



Home Office

Border & Immigration Agency

COMPULSORY IDENTITY CARDS FOR FOREIGN NATIONALS

UK BORDERS ACT 2007:
CONSULTATION ON THE 'CODE OF PRACTICE ABOUT THE
SANCTIONS FOR NON-COMPLIANCE WITH THE BIOMETRIC
REGISTRATION REGULATIONS'

February 2008

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FOREWORD BY THE MINISTER OF STATE FOR BORDERS AND IMMIGRATION



Foreign nationals come to the United Kingdom for a wide range of reasons such as to study or work. Using advances in identity technology we can cut illegal working, protect legal migrants, and flush out those trying to evade our rules and laws. This will help strengthen border security. By recording a person's fingerprints, we can now fix a person to a single identity. This will make it simpler to check whether someone is who they say they are.

In October 2007, Royal Assent of the *UK Borders Act 2007* gave the Government the power to begin issuing identity cards to foreign nationals. These new cards will confirm both a person's immigration status and entitlement to work and/or access to public funds in the UK. The Act obliges us to issue a Code of Practice about our proposals for ensuring compliance with the rules. This consultation, therefore, welcomes your views on the draft '*Code of Practice About the Sanctions for Non-compliance with the Biometric Registration Regulations*' at **Appendix 1**.

A handwritten signature in black ink that reads "Liam Byrne". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Liam Byrne MP
Minister for Borders and Immigration

SECTION 1

ABOUT THIS CONSULTATION

1.1 The purpose of this consultation document is to explain the Border and Immigration Agency's approach¹ to ensuring compliance with the requirements under the *UK Borders Act 2007*: in particular the requirement for foreign nationals who are subject to immigration control², to apply for an identity card³ and to provide their biometric identifiers and the possible sanctions applicable in cases of non-compliance. This consultation also provides an opportunity for you to give your views on the draft Code of Practice at **Appendix 1**.

STATUTORY REQUIREMENT FOR CONSULTATION

1.2 The *UK Borders Act* allows the Secretary of State to make secondary legislation (regulations) that require a person to apply for an identity card for foreign nationals, and to provide their biometric identifiers. The regulations can impose other requirements, including a requirement for the holder of the card to produce it in certain situations, and to provide information to check against the information on the card or that held by the Borders and Immigration Agency.

1.3 The regulations may also provide what should happen when a person does not comply with a requirement of the regulations. Non-compliance with the biometric registration requirements may result in a foreign national (who is subject to immigration control) being subject to a sanction – for example, the person's application for leave to enter or remain in the UK may be refused or rejected; the person's application for an identity card for foreign nationals may be refused; the person's existing leave to enter or remain in the UK may be varied (curtailed) or cancelled; or the person may be required to pay a civil penalty.

1.4 Section 13 (1) of the Act requires the Secretary of State to issue a Code of Practice which

sets out the matters to be considered by the Secretary of State in determining:

- a. whether to give a civil penalty notice; and
- b. the amount of the civil penalty (which should not exceed £1,000⁴).

Section 13 (5) of the Act requires the Secretary of State to:

- a. publish proposals;
- b. consult members of the public; and
- c. lay a draft before Parliament before issuing or re-issuing the Code.

1.5 It is for this reason that we are issuing a '*Code of Practice About the Sanctions for Non-compliance with the Biometric Registration Regulations*'. The Code of Practice will be an important document for those issued with an immigration sanction or civil penalty notice under the forthcoming biometric registration regulations, and their representatives and legal advisers. Case-working staff in the Border and Immigration Agency, and the county court in England, Wales and Northern Ireland, and sheriff in Scotland, will also have regard to this Code of Practice.

1.6 A draft Code of Practice has now been prepared (**Appendix 1**) for consultation with individuals and representative organisations. A list of the consultation participants who have been invited to comment is contained at **Appendix 2**. However, it is open to anyone to respond to this consultation document – please see **Section 2 'How to respond'**.

1.7 This consultation document is available to download from the Border and Immigration

1. On behalf of the Secretary of State.
2. A person who is subject to immigration control means a person who under the Immigration Act 1971 (c.77) requires leave to enter or remain in the UK (whether or not such leave has been given).
3. The technical name for this document in the legislation is a 'biometric immigration document'. It should be noted the identity card for foreign nationals issued under the UK Borders Act 2007 which is the subject of this consultation, is not to be confused with the 'ID Card' which will be issued under the Identity Cards Act 2006.
4. The maximum penalty may be increased by Order to reflect changes to the value of money.

Agency's website at the following address:
www.bia.homeoffice.gov.uk/aboutus/consultations/

- 1.8 Please contact the Enforcement Communications Team if you require a printed copy of this consultation paper, or a copy in any other format, for example, Braille, large font, or audio. These can be requested by telephoning 020-8604 1894, or by e-mail to BRSconsultation@homeoffice.gsi.gov.uk, with the subject heading '**Consultation – BRS**'.

CONSULTATION CRITERIA

- 1.9 This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office (see <http://bre.berr.gov.uk/regulation/consultation/code/index.asp>)

CONTACT FOR COMMENTS OR COMPLAINTS

- 1.10 If you are planning to respond to this consultation please refer to **Section 2 'How to Respond'** which explains where you should send your response. However, if you have any comments or complaints specifically about the consultation **process** only, you should e-mail or write to the Home Office consultation co-ordinator:

nigel.lawrence@homeoffice.gsi.gov.uk
Nigel Lawrence
Consultation Co-ordinator
Performance and Delivery Unit
Home Office
3rd Floor, Seacole
2 Marsham Street
London SW1P 4DF

SECTION 2

HOW TO RESPOND

- 2.1 Please read **Section 3 ‘Background to the new biometric registration requirements’** and **Section 4 ‘Identity cards for foreign nationals issued under the UK Borders Act 2007’** before responding to this consultation. Please also read the draft Code of Practice at **Appendix 1**, to gain a full understanding of the forthcoming biometric registration requirements, and what it is that we are consulting about. A summary of the key proposals, along with the actual questions for which we seek your response, are found in **Section 5 ‘Questions for participants’**.
- 2.2 It would be helpful if you could please send your responses to the questions posed in Section 5 by e-mail to:
BRSconsultation@homeoffice.gsi.gov.uk, with the subject heading **‘Consultation – BRS’**. A separate Word version of the questions in Section 5 are available for you to download from:
www.bia.homeoffice.gov.uk/aboutus/consultations/
- 2.3 Alternatively, you can post your response to the following address:
- Angela Flower
Enforcement Communications Team
Border and Immigration Agency
11th Floor, St. Anne’s House
Wellesley Road,
Croydon
Surrey
CR0 9XB
- 2.4 This public consultation closes on **4 May 2008** so we should be grateful if your response could arrive before then.

CONFIDENTIALITY AND DISCLAIMER

- 2.5 The information you send us may be passed to colleagues within the Home Office, the Government or related agencies. Furthermore, information provided in response to this consultation, including personal information, may be published or disclosed in accordance

with the access to information regimes (these are primarily the *Freedom of Information Act 2000* (FOIA), the *Data Protection Act 1998* (DPA) and the *Environmental Information Regulations 2004*).

- 2.6 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but **we cannot give an assurance that confidentiality can be maintained in all circumstances**. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 2.7 Please ensure that your response is marked clearly if you wish your response and name to be kept confidential. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.
- 2.8 The Department will process your personal data in accordance with the DPA and, in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties. A non-attributed summary of responses to this consultation will be provided to all those who supply comments and a return address. It will be available on request to others and displayed on the Border and Immigration Agency’s website.

Your views are valuable to us. Thank you for taking the time to read and respond to this document.

SECTION 3

BACKGROUND TO THE NEW BIOMETRIC REGISTRATION REQUIREMENTS

TRANSFORMING OUR BORDER SECURITY

- 3.1 Better management of identity is fundamental to improving immigration control and securing our borders. In December 2006 our *Strategic Action Plan for the National Identity Scheme: Safeguarding your identity* and *Borders, Immigration and Identity Action Plan: Using the National Identity Scheme to strengthen our borders and enforce compliance within the UK* underlined how, by using improved technology, we can securely link a person to a unique identity. By recording and storing a person's biometrics – i.e. the physical characteristics that are unique to each person – we can check that person against centrally held records.
- 3.2 In March 2007 we published *Securing the UK Border: Our vision and strategy for the future*. This strategy announced tougher checks abroad, before foreign nationals travel to the UK. All visa applicants, except those categories currently exempt from entry clearance control, are now required to provide their biometric data (i.e. a dry 10-finger scan and a digital photograph) as part of the visa application process. The global deployment of this requirement is now complete. As of the end of January 2008, visa applicants in 133 countries are providing their biometrics as part of their visa application. This means that we now fix foreign nationals' identities at the earliest point practicable, checking them through each stage of their journey, identifying those presenting risk and stopping them coming to the UK, thereby strengthening our borders. The new biometrically enabled visa checking process has enrolled over 1.2 million sets of fingerprints and has already identified 12,500 people who have previously claimed asylum or been fingerprinted for other immigration purposes, and were trying to return to the UK.
- 3.3 We also published in March 2007 *Enforcing the rules: A strategy to ensure and enforce compliance with our immigration laws*. This cross-Government enforcement strategy is focused on fairness and enforcing the rules. The strategy outlines how the Border and Immigration Agency, by working in partnership with the HM Revenue and Customs, Department for Work and

Pensions, other government departments, local authorities, police forces and the private sector, will progressively strengthen the safeguards that protect access to public funds from those here illegally. The enforcement strategy further underlines our commitment to deploy new technology as part of this strategy – such as biometrics – in advance of the wider roll-out of the National Identity Scheme.

- 3.4 In June 2007 we issued a joint publication with the Foreign and Commonwealth Office: *Managing Global Migration: A Strategy to build stronger international alliances to manage migration*. This strategy reiterates our commitment to securely fix foreign nationals' identity through the use of biometrics.

UK BORDERS ACT 2007

- 3.5 The *UK Borders Act 2007* received Royal Assent in October 2007. Building on existing legislation and Ministerial commitments, the Act is a package of measures to equip the Border and Immigration Agency with a range of new powers to deter, detect and deport those who abuse our hospitality, and to ensure that those foreign nationals legally in the UK play their part in upholding the immigration rules.
- 3.6 A Regulatory Impact Assessment (RIA) for the *UK Borders Bill* was issued in February and March 2007. Equality Impact Assessments (EIAs) have also been issued in respect of the Act. Both the RIA and EIAs can be downloaded from the Border and Immigration Agency website via:
www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/legislation/ukbordersact/

ALIGNING WITH THE NATIONAL IDENTITY SCHEME

- 3.7 The *Strategic Action Plan for the National Identity Scheme: Safeguarding your identity* affirms the Government's commitment to introduce a single comprehensive National Identity Scheme to cover everyone legally resident in the UK, and to establish a National Identity Register.

COMPLYING WITH EU REGULATIONS

- 3.8 The UK Government also needs to comply with EU law. In June 2002, Council Regulation (EC) 1030/2002 laid down a uniform format for residence permits for third-country nationals. A residence permit is the current document issued to third-country nationals which authorises their stay in the UK, and acts as evidence of their immigration status while they are in the UK. This is presently in the form of a sticker, known as a vignette, affixed to a passport (1030/2002 sets out the format and security features for residence permits).
- 3.9 The EU has recognised that using biometrics provides a greater level of assurance to individuals' identities. In November 2003 the EU Council agreed to amend the Regulations relating to the uniform format for visas (1683/95) and residence permits for third-country nationals (1030/2002). These proposals provided for the mandatory storage of digitised facial images and fingerprints within two-three years from the date of adoption.
- 3.10 In March 2006 the Commission presented an amended proposal that residence permits may only be issued as a card. A revised Regulation is expected to be approved by the Council in early 2008 and will mandate the phasing-out of residence permits in the form of vignette stickers, requiring instead that residence permits are only issued as biometric cards. The biometric registration provisions in *UK Borders Act* will be used by the UK to comply with the requirements of this EU Regulation. The Act's provisions go further than the EU Regulation – ensuring that safeguards and sanctions are clearly provided for in our domestic law.

SECTION 4

IDENTITY CARDS FOR FOREIGN NATIONALS ISSUED UNDER THE UK BORDERS ACT 2007

BIOMETRIC REGISTRATION REQUIREMENTS

4.1 The *UK Borders Act 2007* gives the Secretary of State the power to make secondary legislation to require foreign nationals subject to immigration control to apply for an identity card⁵ and register their biometric data (for example, facial image and fingerprints) and biographical information (for example, name, date and place of birth, nationality). This information will be held on an existing Border and Immigration Agency database, so that it can be checked to verify the applicant.

WHEN WILL THE NEW IDENTITY CARDS FOR FOREIGN NATIONALS BE INTRODUCED?

4.3 The requirements for foreign nationals subject to immigration control to apply for an identity card under the *UK Borders Act* and register their biometrics will be introduced incrementally from 2008. We will shortly publish our roll-out strategy, which will explain the order in which we plan to introduce the new cards.

WHAT INFORMATION WILL BE ON THE IDENTITY CARD FOR FOREIGN NATIONALS?

4.2 The precise format of the new document will be determined by the forthcoming EU Regulation in relation to biometric residence permits which will require Member States to issue a “biometric residence permit” to a specified uniform format. We expect that the following information will be encrypted within a tamperproof chip that will be embedded in the card:

- Holder’s facial image and two⁶ fingerprints
- Holder’s biographical information (i.e. name, nationality, gender, date and place of birth)
- Holder’s immigration status (which will also show any conditions on leave, entitlement to employment and/or public funds, etc)
- Holder’s signature
- Place and date of issue, and document validity

5. Known technically as a ‘biometric immigration document’ under section 5(1)(a) of the UK Borders Act 2007.

6. All of the holder’s fingerprints (and their facial image) will be registered on the central Border and Immigration Agency database, for verification purposes.

The basic penalty for failing to comply with a secondary compliance requirement will be one eighth of the maximum statutory penalty of £1,000 (i.e. £125). However, the final amount of the civil penalty will depend on the circumstances of the individual case and, in certain circumstances, could be lower or higher. A civil penalty notice could also be issued for the contravention of a primary compliance requirement – and therefore the entry rate would be higher – but only in specified circumstances.

Q4b How important should the following factors be in determining the amount of the civil penalty? (See Section 6 of the Code of Practice)

i) whether the person has failed to meet a primary or secondary compliance requirement?

Very important	<input type="checkbox"/>	Not at all important	<input type="checkbox"/>
Important	<input type="checkbox"/>	Unsure	<input type="checkbox"/>
Not very important	<input type="checkbox"/>		

ii) whether the person has a history of non-compliance?

Very important	<input type="checkbox"/>	Not at all important	<input type="checkbox"/>
Important	<input type="checkbox"/>	Unsure	<input type="checkbox"/>
Not very important	<input type="checkbox"/>		

iii) whether there are children aged under 18, who have also failed to comply, in the person’s household?

Very important	<input type="checkbox"/>	Not at all important	<input type="checkbox"/>
Important	<input type="checkbox"/>	Unsure	<input type="checkbox"/>
Not very important	<input type="checkbox"/>		

iv) whether the person has limited financial means?

Very important	<input type="checkbox"/>	Not at all important	<input type="checkbox"/>
Important	<input type="checkbox"/>	Unsure	<input type="checkbox"/>
Not very important	<input type="checkbox"/>		

Where a child aged under 18 fails to comply with one or more of the compliance requirements, the forthcoming regulations will state that the civil penalty notice may be issued against the child's **designated adult**. A designated responsible adult is a person who the Secretary of State has designated as the person responsible for ensuring the child's compliance with a requirement of the regulations under section 7(3) of the *UK Borders Act*.

Q4c Which, if any, of the following should be considered as a 'designated responsible adult'? Please tick all that apply.

A person with "parental permission" (e.g. housemaster of boarding school)

A parent with parental responsibility

An adult who has been given responsibility for the child's care through the courts

An adult who has been given responsibility for the care of the child through a private fostering arrangement

Other responsible adult (please specify)

.....

.....

Unsure

Q4d Does the Code of Practice clearly outline the circumstances when a person might object and appeal to a civil penalty notice? (See Section 6 of the Code of Practice)

Yes Unsure

No

If you have answered 'No', please explain how the information might be improved:

.....

.....

.....

.....

.....

RESPONDENT INFORMATION

We would be grateful if you could provide us with the following information to assist us with our analysis. These details will be treated as confidential.

From the list below, please select the option which best describes your current nationality

- UK national
- Other European Economic Area (EEA) national or Swiss National
- Non-EEA national
- Dual nationality (please specify)
- Prefer not to state

Thinking of the response that you have given to this consultation, who are you responding on behalf of?

- Responding as a member of the general public
- Responding in a professional capacity
- Responding on behalf of an organisation
- Other (please specify)
- Prefer not to state

Please only complete the remaining question if you are responding in a professional capacity or on behalf of an organisation.

Which, if any, of the following best describes your organisation? (Please select all that apply)

- Voluntary/community organisation or charity
- Educational institution
- Local government
- Immigration advice or legal advice provider
- Healthcare provider
- Central government
- Private sector company
- Other (please specify)
- Prefer not to state

SECTION 6

WHAT HAPPENS NEXT?

- 6.1 Where appropriate, we will incorporate comments and suggestions into the Code of Practice. We will also give consideration to any practical concerns raised.
- 6.2 We will aim to publish a report summarising the responses to this consultation on the Border and Immigration Agency website within six weeks of the closing date (which is **4 May 2008**).

APPENDIX 1

DRAFT '*CODE OF PRACTICE* ABOUT THE SANCTIONS FOR NON-COMPLIANCE WITH THE BIOMETRIC REGISTRATION REGULATIONS'

APPENDIX 2

LIST OF CONSULTATION PARTICIPANTS

11 Million
Administrative Law Bar Association
Africans Unite Against Child Abuse
Amnesty International UK
Anti-Slavery International
Arts Council
Asguard UK
Asian Music Circuit
Association of British Orchestras
Association of Chief Police Officers
Association of Circus Proprietors
Association of Colleges
Association of Directors of Children's Services
Association of Independent Higher Education Providers
Association of Labour Providers
Association of Model Agents
Association of Northern Ireland Colleges
Association of Scottish Colleges
Association of Town Centre Management
Barnardos
Bates Wells and Braithwaite
BBC Talent Rights Group
Bechtel Ltd
Brighton Festival
British Accreditation Council
British Accreditation Council Association
British Beer and Pub Association
British Chamber of Commerce
British Council
British Fashion Council
British Hospitality Association
British Phonographic Industry
British Ports Association
British Retail Consortium
British Shops and Stores Association
British Telecommunication
British Universities International Liaison Association
BUPA Care Services
Child Exploitation and Online Protection Centre
Children's Commissioner for Northern Ireland
Children's Commissioner for Scotland
Children's Commissioner for Wales
Children's Services Manchester
Children's Society
Citigroup
Citizens Advice Bureau
City of London
Cleaning Association
Commission for Equality and Human Rights
Commission for Social Care Executive
Complaints Audit Committee
Confederation of British Industry
Construction Federation
Convention of Scottish Local Authority
Department for Children Schools and Families
Department for Innovation, Universities and Skills
Department for Media Culture and Sports
Department for Universities and Skills
Department for Work and Pensions
Department of Health
Edinburgh Festival Fringe
Education and Child Services
Employability Forum
End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes
Engineering Employers Federation
English Community Care Association
English UK
Equity
Ernst and Young UK
Eversheds
Federation of Small Businesses
First Contact Agency
Foreign and Commonwealth Office
General Council of the Bar
Goldman Sachs
Government Office East of England
Greater London Authority
GuildHE
H20 Law
Health and Safety Executive
HM Treasury
Honda UK Manufacturing Ltd
IBM UK Ltd
Immigration Advisory Service
Immigration Law Practitioners Association
Independent School Council
Independent Theatre Council Ltd
Institute of Directors
International Artist Managers' Association
International Bar Association
Joint Council for the Welfare of Immigrants
Justice
Knitting Industries' Federation
Law Society
Leadership and Skills Unit
Learning and Skills Development Agency
Legal Complaints Service
Legal Services Commission
Liberty
Local Government Association

Local Government Leicester
Local Safeguarding Children's Boards
London Area Child Protection Committee
London Councils
Magistrates Association and Judicial Policy
Manpower UK Ltd
Medical Foundation for the Care of Victims of
Torture
Migrant Helpline
Migration Watch UK
Ministry of Justice
Mishcon de Reya
Musicians Union
NASSCOM
National Campaign for the Arts
National Children's Home
National Farmers Union
National Union of Students
NCP Services
Neighbourhoods and Community Care
NHS
NHS Employers
North West Strategic Health Authority
Northern Ireland Office
NSPCC
Office of the Immigration Services Commissioner
Police Headquarters North Yorkshire
Principal Cleaning Services Ltd
Private Sector Employment Policy for Commission
for Racial Equality
Recruitment and Employment Confederation
Red Cross
Refugee Council
Roots Around the World
Sainsburys
Save the Children
Scottish Executive
Scottish Trades Union Congress
Serious Ltd
Shell International Ltd
SMART Recruitment
Society of London Theatre and Theatrical
Management Association
Stop the Traffick
Tesco plc
The PACT Council
The Theatre Group
Trades Union Congress
UK Board of Airline Representatives
UK Council for International Student Affairs
UK Film Council

UKvisas
UNICEF
United Kingdom Human Trafficking Centre
United Nations High Commission for Refugees
Universities UK
Visual Arts and Galleries
Welsh Assembly Government
Welsh Colleges Association

