STATUTORY INSTRUMENTS

2009 No. 2793

IDENTITY CARDS

The Identity Cards Act 2006 (Provision of Information without Consent) Regulations 2009

Made - - - -	*19th October 2009*
Coming into force - -	*20th October 2009*

The Secretary of State, in exercise of the powers conferred by sections 17(5)(**a**), 21(2)(a), (4)(a) and (5), 40(4) and 42(1)(**b**) of the Identity Cards Act 2006(**c**), makes the following Regulations.

In accordance with sections 17(8) and 21(7) of that Act, a draft of these Regulations has been laid before and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Identity Cards Act 2006 (Provision of Information without Consent) Regulations 2009 and shall come into force on the day after the day on which they are made.

(2) In these Regulations—

"Commissioner" means the National Identity Scheme Commissioner(**d**);

"consular functions" has the meaning given to it in Article 5 of the Vienna Convention on Consular Relations done at Vienna on 24 April 1963;(**e**);

"identity document" has the meaning given to it in section 26 of the 2006 Act;

"intelligence service" means the Security Service, the Secret Intelligence Service or GCHQ (as defined in section 3(3) of the Intelligence Services Act 1994)(**f**);

"officer of Revenue and Customs" means a member of staff appointed by the Commissioners for Her Majesty's Revenue and Customs under section 2(1) of the Commissioners for Revenue and Customs Act 2005(**g**);

"passport" means—

(a) a United Kingdom passport (within the meaning of the Immigration Act 1971(**h**)); or

(b) a document that can be used (in some or all circumstances) instead of a United Kingdom passport;

(**a**) Section 17(7) contains a limit on the enabling powers in subsection (5).
(**b**) See definition of "prescribed".
(**c**) 2006 c. 15.
(**d**) Appointed under section 22 of the Identity Cards Act 2006.
(**e**) United Nations, Treaty Series, Vol. 596, p. 261.
(**f**) 1994 c. 13.
(**g**) 2005 c. 11.
(**h**) 1971 c. 77.

"personal data" has the meaning given to it in section 1(1) of the Data Protection Act 1998(**a**);

"sums adjudged to be paid by a conviction or order of a magistrates' court" shall be construed as including a reference to any costs, damages or compensation adjudged to be paid by the conviction or order of which the amount is ascertained by the conviction or order; and

"the 2006 Act" means the Identity Cards Act 2006.

(3) In these Regulations any reference to—

(a) a function carried out under a particular enactment, includes a reference to a function carried out under subordinate legislation made under that enactment; and

(b) the processing of information or data means processing as defined in section 1(1) of the Data Protection Act 1998.

Prescribed government departments and functions

2.—(1) The following government departments and functions of that department or Minister in charge of it are prescribed for the purposes of section 17(5) of the 2006 Act—

(a) the Home Office for the functions—

(i) carried out under Part 5 of the Police Act 1997(**b**);

(ii) of the issue, manufacture, modification, cancellation or surrender of passports;

(iii) of the prevention or detection of crime;

(iv) of safeguarding national security; and

(v) relating to immigration, asylum or nationality;

(b) the Ministry of Justice for the functions of—

(i) repatriating British nationals imprisoned overseas; and

(ii) assisting with the enforcement of:

(aa) sums adjudged to be paid by a conviction or order of a magistrates' court; or

(bb) other orders imposed by a magistrates' court or the Crown court;

(c) subject to paragraph (3), the Department for Transport for the functions carried out under—

(i) Part 3 of the Road Traffic Act 1988(**c**); and

(ii) Part 10 of the Merchant Shipping Act 1995(**d**);

(d) the Department for Work and Pensions for the functions of the prevention, detection, investigation or prosecution of offences relating to social security; and

(e) the Foreign and Commonwealth Office for—

(i) the functions of manufacture, modification, cancellation or surrender of passports; and

(ii) consular functions.

(2) Subject to paragraph (3), the Department of the Environment (Northern Ireland) for the functions carried out under Part 2 of the Road Traffic (Northern Ireland) Order 1981(**e**) is prescribed for the purposes of section 17(5).

(3) The functions referred to in paragraphs (1)(c) and (2) are only prescribed to the extent to which those functions are being exercised for the purpose of preventing or detecting crime.

(**a**) 1998 c. 29.
(**b**) 1997 c. 50.
(**c**) 1988 c. 52.
(**d**) 1995 c. 21.
(**e**) 1981 No. 154 (N.I. 1).

Provision of information to another person

3.—(1) Subject to regulations 4 and 5, information that may be provided under any of sections 17 to 20 of the 2006 Act to—

(a) a chief officer of police;

(b) the Director-General of the Security Service;

(c) the Chief of the Secret Intelligence Service;

(d) the Director of the Government Communication Headquarters;

(e) the Director General of the Serious Organised Crime Agency; or

(f) subject to paragraph (5), the Commissioners for Her Majesty's Revenue and Customs,

may be provided instead to another person if the conditions set out in paragraph (2) are satisfied.

(2) The conditions referred to in paragraph (1) are that that other person (P)—

(a) is authorised by a person referred to in paragraph (1) to be a recipient of information provided under that section;

(b) holds the relevant rank or position specified in paragraph (3) or (4); and

(c) is under the direction or control, or is otherwise answerable or subordinate to that person in respect of any of P's duties as a person holding that rank or position.

(3) In a case where P is authorised to be a recipient of information by a chief officer of police, the rank of—

(a) inspector or above is specified in respect of information not falling within paragraph 9 of Schedule 1 to the 2006 Act; and

(b) superintendent or above is specified in respect of information falling within that paragraph.

(4) In a case where P is authorised to be a recipient of information by—

(a) the Director-General of the Security Service, the position of a member of that Service is specified;

(b) the Chief of the Secret Intelligence Service, the position of a member of that Service is specified;

(c) the Director of the Government Communication Headquarters, the position of a member of the GCHQ is specified;

(d) the Director General of the Serious Organised Crime Agency, the position of an employee of that Agency is specified; and

(e) a Commissioner for Her Majesty's Revenue and Customs, the position of an officer of Revenue and Customs is specified.

(5) Information falling within paragraph 9 of Schedule 1 to the 2006 Act, which may be provided to the Commissioners for Revenue and Customs under any of sections 17 to 20 of the 2006 Act, may not be provided instead to another person.

Provision of information condition

4. It is a condition of providing information to a person under any of sections 17 to 20 of the 2006 Act that that person (where not specified in those sections) is for the time being approved by the Secretary of State in writing.

Provision of information requirements

5.—(1) Subject to paragraphs (4) and (5), the Secretary of State may only provide information under any of sections 17 to 20 of the 2006 Act—

(a) to a person specified in any of those sections; or

(b) instead to another person who is authorised in accordance with regulation 3 to be a recipient of the information,

if the requirements set out in paragraph (2) are satisfied.

(2) The requirements referred to in paragraph (1) are that the Secretary of State is satisfied that—

(a) the person referred to in paragraph (1)(a) will carry out the activities set out in paragraph (3)(a) and (b) and, where appropriate, (c) to (g); and

(b) any information which constitutes personal data, will be processed by the data controller who receives it under any of those sections, in compliance with the Data Protection Act 1998.

(3) The activities referred to in paragraph (2)(a) are to—

(a) monitor whether the activities set out in sub-paragraphs (b) to (f) are being carried out;

(b) make a record of—

(i) the name of the person requesting the information under any of sections 17 to 20 of the 2006 Act;

(ii) the date and time of the request;

(iii) the reason for the request, including the reason why it was considered necessary and proportionate to request all the relevant information; and

(iv) the information which was provided pursuant to the request,

and retain that record for 12 months from the date the request was made, unless the Commissioner and the Secretary of State are satisfied that the record no longer needs to be retained;

(c) provide the Commissioner, or a member of the Commissioner's staff, if requested, with all such information as they may reasonably require for the purpose of carrying out the Commissioner's functions insofar as they relate to—

(i) the arrangements made by the persons referred to in paragraph (1)(a) and (b) for obtaining information under any of sections 17 to 20 of the 2006 Act and for recording and using it; or

(ii) the use of an ID card;

(d) inform the Secretary of State if that person, or anyone acting on that person's behalf, has reasonable grounds for suspecting that an individual has committed or is attempting to commit an offence relating to the Register or an identity document, unless doing so would prejudice—

(i) the prevention or detection of crime; or

(ii) the interests of national security;

(e) co-operate with any investigations by the Secretary of State into suspected fraudulent activity relating to the Register or an identity document, unless doing so would prejudice—

(i) the prevention or detection of crime; or

(ii) the interests of national security;

(f) report promptly any failures or suspected failures to carry out the activities set out in sub-paragraphs (a) to (e) to the Secretary of State; and

(g) assist the Secretary of State, insofar as is reasonably practicable, in order that the Secretary of State can be satisfied that the activities set out in sub-paragraphs (a) to (f) are being carried out.

(4) If the Secretary of State is satisfied that another person will carry out any of the activities set out in paragraph (3) on behalf of the person referred to in paragraph (1)(a), the requirement imposed under paragraph (2) will, insofar as it is relates to those activities, be satisfied.

(5) In a case where a person referred to in paragraph (1)(a) is a member of the intelligence services, the references in paragraph (3)(b) and (c) to the Commissioner, in so far as it relates to that person, should be read as references to the Intelligence Services Commissioner.

Home Office
19th October 2009

Meg Hillier
Parliamentary Under Secretary of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 17(1) of the Identity Cards Act 2006 ("the 2006 Act") provides that Secretary of State may, without the individual's consent, provide a person with information recorded in an individual's entry in the Register if—

(a) the provision of the information is authorised by this section; and

(b) there is compliance with any requirements imposed by or under section 21 of the 2006 Act in relation to the provision of the information.

Section 17(5) of the 2006 Act provides that the provision of information not falling within paragraph 9 of Schedule 1 to the 2006 Act (records of provision of information) is authorised by this section, where the information is provided to a prescribed government department or to a prescribed Northern Ireland department for purposes connected with the carrying out of any prescribed functions of that department or Minister in charge of it.

Regulation 2 prescribes such departments and functions in respect of those departments for the purposes of section 17(5) of the 2006 Act.

Regulation 3 provides that information that may be provided to a person (P) under any of sections 17 to 20 of the 2006 Act may be provided instead to another person who—

(c) is authorised by P to be the recipient of information provided under that section;

(d) holds the rank or position which is specified in paragraph (3) or (4) in respect of that person; and

(e) is under the direction or control of P, or is otherwise answerable or subordinate to P, in respect of any of that other person's duties as a person holding that rank or position.

Regulation 4 provides that it is a condition of providing information to a person under any of sections 17 to 20 of the 2006 Act that that person (where not specified in those sections) is approved by the Secretary of State in writing.

Regulation 5 imposes requirements that must be satisfied before information is provided under any of sections 17 to 20 of the 2006 Act. These are that the Secretary of State must be satisfied (a) that the relevant person specified in sections 17 to 20 of that Act must carry out the activities set out in paragraph (3) and (b) that the data controller who receives the information under any of those sections must comply with the Data Protection Act 1988 when processing any of the information which constitutes personal data.

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