EXPLANATORY MEMORANDUM TO

THE IDENTITY CARDS ACT 2006 (PROVISION OF INFORMATION WITHOUT CONSENT) REGULATIONS 2009

2009 No. 2793

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of Instrument

2.1 These Regulations will enable the Secretary of State to disclose information from an individual's entry in the Register, without the individual's consent, to additional persons to those who are expressly listed in the Act and also impose additional requirements that must be satisfied before the Secretary of State can disclose information under any of sections 17 to 20 of the Act.

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 2009. They are as follows:

- 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 (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 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.

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.

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 Under-Secretary of State, Ministry of Justice and Home Office, Shahid Malik, has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Identity Cards Act 2006 (Provision of

Information without Consent) Regulations 2009 are compatible with the Convention Rights.

7. Policy background

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 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 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. These will initially be issued to critical workers at airports as well as 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.

7.4 The Act sets out the statutory purposes for the establishment of a National Identity Register. In summary these are to provide a convenient and secure and reliable method for individuals to prove their identity to anyone who reasonably requires proof, and also to provide a secure and reliable method for people to be identified wherever that is necessary in the public interest. Public interest is defined as:

- 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.

7.5 In order to be able to disclose information from an individual's entry in the Register, without the individual's consent, to a government department or a Northern Ireland department for purposes connected with the carrying out of any of the department's functions, the relevant departments and functions need to be prescribed in regulations made under section 17(5) of the Act. These must also be consistent with the public interest as defined by the Act. For the initial stages of the roll out where volumes are low, we have set out arrangements that primarily either assist in, or are related to, the prevention and detection of crime, or allow for assistance to be provided to British nationals overseas.

7.6 Regulation 2 prescribes the relevant departments and functions, thereby

enabling the Secretary of State to disclose information not falling within paragraph 9 of Schedule 1 to the Act (i.e. non audit log information) to such departments for purposes connected with the carrying out of the relevant functions, provided conditions imposed under section 21 of the Act are satisfied.

- The Home Office for the issuing of criminal record/conviction certificates, to assist in passport operations, the prevention or detection of crime, the safeguarding of national security, and for functions relating to immigration, asylum or nationality.

- The Ministry of Justice to assist in the identification of the whereabouts of those who are required to pay a fine imposed by criminal courts, as well as to help identify British prisoners overseas who are eligible to be repatriated.

- The Department for Transport and the Department of Environment (Northern Ireland) for the prevention and detection of crime in so far as the offences relate merchant shipping and pollution or road traffic offences.

- The Department for Work and Pensions to assist with the prevention, detection, investigation or prosecution of offences relating to social security.

- The Foreign and Commonwealth Office to secure the delivery of consular services including the issue of passports, and offering assistance in the event of a British national overseas falling victim to assault and other serious crime, imprisonment, hospitalisation and illness, civil disturbance and natural disaster, and claims for property losses/threat to British interests.

7.7 Information will not be provided to other government departments for functions other than those specified under the Identity Cards Act 2006.

7.8 In addition to the condition imposed by section 21(1) of the Act, these regulations impose requirements that must be satisfied before the Secretary of State can disclose information from an individuals' entry in the Register without the individual's consent, under any of sections 17 to 20 of the Act.

7.9 This Instrument also sets out who can be provided with information on behalf of those listed in sections 17(2)-(4) of the Act.

7.10 Regulation 4 provides that the Secretary of State can only disclose information to such persons if they have 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.

7.11 Regulation 3 enables the Secretary of State to disclose information under the

Act to other members of the Security Service or employees of the Serious Organised Crime Agency, provided they are (a) authorised to be the recipient of the information by the person in charge of the relevant agency for which they work (i.e. the relevant person listed in section 17(2) of the Act) and (b) acting for or on behalf of that person.

7.12 It also enables the Secretary of State to disclose information to an Inspector or above if that person is authorised by a chief officer of police to be the recipient of the information, provided they are (a) authorised to be the recipient of the information by a chief officer of the police and (b) acting for or on behalf of that person. However audit log information (i.e. information falling within paragraph 9 of Schedule 1 to the Act) can only be provided to a superintendent or above.

7.13 In addition it enables the Secretary of State to disclose non audit log information to officers of HMRC if the officer is authorised by a Commissioner of HMRC to be the recipient of such information, and is acting for or on behalf of that person. Only the Commissioners for HMRC will be provided with audit log information in connection with HMRC's statutory functions.

7.14 The additional protections in respect of the provision of audit log information are provided because of the sensitivity of this type of information and are in accordance with the additional protections provided in the Act in respect of the disclosure of that type of information (see section 18).

8. Consultation Outcome

8.1 A draft of these Regulations formed part of the 12 week consultation on draft secondary legislation under the 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 As a result of the consultation process, we have defined the statutory functions for which the prescribed Other Government Departments may be provided with information from the National Identity Register, only to the extent that is required for the initial stage of the National Identity Service. As already explained, these are primarily aimed to assist in protecting national security, the prevention and detection of crime, and frustrating illegal immigration and illegal working.

8.3 In response to concerns over the provision of audit record data, in relation to the police and HMRC, we have limited the provision of that information to those holding of the rank of superintendent or Commissioner respectively.

8.4 The draft instrument that we consulted on purported to prescribe conditions which the grant of approval would be subject to. After further analysis of the powers, we have instead imposed conditions on the provision of information under any of sections 17 to 20 of the Act. Therefore the Secretary of State cannot disclose information under any of sections 17 to 20 of the Act unless these conditions are satisfied.

8.5 Conditions relating to the administration of the provision of information, including security requirements, will be set out in an agreement between the Identity

and Passport Service and the receiving organisation or person.

8.6 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 We are working with the persons listed to ensure the processes are understood.

9.2 The application process will make clear to whom information might be provided from an individual's entry in the 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).

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 The regulations do not apply directly to businesses.

12. Monitoring and review

12.1 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.

13. Contact

James Fogg at the Identity and Passport Service (James.Fogg@IPS.gsi.gov.uk, Tel: 020 3356 8020) can answer any queries regarding the instrument.