service and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 These Regulations enable the Secretary of State to provide information to an organisation with the consent of the individual. They also set out the prescribed particulars that the organisation must provide to the Secretary of State before they can be approved to be provided with information, as well as the conditions that are attached to that approval

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 eight, will be the first set of orders and regulations made under the Act.

4.2 Five instruments subject to the affirmative resolution procedure were laid before Parliament in May and June 2009 and were affirmed in July 2009. They are as follows:

- The Identity Cards Act 2006 (Application and Issue of ID Card and Notification of Changes) Regulations 2009, which prescribe various matters in relation to applications for entry on the National Identity Register, applications for an ID card and notification of changes and make provision in relation to place of residence.
- 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 prescribes 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 paid in relation to an application for an ID card or to be registered in the Register.

4.3 A further instrument subject to the affirmative resolution was laid before Parliament in May 2009 but was subsequently withdrawn in line with the Home Secretary's announcement that the rollout of identity cards to British citizens should occur on an entirely voluntary basis. The Identity Cards Act 2006 (Designation) Order 2009 would have designated "a criminal conviction certificate" applied for by airside workers, which would have meant that certain airside workers would have been required to apply for an ID card when they apply for such certificates.

4.4 Three other instruments subject to the negative resolution procedure will be laid before Parliament in September 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 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 (National Identity Registration Number) Regulations 2009 prescribe requirements relating to the format of the National Identity Registration Number and the process by which that number is allocated to an entry made in the National Identity Register.

4.5 These instruments will enable the first phase of the National Identity Service to be implemented, which will involve a limited initial rollout to a number 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 that commencement orders will be laid during 2009 to enable a short operational trialling period, followed by the launch of the Service to members of the public resident in Greater Manchester as well as to airside workers in the aforementioned airports. This rollout will then extend to other volunteers across the North West in 2010.

4.6 The instruments relate only to provisions for those who are British citizens, British subjects with right of abode in the United Kingdom or EEA nationals. Provisions to issue biometric immigration documents (commonly

known as Identity Cards for Foreign Nationals) are made under the United Kingdom Borders Act 2007.

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 Parliamentary Undersecretary of State, Home Office, Lord Brett has made the following statement regarding Human Rights: "In my view the provisions of the Identity Cards Act 2006 (National Identity Registration Number) Regulations 2009 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Act establishes a statutory framework for issuing fingerprint biometric ID cards together with the creation of a secure and reliable National Identity Register to hold the identity information about individuals in the United Kingdom. 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 ID card.

7.2 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.

7.3 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).

7.4 The Delivery Plan also made clear that the first identity cards issued to British citizens and European Economic Area nationals would be issued by the Home Office Identity and Passport Service under the Identity Cards Act 2006, starting in autumn 2009 after an operational trialling period. These will be

initially issued to those resident in Greater Manchester as well as to airside workers in Manchester and London City airports. This rollout will then extend to other volunteers across north-west England in 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. In his statement to the House of Commons on the 30th of June 2009, the Home Secretary stated that the issue of identity cards would occur on a voluntary basis for all stages of this rollout (see: http://services.parliament.uk/hansard/Commons/ByDate/20090630/writtenministerialstatements/part005.html)

7.5 Regulation 2 sets out how the individual must give consent or authority before information can be provided to the organisation requesting information where that organisation is of the type listed in Regulation 3. Consent must be given by the individual signing a document which clearly details what they are consenting to, why the information is required, who is going to be provided with the information, and how consent can be withdrawn. This is to ensure that there is a record which can be audited in the event that such an audit is considered necessary.

7.6 Regulation 3 limits those who can be provided with information under section 12 of the Identity Cards Act, where consent has been given in the manner specified in Regulation 2, to government departments and those working in airside pass issuing offices.

7.7 Regulation 4 limits those who can be provided with information under section 12 of the Identity Cards Act to accredited users of the passport validation service, where consent has been given in a manner consistent with that regulation. Further regulations will be laid in due course to extend this list as volumes of identity cards in circulation increase.

7.8 Regulation 5 provides that the Secretary of State can only disclose information to persons set in Regulations 3 and 4, if they have (i) provided prescribed particulars, and (ii) been approved by the Secretary of State in writing. This is to ensure that there is a written and comprehensive record of the persons to whom the Secretary of State can disclose information from the Register. It will enable to the Commissioner to effectively review the arrangements made for disclosing information from the Register

7.9 Regulation 6 sets out what those prescribed particulars are. The provision of those particulars will enable the Secretary of State to assure himself that the organisation is who it purports to be, establish who within those organisations can be provided with information, and make explicit the person to whom questions over the administration of the arrangement to provide information will be directed. It is our intension that the prescribed particulars will evolve as the list of organisations under Regulation 3 expands.

7.8 Regulation 7 sets out that the written grant of approval is conditional on the requirements contained within this regulation being met. These

conditions will enable the Secretary of State and the Commissioner to properly audit the activities of organisations receiving information, by for example, cross refereeing the audit record held on the National Identity Register which will detail ever instance when information has been provided from an individual's entry on the Register. They will also require the receiving organisation to comply with any investigations by the Secretary of State or the Commissioner, and promptly inform the Secretary of State when there is a breach or suspected breach of any of the conditions in Regulation 7 or any conditions, imposed by way of an Memorandum of Understanding (MOU) or other agreement.

7.10 We are not seeking to impose any conditions relating to security in these regulations. We intend to continually review the security requirements and improve them as technologies progress, and as such, sit better in an agreement between the Identity and Passport Service and the receiving organisation.

7.11 Regulation 7 sets out the circumstances in which a grant of approval may be withdrawn.

Consolidation

7.12 This statutory instrument does not consolidate any previous orders or regulations.

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 consultation, the regulations require the receiving organisation to retain a certain level of information to allow for proper auditing of the processes, both by IPS and the Identity Commissioner.

8.2 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 Guidance on the requirements prescribed in these Regulations that must be met before information can be provided will be given to staff who are responsible for the provision of information from the National Identity Register.

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 this Order (at http://www.ips.gov.uk/identity/index.asp). This Impact Assessment examines the impact on the public, private and third sectors.

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 These regulations do not apply directly to businesses.

12. Monitoring and review

12.1 During the first eighteen months following commencement the Government will evaluate the arrangements that have been put in place to provide information form an individual's entry on the National Identity Register with the consent of that individual. The Identity Commissioner will have responsibility for oversight of the arrangements maintained to carry out the functions under the Identity Cards Act more generally.

13. Contact

13.1 James Fogg at the Home Office, Identity and Passport Service, Tel:020 7035 8020 or email: james.fogg@ips.gsi.gov.uk can answer any queries regarding the instrument.