



The Identity Cards Act 2006

Draft Code of Practice on Civil

Penalties 2009

Draft Code of Practice issued in accordance with section 34 of the Identity Cards Act

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Presented to Parliament pursuant to Section 34 (4) of the
Identity Cards Act 2006

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1. The basis for this code of practice

1.1. This code of practice is issued under section 34 of the Identity Cards Act 2006 (“the Act”). The purpose of the code is to set out the following:

- When a civil penalty should be issued;
- How the amount of the civil penalty should be calculated;
- The way in which the civil penalty should be issued;
- How to appeal or object to a civil penalty; and
- Circumstances that should be taken into consideration when issuing a civil penalty and during the objection process.

1.2. In accordance with the Act, regard must be had to this code:

- By the Secretary of State when imposing a civil penalty under the Act;
- By the Secretary of State when considering an objection under section 32 of the Act; and
- By the court when determining an appeal under section 33 of the Act.

1.3. The Act lays out the legal duty of the Secretary of State to maintain a “secure and reliable record of registrable facts”. Ensuring the facts that are held on the National Identity Register (the “Register”) are accurate is an essential element of this duty and the civil penalty regime is in place to support this by enforcing the obligation of those who are on the Register to keep Register entries up to date and to surrender an identity card if required to do so.

1.4. A civil penalty may be issued if a person fails to comply with the requirements imposed upon them under the Act, namely, to notify the Secretary of State of changes affecting the accuracy of the Register and to surrender an identity card when required to do so. The requirements under section 7 of the Act, regarding those who are compulsorily registered, will not be commenced until compulsory registration is in force and, therefore, civil penalties will not be issued in relation to those at this stage. Section 2 of this document deals with liability for civil penalties.

1.5. The civil penalty scheme is not intended to be punitive or revenue-raising. It is intended to establish a mechanism which delivers a proportionate means of ensuring compliance with the terms of the Act. If there is good reason for failure to comply or, in cases where the requirements of the Act have been complied with at the time when an objection or appeal is considered, it will normally be appropriate to waive any penalty. The amounts of the penalty specified in the Act are meant as guidelines, the actual amount imposed will be determined on a case by case basis having regard to the principles set out in this code and all the circumstances of the case.

1.6. It is very important that card holders are aware of the importance of these obligations and the civil penalty regime will act as a strong encouragement to comply and will ensure that it is possible to penalise anyone who flaunts the law. It is already a requirement by law for holders of driving licences to notify changes of name or address and that requirement is enforced through a criminal, as opposed to a civil, penalty.

1.7. It should be noted that persons may be issued with further civil penalties if they continue fail to comply with a requirement (see paragraph 3.5), even if they have paid the civil debt.

1.8. A similar civil penalty regime is in place for biometric immigration documents (also known as identity cards for foreign nationals) issued under the UK Borders Act 2007. However, the sanctions against cases of non-compliance under the UK Borders Act 2007 are much wider and may include refusal or curtailment of leave to remain. These wider sanctions are only applicable to foreign nationals who are subject to immigration control. Further information on civil penalties issued under the UK Borders Act 2007 may be found on the UK Borders Agency website at: <http://www.ukba.homeoffice.gov.uk/>.

1.9. Under section 4 of the UK Borders Act, biometric immigration documents may be designated and a single combined “ID card” would be issued and recorded on the Register. Combined ID card holders would then be subject to the maintenance requirements of both Acts. Where a person fails to comply with a similar requirement under both Acts, the Secretary of State will only impose a sanction under the UK Borders Act 2007.

2. Liability for civil penalties

2.1. Under the Act the Secretary of State may impose a penalty where satisfied that a person is liable to a penalty. Liability may arise in the following situations under the following sections:

Section 10: Notification of changes affecting the accuracy of the Register

2.2. **Section 10(7)** Failure by an individual to whom a card has been issued to notify the Secretary of State of prescribed changes of circumstances which affect the information held on the Register, or of errors in that information of which the cardholder is aware: maximum penalty £1,000.

2.3. In considering liability in relation to changes of circumstances, the Secretary of State will need to be satisfied that the person concerned has been issued with an ID card; that there has been a relevant change of circumstances as set out in regulations under section 10 *The Identity Cards Act 2006 (Notification of Changes and Loss, Theft etc. of ID Cards) Regulations 2009*; and that the person concerned has not notified the Secretary of State within the relevant period set out in those regulations. For example, regulation 5 provides that a change of an address recorded in the Register should be notified within 3 months of the change taking place.

2.4. In relation to errors in the information in the Register, the Secretary of State will need to be satisfied that there was an error in the entry relating to that individual and that he was aware of it. Deliberate or reckless provision of false information is a criminal offence under section 28 of the Act with a maximum penalty of 2 years imprisonment. Where there are grounds to believe that an offence under that section may have been committed, the matter should be referred to the police to consider in conjunction with the Crown Prosecution Service whether a prosecution would be appropriate.

2.5. **Section 10(7)** Failure to comply with a requirement which is imposed in connection with a notification given under section 10: maximum penalty £1,000.

2.6. Where a notification of a change is made, the Secretary of State may require the person concerned to do one or more of the following in order to ensure the accuracy of the Register:

- To attend at a specified place and time;
- To allow his fingerprints and other biometric information, such as facial biometrics, to be recorded;
- To allow himself to be photographed;
- Otherwise to provide such information as may be required by the Secretary of State. This may include, for example, requests to provide relevant documents such as immigration documents, birth or marriage certificates.

2.7. In considering liability, the Secretary of State will need to be satisfied that a change has been notified, that the person concerned has been required to do one or more of the things referred to in paragraph 2.6 and that the person has failed to do so.

Section 11: Invalidity and Surrender of ID Cards

2.8. **Section 11(6)(a)** Failure on the part of a cardholder to notify the Secretary of State, where the cardholder knows or has reason to suspect that the card has been lost, stolen, damaged, tampered with, or destroyed. Maximum penalty £1,000.

2.9. Regulations under section 11 *The Identity Cards Act 2006 (Notification of Changes and Loss, Theft etc. of ID Cards) Regulations 2009* require a cardholder to notify the Secretary of State within one month if he knows or suspects his card has been lost, stolen, damaged, tampered with or destroyed. A card will be classed as damaged if it or anything on it has become unreadable or otherwise unusable. A card will be classed as being tampered with if it or the information on it has been modified, copied or otherwise extracted for an unlawful purpose.

2.10. In considering liability, the Secretary of State will need to be satisfied that one of those things has occurred; that the cardholder knew or had reason to suspect that it

had happened; and that the card holder failed to notify the Secretary of State within the prescribed period.

2.11. **Section 11(6)(b)** Failure on the part of a person who is knowingly in possession of an ID Card without the lawful authority of the individual to whom it was issued, or the permission of the Secretary of State, to surrender it as soon as it is practicable to do so: maximum penalty £1,000.

2.12. **Section 11(6)(b)** Failure, by a person in possession of an ID Card, to comply with a requirement imposed by the Secretary of State to surrender it within a specified period: maximum penalty £1,000.

2.13. The Secretary of State may impose such a requirement where it appears to her that:

- The ID Card was issued to another person;
- The ID Card has expired or been cancelled or is otherwise invalid;
- The ID Card has not yet been cancelled but is of a description of cards that the Secretary of State has decided should be re-issued; for example, if a batch of cards were to be recalled following the discovery of a defect in that particular batch.
- The ID card is in the person's possession in contravention of a relevant requirement. A relevant requirement would be when a card holder is legally required to surrender their card, in the case of a travel banning order, for example.

2.14. In considering liability, the Secretary of State will need to be satisfied either that the person concerned had a card belonging to someone else in his possession in circumstances where he must have known he was not authorised to do so or that a specific requirement to surrender a card has been imposed and has not been complied with. For example, while it may be obvious that a card found in the street belonging to a stranger should be surrendered, this may not be the case in relation to a card belonging to a family member. It will not be appropriate to impose a penalty on

family members of a deceased person unless a specific requirement to surrender has been made and not complied with.

2.15. Possession of a card issued to another without reasonable excuse may also be a criminal offence under section 25 of the Act. Where it appears there is no innocent explanation for possession of a card or that it may have been intended to mislead, the matter should be referred to the police and Crown prosecution service to consider whether a prosecution is appropriate.

2.16. If a person has voluntarily surrendered their identity card, by formally returning it to the Secretary of State, a civil penalty will not normally be issued in the case of failure to comply with maintenance requirements.

3. Determining the amount of the civil penalty

3.1. The basic penalty level for a person's initial failure to comply with a maintenance requirement will be $\frac{1}{8}$ of the maximum statutory penalty (currently £1,000). The Secretary of State will increase the amount of the civil penalty for continued and subsequent failures to comply with a requirement, up to the maximum statutory penalty allowed – see the Sanctions Table at paragraph 3.7.

Evidence of extenuating circumstances

3.2. The Secretary of State will also consider whether the person has evidence of extenuating circumstances which would warrant a discount to the level of civil penalty notice issued. This will include factors such as where the person can demonstrate he has limited financial means.

Where there are households with limited financial means

3.3. The Secretary of State may discount the penalty issued to person by the amount stated in the Sanctions Table where there is satisfactory evidence that the issuing of a civil penalty would cause undue financial hardship. An example would be where the person provides evidence that he is in receipt of:

- means tested benefits; or
- income related benefits.

Any evidence of the financial circumstances of the individual of which the Secretary of State is aware should be taken into account.

Application of discounts for extenuating circumstances

3.4. Where a person provides evidence of more than one extenuating circumstance (see section 7 of this document for details of extenuating circumstances) the Secretary of State will only allow a single discount regardless of the number of extenuating circumstances.

Further incidences of non-compliance

3.5. Where there are further incidences of non-compliance or continued failure in respect of the original requirement in a five-year period, the Secretary of State may increase the level of penalty by the amounts shown in the Sanctions Table to the statutory maximum. The total amount of the penalty will be based on the number of times the person failed to comply.

Payment of penalties

3.6. Once the amount of the civil penalty has been fixed, the Secretary of State or the civil courts may allow the penalty to be paid in instalments. The Secretary of State or the civil courts will decide the amounts and periods of payments.

3.7. Sanctions Table:

	Penalty amount
Basic penalty level	£125
Further incidences of non-compliance or continued non-compliance – for each additional failure ¹	+ £125
Evidence of extenuating circumstances ²	- £50

¹ For each additional occurrence of non-compliance in a five-year period, to a maximum of £1,000, e.g. the 2nd failure of a requirement in a five year period would attract a civil penalty of £250, (£125 + £125 = £250).

² Where evidence of extenuating circumstances is provided the penalty is reduced, e.g. A person in receipt of income related benefits who fails to comply with a requirement would be issued with a civil penalty of £75, (£125 - £50 = £75).

4. Warning letters and penalty notices

Warning Letters

4.1. Before imposing a civil penalty for non compliance with a requirement, it will normally be appropriate to send a warning letter setting out the reasons why the Secretary of State has reason to believe liability to a civil penalty has arisen and urging compliance.

4.2. The warning letter will set out the reasons why the Secretary of State considers the person has not complied with one or more of the maintenance requirements, and what action may be taken.

4.3. The warning letter will also outline how the person may avoid a sanction being imposed providing the person:

- arranges to comply with the necessary requirement within the fifteen working days warning period, and gives notification to this effect;
- provides a credible explanation as to why he was unable to comply and gives notification, which demonstrates that compliance will take place as soon as is practically possible;
- provides a credible explanation that allows the Secretary of State to put into place special arrangements to enable the person to comply; or
- provides a credible explanation or satisfactory evidence that he cannot comply.

Following the issuing of a warning letter

4.4. The person will have **fifteen-working days**, from the date the warning letter was posted, to comply with the requirement or to take one of the actions listed in paragraph 4.3.

4.5. Where the person fails to do so by the time the **fifteen-working days** period has passed, the Secretary of State will consider all of the relevant facts, including any written response to the warning letter, before deciding to take action.

4.6. Section 7 of this document deals with further extenuating circumstances which the Secretary of State will take into consideration when deciding whether to issue a civil penalty.

4.7. The Secretary of State will not proceed to issue a civil penalty notice until the **fifteen-working days** warning period has passed.

4.8. Where the Secretary of State decides to issue the person with a civil penalty notice, the person will have a right to submit a written objection within **thirty-working days** from the date the civil penalty notice was posted (see section 5). The person will also have a right of appeal against the Secretary of State's decision to issue a civil penalty notice (see section 6).

The Penalty Notice

4.9. When imposing a civil penalty the Secretary of State must issue the defaulter with a notice. The contents of the notice are set out in section 31 of the Act. It must contain the following information:

- The reasons for deciding that the person is liable to a penalty
- The amount of the penalty
- The date before which the penalty must be paid
- A description of the ways in which payment may be made
- An explanation of the steps the defaulter must take if he wishes to object to the penalty or appeal against it to the courts or both, including the grounds on which he may object and appeal
- An explanation of the powers of the Secretary of State to enforce the penalty.

Service of civil penalties

4.10. The civil penalty notice will be treated as properly served (or intimated in Scotland) where a notice is:

- sent by first class post, in a prepaid registered envelope or by the recorded delivery service, addressed to the person on whom the notice is required to be served. It is to be taken to have been received by (and served on) that person on the second day after the day on which it was sent;
- sent by facsimile, to the last known facsimile number of the person to whom the notice is required to be served. It is to be taken to have been received by (and served on) that person on the day on which it was sent;
- sent by electronic mail, to the last known electronic mail address of the person to whom the notice is required to be served. It is taken to have been received by (and served on) that person on the day on which it was sent; or
- delivered in person to the defaulter.

5. Objecting to civil penalties

5.1. Under Section 32 of the Act, a person on whom a penalty has been imposed may object to the penalty on the following three grounds:

- That he is not liable to the penalty;
- That the circumstances of the contravention in respect of which he is liable make the imposition of a penalty unreasonable;
- That the amount of the penalty is too high.

5.2. A notice of objection must set out the grounds of the objection and the objector's reasons for objecting on those grounds. It should be given in writing (either by post or electronically), on the appropriate form, and within **thirty-working days** from the date that the civil penalty notice was posted.

5.3. The Secretary of State must consider a notice of objection and may then:

- cancel the penalty
- reduce the penalty
- increase the penalty
- confirm the penalty

5.4. Where the Secretary of State increases a penalty he must issue the objector with a new penalty notice. If he reduces, cancels or confirms the penalty he must inform the objector in writing.

5.5. Where the Secretary of State has not responded to the objection within **thirty-working days** from the date that the objection was received by post or electronically, the civil penalty notice will be cancelled. However, it remains open to the Secretary of State to issue further penalty notices if the person's failure to comply with the requirement continues (see paragraph 3.5).

5.6. Section 7 of this document deals with the factors which the Secretary of State will take into account in considering an objection.

6. Appealing against civil penalties

6.1. A person on whom a penalty has been imposed may appeal in England, Wales or Northern Ireland to the county court or in Scotland to the sheriff. The grounds of appeal are the same as the ones on which an objection may be made, namely:

- That he is not liable to the penalty;
- That the circumstances of the contravention in respect of which he is liable make the imposition of a penalty unreasonable;
- That the amount of the penalty is too high.

6.2. An appeal may be brought regardless of whether a person has made an objection to the Secretary of State. In practice if a person appeals whilst his objection is pending, the court will delay consideration until the outcome of the objection has been notified to the objector.

6.3. An appeal will be a re-hearing of the Secretary of State's decision to impose a penalty, and any subsequent decision made after consideration of an objection. There are no statutory limitations on the evidence which may be brought before the court, including evidence which was not before the Secretary of State when he made his decision.

6.4. On consideration of an appeal the court may:

- allow the appeal and cancel the penalty
- allow the appeal and reduce the penalty
- dismiss the appeal

6.5. The court has no power to increase the penalty. The purpose of the appeal is to guarantee the right of access to the courts for those on whom penalties are imposed; it is not intended to be punitive.

7. Extenuating circumstances

7.1. This section describes the extenuating circumstances that should be taken into consideration when deciding to issue a civil penalty or when considering grounds for an objection to a civil penalty.

Liability

7.2. Liability turns on whether the circumstances set out in section 2 of this document are present.

7.3. Any evidence which suggests that the circumstances which gave rise to a penalty under a particular section were not in fact present should lead to cancellation of the penalty. The following are examples for illustrative purposes only:

- A person on whom a penalty has been imposed under section 10(7) because he has failed to notify the Secretary of State of a change of address produces evidence which shows that he did not in fact move house or that he did in fact notify the Secretary of State. The penalty should be cancelled.
- A person on whom a penalty has been imposed under section 11 for failing to notify loss of a card produces evidence that he has been abroad for 6 months and did not know his card had been stolen. The penalty should be cancelled.

The circumstances of the contravention in respect of which he is liable make the imposition of a penalty unreasonable

7.4. Even if liability is established, there may be circumstances which make the imposition of a penalty unreasonable. It is impossible to predict all the circumstances which might be raised. All relevant facts known to the Secretary of State and any representations from the person concerned should be considered at the objection stage. These may include written representations or other evidence (such as medical certificates) or representations made by telephone or e mail. Some relevant factors are

set out in the following paragraphs but this is not an exhaustive list. Each case should be considered on its merits.

The awareness of the person concerned of the requirement

7.5. If there is genuine doubt as to whether the person concerned was aware of the requirement, any penalty imposed should normally be cancelled. This may be because they had no notice of the requirement or because they were not able to understand it due to language difficulties, illiteracy or lack of intellectual capacity.

Where a person lacks capacity to make a decision

7.6. Where there is satisfactory evidence that a person lacks the capacity to make decisions within the terms of the *Mental Capacity Act 2005*, the Secretary of State will allow the person to identify a carer, close friend or family member who is able to assist him to comply. Where the person concerned is unable to identify someone who is able to assist, efforts will be made to identify such a person. Where the person has appointed an attorney, under a lasting power of attorney, whilst he had capacity, or a deputy has been appointed by the Court of Protection, it is likely that he will be the most suitable person to assist. Where there is satisfactory evidence that the person is an adult with incapacity within the context of the *Adults with Incapacity (Scotland) Act 2000*, any guardian, continuing attorney, welfare attorney or manager of an establishment exercising functions under this Act or under any order of the sheriff in relation to the adult is likely to be the most suitable person to assist the person.

7.7. Where no suitable person can be identified, the Secretary of State will act in accordance with the Acts and their principles in supporting the person to comply with the requirements. In particular, the Secretary of State will ensure that the person:

- was given the opportunity to make decisions for himself and has the fullest input into any decisions made on his behalf;
- was given help to express his wishes, ensuring that he was able to make those decisions for which he does have capacity; and where decisions are made on the person's behalf, the person's wishes, where possible, will be taken into consideration.

Where a sanction will be imposed upon a vulnerable person

7.8. The Secretary of State will only proceed to impose a sanction where there is satisfactory evidence that the person intentionally failed to cooperate, and that the person also understood what was required of him and the consequences of not complying. This is despite the availability of alternative arrangements, where such arrangements are reasonably practicable.

The reason for non compliance

7.9. Even if there is no doubt that there has been a relatively serious failure to comply with a requirement of which the individual concerned was aware, there may be a good reason why he has not complied. For example, he may have been abroad or in hospital at the relevant time; or may have been suffering a bereavement; or there may be some other reasonable excuse.

Whether there is a history of previous contraventions

7.10. It may often be appropriate to cancel or reduce a penalty on the first occasion there is a failure to comply. However successive failures should normally attract successively higher penalties, subject to the appropriate maximum.

Whether there has been compliance since service of the penalty notice

7.11. As the purpose of the penalty scheme is to encourage compliance rather than to punish, it will usually be appropriate to cancel the penalty if the individual has complied with the relevant requirement by the time the objection or appeal is considered. Mere lateness should not generally lead to a penalty unless it is both deliberate and prolonged or repeated.

The amount of the penalty is too high

7.12. This ground overlaps to some extent with the question of reasonableness. If there are mitigating circumstances such as those listed above but it is still reasonable to impose a penalty, the financial circumstances of the person concerned should be considered on this ground.

7.13. Any evidence of financial circumstances of which the Secretary of State is aware at the point of imposition of the penalty, or which is made available to him at the objection stage, or which is put before the court at the appeal stage should be taken into account.

7.14. Only in the most extreme circumstances should that result in cancellation of the penalty. Rather the penalty should be reduced to an amount which is affordable.