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The Government's Identity Card Proposals

Liberty's Outline Submissions

**Home Affairs Committee Oral Evidence Session
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Dr Caoilfhionn Gallagher

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Parliamentarians may contact Gareth Crossman, Head of Policy at Liberty.

Direct Line: 020 7378 3654

Email: GarethC@liberty-human-rights.org.uk

This evidence was prepared by Dr Caoilfhionn Gallagher, Senior Researcher at Liberty

Email: Privacy@liberty-human-rights.org.uk

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1. RESPONSES TO COMMITTEE QUESTIONS

1. Do you oppose ID cards in principle or just on the Government's proposal? If this one were just voluntary would you still oppose?

Do you oppose ID cards in principle?

- Any national identity scheme raises profound constitutional concerns regarding the relationship between the individual and the state, and the presumption of privacy and individual liberty. These concerns and presumptions can only be rebutted by clear and compelling evidence to the contrary, and a proportionate and effective means of achieving the state's aims. In other words, there is a rebuttable presumption in favour of the liberty, autonomy and privacy of the individual (and thus against ID cards). This is underpinned by Britain's common law and constitutional tradition, and the analytical approach of the European Convention on Human Rights (ECHR). The issue is whether the government's proposals rebut that strong presumption.
- Unfortunately, the debate in Britain so far has asked the question, "what's wrong with ID cards?" The appropriate approach, however, should ask, "what's right with ID cards?" (This is referred to as 'the justificatory principle' throughout this document).

If this one were just voluntary would you still oppose?

- Yes, for two reasons:
 - (1) Any 'voluntariness' would be illusory. This is clear from both the language of the Home Office and Home Secretary throughout this process, and comparative experience. In September 2001 David Blunkett announced that the cards would be compulsory to obtain, but not compulsory to carry; the consultation document, *Entitlement Cards and Identity Fraud*, claimed the cards would be 'voluntary' but public services would be inaccessible without

them, and so they would be de facto compulsory (at least for the poor); the latest document, *Identity Cards: The Next Steps*, reveals that they will be “mandatory” for foreign nationals during phase one (what sanction will be attached to non-compliance and how foreign nationals and British citizens will be distinguished is unclear). Comparative experience reveals that ‘voluntary’ cards are often compulsory in practice, to obtain and to carry (the Greek, French and Portuguese police routinely request ID cards to be produced from the wallets of those they stop), and also that some governments dub cards ‘voluntary’ or ‘pseudo-voluntary’ simply to sidestep parliamentary and public criticism (Australia and New Zealand¹ are good examples of this, although in both cases the cards were eventually rejected).

(2) If the scheme were to be truly voluntary, this would undermine all of the supposed benefits set out by the Home Office and Home Secretary.

2. What do you think about the Office of National Statistics for a U.K. population register? Is this not a sensible way to make record-keeping more efficient?

- No. Liberty has a number of concerns.
- First, it is unclear what precise records will be kept, and what the purpose will be. There are two conflicting positions which we assume are being considered by the Home Affairs Committee under this heading: (i) the National Identity Register outlined by the Home Secretary in *Identity Cards: The Next Steps* and in public statements; (ii) the Population Register being considered by the Office for National Statistics’ *Citizen Information Project*.

(i) National Identity Register

- Details unclear as to what information the National Identity Register is to include and what purpose it is to serve. It is presented in *Identity Cards: The Next Steps* as a stepping stone to a national identity scheme,

¹ It is interesting to note that the term ‘Entitlement Card’ was first used in New Zealand in 1991 to disguise a de facto compulsory card as a ‘voluntary’ one. It is inconceivable that the Home Office and the government were unaware of this when they used the term in 2002.

with no claimed benefit in and of itself. Statements from the Home Secretary have made clear that the register is to include only basic information (name, address, age, sex) which suggests it is different to the population register outlined below.

- Even if the proposed National Identity Register is this limited, it is proposed by the Home Office as the basis of a multi-purpose scheme – not just focused on “record-keeping”. A register connected to an ID card scheme would not simply be a more efficient or “sensible” method of conducting a current practice, but a new system for a new, more broad-ranging aim.

(ii) Citizen Information Project and the Population Register

- Preliminary work completed in summer 2002 by Patrick Carter, a member of HMT’s Public Services Productivity Panel, indicated that government could provide better services at lower cost if the same basic information about people was not collected and stored in many different databases held by the public sector. The Citizen Information Project feasibility study has considered the proposition in more detail and concluded that benefits could be realised by holding, effectively in one place, a selection of information about people that could be widely used across the public sector. The feasibility study examined operational concerns only, and not ethical, legal and constitutional issues.
- In addition to including personal information, the register would include a unique reference number, an aspect never mentioned by the Home Office or Home Secretary in relation to the National Identity Register. This unique reference number is needed for efficiency, but the Citizen Information Project say it could have “a wider use,” and they have specifically mentioned “the potential for data linkage”.

- This proposal cannot be looked at in a blinkered manner. It must be put into the broader context and examined alongside the incremental expansion of Regulation of Investigatory Powers Act (RIPA) powers, the national DNA database, proposed national database on all children, and so on. Of particular concern is the Performance Innovation Unit of the Cabinet Office's proposed 'presumption in favour of data sharing' unless there is a specific reason not to share data, a reversal of the traditional presumption in favour of the citizen's privacy and autonomy and a reversal of the ECHR approach.

3. **If there are problems why do so many other EU nations have them?**

(1) Not comparing like with like:

- No other common law countries have them. The only other common law country in the E.U. (Ireland) opposes them.
 - ID card schemes across Europe differ wildly in function and form.
- Cherry-picking selective aspects of policy in other European countries is nonsensical. For example, Germany has a fully compulsory ID card scheme but some of the strongest privacy laws in Europe (a constitutional right and the equivalent of a privacy 'tort'). If we are to emulate their card, why not their safeguards?
- Differences of history and culture lie behind the fact that other E.U. countries have ID card schemes of some sort. There are two separate issues raised by the Committee's question: (i) why did they bring them in the first place? (ii) why do they still have them?

(i) Origin of ID card schemes in Europe

The majority of E.U. countries with ID card schemes have had them in place for a long period of time (France have had them in some form since 19th century; Belgium since 1919; Greece since the 1940s; Portugal, Spain, Germany and Italy since they were ruled by fascist governments). The

timing means that there hasn't been any real, modern public debate in these countries - it's wrong to imply they have positively endorsed ID cards when they just haven't abolished them.

(ii) Retention of those schemes

The schemes have been retained for various reasons, although primarily they have been retained in the absence of a 'positive' reason to abolish them (this was acknowledged by the Information Commissioner, Richard Thomas, in his evidence to the Home Office – the long-standing existence of ID cards means they've become a largely unquestioned aspect of society in many of these countries). Another key reason for their retention is the fact that military service is compulsory in many continental European countries and so the relationship between the citizen and state reflects this duty.

4. **There is going to be an EU health insurance card coming in. Does this type of development make ID cards desirable & inevitable?**

(1) Does this development make ID cards desirable? No. The EU health insurance card is purpose-specific (the holder will be able to access free medical treatment anywhere in the EU). There is a fundamental distinction between purpose-specific identification (driving licences allowing you to drive, passports enabling you to travel, library cards enabling you to borrow books) and a general, multi-purpose identification card. The EU health insurance card is designed to facilitate free movement of persons and allow access to free medical treatment outside one's own country, a reasonable and targeted purpose.

(2) Does this development make ID cards inevitable? No. We already have NHS cards and national insurance numbers in this country, but this does not make ID cards inevitable. Besides, the EU health card proposals make clear that it will be for each European country to choose whether to include records of treatment received, photographs and biometric data.

(3) Finally, and most importantly, referring to EU developments as a justification for the scheme outlined in Identity Cards: The Next Steps is bizarre as the two-tier system undoubtedly breaches E.U. law (despite the protestations of the Home Office in footnote 2 of that document). European Court of Justice case law has established that if there is a sanction for non-national E.U. citizens not carrying/obtaining an ID card, there must be a comparable sanction for nationals who do the same. The Home Secretary's proposed scheme makes ID cards 'mandatory' for non-nationals staying in the U.K. for over 3 months during phase one, but not compulsory for British citizens, which constitutes a clear breach.

5. Why does Privacy International think the European Convention on Human Rights (ECHR) is breached?

- It's for parliamentarians to examine the merits and proportionality of the government's proposals, taking into account privacy, the narrower issue of data protection compliance, and other issues.
- Article 8, ECHR provides a useful tool for the Houses of Parliament to examine whether the arguments made in favour of ID cards in general and the proposed scheme in particular stand up to scrutiny. Article 8 is structured in a manner which gives presumptive weight to the right to privacy, and limitations to that right must be strictly construed. This dovetails with the justificatory approach to privacy, liberty and autonomy issues in the British constitutional tradition.
- The 'margin of appreciation' doctrine in Strasbourg jurisprudence means that there's a self-fulfilling prophecy element to this: if the majority of European states choose to have an ID card scheme, and have had one since before the ECHR was signed, a Strasbourg court will not necessarily be able to find that it breaches Article 8. However, there is no 'margin of appreciation' doctrine in the domestic courts and so the domestic courts must approach Art. 8 in a stricter manner than the Strasbourg courts. The justificatory approach was adopted by the House of Lords in the *Daly* case.

6. The Home Office do not claim ID cards are a magic bullet but do you accept they are a useful tool for fighting crime?

- No. There is no evidence which backs up this crucial assertion by the Home Office. How would an ID card scheme help tackle crime? There is no real evidence from other countries with ID card schemes that it has any impact on general crime or even identity fraud. Apparent ‘evidence’ is entirely anecdotal. Common sense shows no link between the problem and the proposed solution.
 - ‘General’ crime: the police’s problem is not with identifying suspects, but with the evidential chain linking suspects to the crime. ID cards could not assist with this.
 - Illegal immigration and working: currently, employers are obliged to request identification and entrants to the country are obliged to give a biometric (fingerprints) for the purposes of the Application Registration Card (ARC). If unscrupulous employers do not currently ask for existing documentation why will they suddenly start asking for ID cards?
 - Identity fraud: if anything, identity fraud may become easier and more profitable. If the card is trusted as a gateway to a plethora of public services and entitlements, the market in forgeries will be high. Also, common sense suggests that having to provide multiple forms of ID is some sort of barrier to ID fraud - a one card proves all approach is fraught with dangers (this is why the ‘trusted traveller’ card has been opposed in the U.S.).
- Even if ID cards could help to tackle some crimes in some ways, this is not – of itself -enough to justify them. The ID card would have to be shown to be proportionate and cost-effective. Police resources could be

better focused, e.g. more police to improve detection rates, and benefit agency workers could be better trained in spotting fraud, and so on.

- The scheme as proposed does not allow for on the spot requests for ID cards (although French and Belgian experience suggests this will not stop it happening). The 7-day rule means that the scheme will only inconvenience the law-abiding citizen and the police and will play no part in stopping the law-breaker.
- Even the Home Secretary cannot make up his mind on this. The Home Office itself accepted that terrorism and ‘ordinary’ crime would not be tackled by an identity card scheme in the *Entitlement Cards* document (this “acceptance that entitlement cards will have little part to play in bringing criminals to justice or fighting terrorism” was praised by the Info Commissioner in his submission to the HO, page 1). However, these arguments were revived after the consultation had concluded.

7. Liberty expressed concern about the Government’s ability to keep data secure. Is this a question of perception? If not is there an independent body whose assessment of the Government’s plans Liberty would trust?

Is this a question of perception?

- This is far more than a perception issue. Reviews of data matching, data mining and Data Protection Act (DPA) compliance by public bodies have shown this. 2 possible examples: (i) Regulation of Investigatory Powers Act 2000 (RIPA) example – public bodies have consistently stepped outside the bounds of what’s permissible under RIPA, and it’s then been necessary to draft orders to make widespread illegal behaviour legal (“regulate the unregulated,” in Home Office speak); (ii) recent statements by the Information Commissioner regarding lack of compliance with his Code of Practice on CCTV by public bodies, including the police.

If not is there an independent body whose assessment of the Government's plans Liberty would trust?

- Parliament is the appropriate independent body to review the government's proposals at this initial stage.

Liberty would not be satisfied with the introduction of an ID card scheme with 'safeguards' vested in another body. Liberty is not simply looking for safeguards to the scheme, but a justification for its existence in the first place. No independent body can give us that when the government has failed to.

- A number of issues are raised by this suggestion:
 - (i) Can wide-ranging constitutional concerns be appropriately sub-contracted to any body other than existing limbs of the constitution?
 - (ii) Can this question be answered anyway when it is so vaguely phrased (what body, how independent, what precise safeguards)?

Justificatory principle again: we are not simply looking for safeguards to the scheme, but a justification for its existence in the first place. No independent body can give us that when the government has failed to.

8. Everyone has expressed concern about e.g. forgery. Could two forms, e.g. iris scan and fingerprint, solve this?

- Germany's study into a double biometric (to be potentially introduced from 2006) does not appear to have been examined at all by the Home Office.
- A leading biometric expert, based in the U.K. and responsible for a number of governmental biometric schemes (including facial recognition technology deployment) has expressed concerns to us regarding the most advanced biometric technologies available on the market. The leading U.S. system was cracked by a group of Japanese graduate students within a term in 2003.

9. Liberty expressed the need for proper investigation into feasibility. Is not, for example, the passport office pilot an example of this? What else would you ask for?

- No feasibility study would assuage our principled concerns.
- The passport office pilot involved a self-selecting group and the number of refusals to participate in the trial was not even recorded. Lack of honesty and methodological rigour in the process.
- No adequate comparative work has been undertaken, probably the best way to test feasibility. The Home Office consultation document included a comparative section but it was riddled with errors and omitted unfavourable information. The claim that it was “not possible to have follow-up discussions with all of the countries surveyed” is unconvincing, given that the countries without ID card schemes were the ones neglected.
- Besides, the track-record of government IT projects is execrable, e.g. Libra Magistrates scheme. When this is added to the fact that no biometric project on this scale has ever been undertaken, and no current technology comes close to the sort of reliability needed, feasibility is certainly not addressed by a small-scale ‘investigation’ such as the passport office pilot in which a first year undergraduate science student could spot the basic methodological errors.

10. The Home Office will publish a race impact assessment. What will you be looking for?

- Any race impact assessment must be objective and wide-ranging. Given the Home Office’s political interest in the outcome, and its poor and misleading comparative material in the consultation document, it is incapable of conducting such an objective and wide-ranging assessment.
- Adverse race impact can be predicted from 3 things:

- (i) Comparative experience (young Algerian men in France, despite the ‘voluntary’ nature of the French ID card; Turkish *Gastarbeiter* in Germany, which has a fully compulsory scheme);
- (ii) the skewed operation of stop and searches under existing legislation (PACE, the Terrorism Act 2000, the Criminal Justice and Public Order Act) which has soured relations between the police and minority communities for years;
- (iii) structural, institutionalised discrimination in the scheme as proposed in *Identity Cards: The Next Steps*, both in its aims (if stopping illegal immigration is one of the scheme’s justifications, it stands to reason that skin colour will be a factor in deciding who to question) and its method (the 2-tier system discriminates between foreigners and British citizens from the outset).
- This links to the voluntary/ compulsory spectrum. On November 12th 2003 David Blunkett said (as reported by BBC News) that while people would not initially be compelled to carry their ID, “mobile technology was on the way which could allow police on the streets to check people’s ID by checking their fingerprints or eye scans.”²

11. Costs: There are going to be changes to international regulations, e.g. passport/ driving licences. The Government will need to make changes anyway. Will ID cards not add little to the cost that is already going to be incurred? The Government’s figure is £4 per person per annum over 10 years.

- We would not support this scheme if it were free.

² “Blunkett Outlines ID Card Plans,” BBC News, November 12th 2003, available at http://news.bbc.co.uk/1/hi/uk_politics/3259285.stm.

2. ID CARDS: COMPARATIVE OVERVIEW

2.1 Introduction

2.1.1 Caveats

- Unfortunately, there is a lack of methodologically and conceptually rigorous work in this area: there is a tendency for such “analysis” to be conducted by highly interested parties in a selective manner; apparent “trends” in countries with long-term experience of ID cards have not been fully investigated and so much of the evidence is merely anecdotal or assumptive. The most comprehensive work to date has been conducted in Australia, and there has also been strong research into the impact of national ID card schemes on ethnic and social minorities in some Continental European countries.
- Comparative legal (and policy) analysis is often misleading, as concepts and practices acceptable in one context may have very different effects and implications in other contexts.³ Simply transplanting an idea from one legal soil to another without considering the local conditions does not work.
- This caution is particularly important when comparing different legal families, such as civil law systems and common law systems. (An unfortunate aspect of the Home Office comparative material set out in *Entitlement Cards and Identity Fraud* is its neglect of the common law experience on the overall issue of a national ID card, yet its focus on Canada and the U.S. on the issue of non-nationals.)
- The very term ‘national ID card’ has the tendency to mislead, as it can take many different forms. The term is used throughout this document to refer, generally, to centralised, multi-purpose systems.
- As privacy is one of the issues of relevance to this discussion, it is important to remember that it is a complex term, and means very different things in different contexts. To some it refers to a catch-all “right to be let alone”; to others it refers

³ See further e.g. Otto Kahn-Freund, “On Uses and Misuses of Comparative Law” (1974) 37 Mod. L. Rev. 1; Basil Markesinis, “Comparative Law – A Subject in Search of an Audience” (1990) 53 Mod. L. Rev. 1.

to informational privacy only, and, more narrowly, to data protection rights. Surveys reveal that the Americans and some Continental European countries, for example, rate their financial privacy more highly than sexually explicit personal data. In Germany, they have comprehensive privacy laws and a strong understanding of the appropriate limits of government, the public have regularly protested about the proliferation of CCTV, yet they have an ID card which must be carried at all times. In the U.S. since 9/11, Americans have accepted many incursions into their personal privacy in the name of increased security, yet John Poindexter's Total Information Awareness programme collapsed following public protest and Bush's proposal for a national ID card was defeated in the early stages.

2.1.2 General Observations

Despite these caveats, however, a number of loose trends may be observed:

- Similar assumptions about the supposed benefits of ID cards are constantly made. This has been obvious on a micro level, within the U.K. alone: the arguments made in the House of Commons in 1989 when a Private Members' Bill supported the introduction of ID cards (assumption that it would help tackle crime, illegal immigration and benefit fraud) were made again by Michael Howard in the 1990s and now by David Blunkett. International experience reveals that ID card schemes tend not to be based on any formal statement of objectives, and supporting rhetoric and documentation tends to assume schemes to be general-purpose in nature.
- There is an unfortunate absence of the use of the justificatory principle in most national debates on ID cards (this is partly because ID card schemes in Western liberal democracies often predate the establishment of democratic government, and partly because of the above assumptions). Debates on ID cards, when they occur at all, often pose the question "what's wrong with ID cards?" The common law countries, however, buck this trend, and tend to frame the question differently – "what's right with ID cards?" Liberty supports this approach, beginning from a presumption that the citizen's liberty,

autonomy and privacy should not be disturbed by the State unless a legitimate reason to do so is shown, clear and compelling evidence supports the method chosen to achieve that aim, and a proportionate approach is taken.

- Prior to the introduction of ID card schemes, the public's support of such schemes is in inverse proportion to their knowledge of the proposals. In both Australia (1985-6) and New Zealand (1991) the public initially supported the idea, but as they found out more that support waned.
- Once card schemes are settled and in place, however, they tend to become accepted, in the sense that mainstream opposition fades. Again, this trend must be qualified by the fact that most developed countries with ID card schemes have had them in place for a long period of time, e.g. ID cards have been used in Belgium since 1919, so it is little wonder that they are now an uncontroversial part of life for anyone over 12.
- "Function creep" in ID card schemes is well documented. This occurs both with official sanction and without. Officially sanctioned creep involves the addition of new purposes or information to the card once in place. Creep without official approval most commonly occurs when a 'voluntary' aspect of the card scheme becomes *de facto* compulsory. This has occurred in countries both with a card which is compulsory to obtain, but not to carry, and in countries with a fully voluntary card. The best documented (and perhaps most worrying) example of this relates to discriminatory policing,⁴ but other examples include private sector companies routinely requiring the ID card to, for example, open a storecard account and security guards in public buildings requesting the national ID card before entry is permitted.
- Many ID card schemes, actual and proposed, have avoided the use of biometrics as identifiers in the past, despite their availability. The reason for this is unclear, although the most likely explanation is that, until recently, the only technically effective basis was fingerprints. As fingerprint identification techniques were developed for the express purpose of assisting in criminal investigation, it has been suggested that some qualms would be felt at

⁴ The decision in the *Wilcock v. Muckle* [1952] 1 K.B. 367 case is a homegrown example of this.

applying such a technology to the entire population (similarly, a biometric based upon measuring the skull with calipers would be unlikely to be widely used by any political party given its unfortunate associations).

- ID cards are usually derivative from seed documents such as birth certificates and passports. Of course, there are criminal aliases with impeccable credentials and passports, and birth certificates tend to be issued for the purpose of evidencing recorded details of the birth of some person, not to prove that a person is who he claims to be. In order to achieve the critical target of a one-to-one relationship between cards and individuals, the criteria used would need to be far narrower than tight passport and birth certificate rules. This has been a recurring issue in countries introducing an ID card for the first time.

2.2 Common Law Jurisdictions

- No common law country has a national identity card, an often-overlooked fact in comparative ID card analysis. In the Home Office material (Annex 3 to *Entitlement Cards and Identity Fraud*) these countries and their reasons for rejecting ID cards consistently are not examined – instead, simply the bald words “no card” are listed.
- Proposals to introduce such a card have been rejected by Australia (1987), New Zealand (1991) and the U.S. (most recently, 2002). The ‘Australia Card’ example is remarkably similar to the current U.K. situation politically (suggested by a Labour government using many similar arguments), but the U.S. example is most telling. In the U.S. since 9/11, Americans have accepted many incursions into their personal privacy in the name of increased security. Airline passengers have removed their shoes and stood with arms outspread as uniformed officials peered into their cabin baggage; the Department of Homeland Security has had mainstream support for its proposal to colour-code all passengers based on the likelihood that they may commit a terrorist act; banks have requested information from new customers which is promptly transferred to federal investigators. In this

context, the collapse of the ‘Total Information Awareness’ system and the withdrawal of the ID card proposal are extremely significant.

- Whilst no common law country has a national, universal, multi-purpose card, sectoral cards or identifier systems are often used for particular purposes, such as health or social security.⁵ Examples include the Social Security number in the U.S., the National Insurance number in the U.K., the Social Insurance Card in Canada and the Medicare Card in Australia. These were introduced as low-integrity systems designed for a single purpose, although the U.S. and Canadian Social Security numbers did grow from this and have been used for additional public and private sector purposes. Successive Committees established during the 1980s and 1990s to consider whether the U.S. Social Security number and Card scheme should be replaced recommended against such a project on the grounds of impracticality and excessive infringement of human rights. Some common law countries also use identifiers for particular groups, e.g. fingerscanning systems for welfare recipients have been implemented.⁶
- The concept of ‘one-person-one-identity’ which underlies the Home Secretary’s proposed scheme is, as has been pointed out in the Australian debate in particular, dubious in a common law context. It is a concept foreign to traditional British and Australian law, because the use of an alias has never been in itself a crime. Many people ‘hide behind’ more than one name, variously for psychological, security and sometimes criminal reasons. Users of aliases include creative people like artists, authors and actors, and professional people, particularly females, but also staff at psychiatric and prison institutions, private detectives and intelligence operatives.

⁵ Interestingly, the reverse is also true in a non-common law country, Sweden: it has a ubiquitous national number, but no single official identity card.

⁶ See further Philip E. Agre, ‘Beyond the Mirror World: Privacy and the Representational Practices of Computing,’ in Agre and Marc Rotenberg (eds.), *Technology and Privacy: The New Landscape* (Cambridge, MA: The MIT Press, 2001), pp. 29–62, at p. 55.

2.3 European Countries

- Most European countries have some form of identity card, although they are (as acknowledged by the Information Commissioner) “not on the scale envisaged in the government’s consultation paper”.⁷
- Significantly, the only other common law country in Europe, Ireland, has no identity card or national ID scheme and its Minister for Justice, Michael McDowell, publicly refuted recent claims in Home Office documentation that it was considering introducing such a scheme.
- The purpose and function of schemes differ wildly across Europe. In Austria, Finland, France, Italy, Luxembourg, the Netherlands, Portugal and Sweden ID cards are ‘voluntary’; Belgium, Greece, Germany and Spain require citizens to carry the ID with them at all times.
- Identity cards in continental European countries are now largely uncontroversial largely due to the timing of their introduction. They have been in place for over half a decade in most countries (Belgium, 1919; Greece, 1940s; Germany, since the war; Portugal and Spain, hangover from dictatorships although now used for benign purposes, obviously).
- Identity cards in many of these countries are linked to the fact that military service is compulsory.
- Although the cards are long-standing, recently biometric cards and/ or smartcards have been phased in in a number of countries. Italy and Spain announced the introduction of microchips in cards to little complaint in 2003;⁸ Germany added biometric data to the card in response to 9/11 and by 2006 plans to include a digital photo plus fingerprints, a double biometric; Belgium is rolling out a card with a smart chip with the holder’s digital signature and authentication certificate.

⁷ ICO’s Response to *Entitlement Cards and Identity Fraud*, January 2003, p. 2.

⁸ In Italy the new documents look like credit cards. Personal information is stored in an optical memory strip and in a microchip. Individuals have the option of including health and financial information on the card’s digital record. The new Spanish model is dubbed the world’s first “internet ID card”. The card may be placed in a reader attached to a home computer and thus apply for a passport from home, or do other official business with the state or local administration.

- Two-tier identity card schemes have been held to breach European Union law. Community law does not prevent a Member State from carrying out checks on compliance with the obligation to be able to produce a residence permit at all times, provided that it imposes the same obligation on its own nationals as regards their identity card (Case 321/87 *Commission v Belgium* [1989] ECR 997, paragraph 12; Case C24/97, *Commission v Germany*, Opinion Of Advocate General Jacobs (1998); Case C24/97. *Commission v. Germany*, decision of the ECJ (1998), all annexed to this document). In the event of failure to comply with that obligation, the national authorities are entitled to impose penalties comparable to those attaching to minor offences committed by their own nationals, such as those laid down in respect of failure to carry an identity card. (A further restriction is that even if the sanction is comparable to that imposed upon nationals, it cannot so disproportionate a penalty that it becomes an obstacle to the free movement of workers.) The scheme outlined in *Identity Cards: the Next Steps* breaches this principle of equal treatment (compulsory in phase one for non-nationals, including EEA citizens).

3. FURTHER REFERENCES⁹

- 3.1 The Home Office: Card Schemes in other Countries
- 3.2 The proposed ‘Australia Card’ scheme
- 3.3 Case C24/97, *Commission v. Germany*, Opinion of Advocate General Jacobs (1998)
- 3.4 Case C24/97, *Commission v. Germany*, Judgment of the European Court of Justice (1998)

⁹ These materials are available directly from Caoilfhionn Gallagher at Liberty: privacy@liberty-human-rights.org.uk.