



RESULTS OF THE PUBLIC CONSULTATION ON THE “CODE OF PRACTICE ABOUT THE SANCTIONS FOR NON-COMPLIANCE WITH THE BIOMETRIC REGISTRATION REGULATIONS” IN RELATION TO “COMPULSORY IDENTITY CARDS FOR FOREIGN NATIONALS”

Produced by MVA Consultancy and Analytica Consulting, under management of
Immigration Research and Statistics

EXECUTIVE SUMMARY

There were 17 responses received to this public consultation.

THE COMPLIANCE REQUIREMENTS

Ten respondents felt that the distinction was not clear between the likely primary and secondary compliance requirements of the Code of Practice. Fifteen respondents commented on the requirements which they thought should be reclassified. Some respondents suggested that any change in circumstances or personal details, and all registration requirements, should be secondary requirements.

THE TYPES OF SANCTIONS

Nine respondents felt there was a lack of clarity in the Code of Practice on the different sanctions that might be imposed.

IMMIGRATION SANCTIONS

Respondents were split on whether the Code of Practice clearly outlined reasons for not imposing an immigration sanction for failure to comply with a compliance requirement. Those who thought reasons were not clearly outlined (8) wanted to see further detail and more precise terminology to make the Code of Practice clearer. Ten respondents felt that the Code of Practice did not clearly outline the circumstances when the Secretary of State would refuse an immigration application for an ID card for a foreign national. Nine respondents also felt that the Code of Practice did not clearly outline the circumstances when a person's existing leave to remain might be varied (curtailed) or cancelled.

Seven respondents felt that the Code of Practice clearly outlined the circumstances when a person might appeal against the imposition of an immigration sanction. Those who disagreed (5) sought clarity on when an appeal would be possible and thought the lack of appeal rights on the granting of an ID card would lead to cases of judicial review.

CIVIL PENALTIES

Eight respondents felt the Code of Practice did not clearly outline the circumstances when the Secretary of State may issue a civil penalty notice.

Respondents thought failure to comply with a primary or secondary compliance requirement (10), a history of non-compliance (12) and whether a person had limited financial means (10) should be 'very important' or 'important' in determining the amount of the civil penalty. Slightly fewer respondents (8) thought the presence of children under the age of 18 in the person's household who have also failed to comply was 'very important' or 'important'.

Designated responsible adults¹ were seen most often, but not always, as 'those with parental responsibility' (7) and/or 'those given responsibility for a child's care through the courts' (7). Five respondents selected 'other responsible adult' and made other suggestions. Smaller proportions of respondents selected response categories referring to those with parental responsibility and foster carers. This question allowed for multiple responses and all respondents selected more than one response.

Respondents were divided on whether the Code of Practice clearly outlined the circumstances when a person might object to or appeal a civil penalty notice. Twelve respondents thought that 20 working days was an insufficient period within which to object to a civil penalty notice. A period of 30 or more working days was preferred.

¹ 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 responsible 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.

PROVISIONS FOR VULNERABLE PEOPLE

Respondents (8) thought that the Code of Practice did not clearly outline the circumstances when the Secretary of State would consider a person to be vulnerable. Seven respondents commented on additional circumstances that they felt the Secretary of State should consider under the provision of vulnerable people. These include suggestions of considerations for those with mental incapacity and those who are victims in some way.

WHEN A SANCTION MAY NOT BE IMPOSED

Eight respondents thought that the Code of Practice did not clearly outline the circumstances when a sanction would not be imposed.

1. INTRODUCTION

The consultation on 'Compulsory ID cards for foreign nationals' sought to gather views on the 'Code of Practice about the sanctions for non-compliance with the Biometric registration regulations'.

METHODOLOGY

Letters and e-mails were sent to approximately 180 organisations identified as key stakeholders to alert them to the consultation and encourage responses. Reminders were sent to increase response rates.

The consultation was also made available via the Border and Immigration Agency (now the UK Border Agency), and Home Office websites. Respondents could return either hard-copy or electronic responses.

The consultation period ran from 25 February to 5 May 2008. A total of 17 responses were received during this time. Fourteen responses were received electronically and there were three hard copy responses.

Please note that, given the very small number of respondents, findings cannot necessarily be considered representative of the general population or the stakeholders identified. Some response bases are particularly small as not all respondents answered each question.

RESPONDENT PROFILE

Nine responses were received from those replying on behalf of organisations, five from people responding in a professional capacity and four from members of the general public. Two of these respondents were responding both in a professional capacity and on behalf of an organisation. One respondent selected the "other" category. Respondents were able to select more than one category, for example responding in on behalf of an organisation as well as in a professional capacity.

Five responses came from organisations involved in immigration or legal advice, one of these being a private sector company, three from voluntary/

community/charitable organisations, one from an educational institution, one from central government and three from "other" organisations.

Twelve respondents supplied details of their nationality. The majority (8) were UK nationals, two were non-EEA nationals and one had dual nationality. Six respondents (all organisations) preferred not to provide this information.

The "other" organisations were a trade union, a Regulator of Immigration Advisors and a Non-Departmental Public Body. Respondent Profile Tables in Annex 1 provide more detail.

2. RESULTS

THE COMPLIANCE REQUIREMENTS

Q1a. Does the Code of Practice clearly distinguish between the likely primary and secondary compliance requirements of the forthcoming biometric registration regulations?

Ten of the 17 respondents said that the Code of Practice did not clearly distinguish between the likely primary and secondary compliance requirements of the biometric registration regulations. Five respondents agreed that a clear distinction is made and two respondents were unsure.

Some respondents suggested that any change in circumstances or personal details, and all registration requirements, should be secondary requirements. They requested clarification on potential penalties and the timeframes for compliance and questioned the legal basis of immigration sanctions.

Table 1 Q1a. Does the Code of Practice clearly distinguish between the likely primary and secondary compliance requirements of the forthcoming biometric registration regulations?

Response	Number of Respondents
Yes	5
No	10
Unsure	2
Total	17

All of the ten respondents who said the Code of Practice did not make a clear distinction between primary and secondary compliance requirements provided comments. The two respondents who said they were unsure also commented. The following bullet points detail respondents' feedback on the Code of Practice and suggestions on how information might be improved.

- Nine respondents commented on what they felt to be a lack of clarity and artificial distinctions between primary and secondary compliance requirements. Five respondents felt it was unclear why there was greater importance attached to some compliance requirements and

felt distinctions between the categories could be seen as arbitrary. Two of these respondents saw both primary and secondary compliance requirements as leading to the same sanctions. Three respondents thought the terminology could be confusing to non-EEA citizens or even a lay person. One respondent felt that the legal framework was unclear. Another respondent said there were “so many burdensome requirements” it would be difficult to remember which were primary and which secondary without having the Code of Practice to hand.

“We are not clear on the logic behind the distinction between primary and secondary compliance requirements.” (Organisation)

“It just seems unnecessarily complex to divide these requirements up. It is not very clear why some are more important than others.” (Individual)

“This appears to be quite confusing and I am not sure what is gained by having two categories of compliance requirements when contravention of either requirement may result in a sanction.” (Individual)

- One respondent questioned the legal basis on which the Code of Practice would be able to rely when immigration sanctions should be applied.

“... sanctions should be a last resort for non-compliance. There is no reason why civil penalties cannot be imposed in the first instance for ‘primary requirements’, particularly as this is what is suggested for those groups against whom an immigration sanction cannot be imposed. A civil penalty should therefore, be issued in the first instance and in our view would be a more proportionate measure.” (Organisation)

Suggestions

- Six respondents made suggestions on compliance requirements that they felt should move between primary and secondary. Four of these suggestions

related to the primary requirement of a person 'to notify a change in his circumstances which he knows or suspects affects his leave to enter or remain in the UK' and the secondary requirement to 'notify the Secretary of State when he knows or suspects that information provided in connection with his identity card for foreign nationals was or has become false, misleading or incomplete'. Respondents felt both should be a secondary compliance requirement. One of these respondents suggested legal assistance may be required to fully understand the distinctions between primary and secondary requirements and another supported the suggestion for change by pointing out the potentially serious consequences of non-compliance with primary requirements. Another respondent thought there should be a distinction between those applying for ID cards and those who already hold cards.

“Failure to comply with a primary requirement can have particularly serious consequences. It therefore seems unreasonable to make failure to notify a change in circumstances which an applicant suspects affects his leave a primary compliance requirement.” (Organisation)

- Two respondents pointed out that it is a secondary requirement 'to comply with any other requirement specified in the biometric registration regulations' whilst all other aspects of registration are in primary compliance. Another respondent suggests that deliberate falsifications should be a primary compliance requirement and negligence secondary.
- Three respondents sought clarification of the penalties that can be imposed. One respondent wanted clarification in general, another said that it was unclear where civil penalties would be imposed and where immigration sanctions would be used.

“If there is to be a distinction in the sanctions between non-compliance with primary and secondary requirements, then the two sets of requirements need clearly to be distinguished.” (Organisation)

- One respondent wanted clarification on the timeframes for notification within the secondary compliance requirements. The respondent suggested, for example, that a lost or stolen ID card should be required to be notified within 14 days.
- One respondent suggested the inclusion of examples of the circumstances that could lead to sanctions.

Additional Comments

A number of respondents made other points in response to this question, which did not directly answer the question and were outside the scope of the Code of Practice. These points are summarised below.

- Three respondents sought clarification on when foreign nationals would be required to show their ID cards. These respondents asked how individuals would be advised when ID cards needed to be shown and how, why, when and where they would be required to show their ID cards.

“There is an ambiguity around who needs to be informed of changes and how people go about doing this; when the card needs to be carried; who has the right to see it; how it will be read and who will report infringements.” (Organisation)

Q1b. Do you think that any of the compliance requirements (whether primary or secondary) should be reclassified, i.e. a secondary compliance requirement re-classified as a primary compliance requirement? If so, please say which requirement(s) you think should be re-classified – and why.

Fifteen respondents commented on the requirements they thought should be reclassified. Many respondents also raised concerns about the lack of distinction between primary and secondary requirements.

Some respondents felt that the distinctions between primary and secondary were artificial; others wanted clarification on these distinctions. Information that the card holder would be required to provide regarding ID cards, and the need to show ID cards, were both felt to be secondary requirements by a number of respondents. However a similar number wanted such aspects to remain as primary requirements.

Summaries of the themes raised are split by those relating to the distinction between primary and secondary requirements, those requirements that respondents thought should be primary and those requirements that respondents thought should be secondary. Several of the comments below echo opinions expressed in responses to Question 1a.

Distinction between primary and secondary requirements

- Five respondents reiterated calls for greater clarification on the division between primary and secondary compliance requirements. Two of these respondents felt the classifications to be artificial and unnecessary.

“We do not consider that the classification is serving any clear purpose in the Code and therefore consider suggestions for reclassification to be otiose.” (Organisation)

One of these respondents required clarification on the distinction between primary and secondary requirements before they could comment on reclassification. Another of these respondents suggested clarification was required regarding those “subject to immigration control” as referred to in the Code of Practice. A third respondent thought all requirements should be classified as secondary until specific details were finalised, as a number of the requirements were imprecise.

“The current “primary” proposals which require a person to “submit to a specific process for the provision of biometric information”, or “submit to a specific process to provide verification information”

are unacceptably vague and should not therefore be located within the primary requirements list until finalised.” (Individual)

- Two respondents sought a distinction between process of applying for an ID card, the need to show an ID card when requested and deliberate intention to deceive in relation to gaining or keeping an ID card.

Primary requirements

- Two respondents thought the requirement to notify the Secretary of State, when an ID card holder knows or suspects that information provided in connection with an ID card is or has become false, should become a primary compliance requirement. One of these respondents saw this requirement as a key aspect of the ID card process.

“The above secondary requirement goes to the heart of the reason for an identity card. It is important that any change in information is corrected immediately. This will help to ensure that a fraudulent application is not made and that the person who is presenting the card is the actual person.” (Individual)

- One respondent did not want to see any primary compliance requirements with the exception of applying and reapplying for an ID card.
- One respondent wanted the surrender of an ID card when required to be a primary compliance requirement.

Secondary requirements

- Two respondents said that any sanctions based on an ID card holder’s ‘suspicions’ that they may be in breach should be secondary.
- Two respondents wanted change of details and re-application to be secondary requirements, with one of these respondents doubting the need for change of details to be on the list of requirements.

- Two respondents thought that failure to advise a change in details should be a secondary rather than a primary requirement.
- One respondent suggested the requirement to notify the Secretary of State, when an ID card holder knows or suspects that information provided in connection with an ID card is or has become false, remain secondary and thought it should not be included in the list of requirements.
- One respondent sought recognition that migrant workers and many foreign nationals from non-EEA countries may not be able to supply past addresses, job history and family history as required as primary requirements in the Code of Practice.
- One respondent wanted failure to use an ID card to be a secondary requirements.

THE TYPES OF SANCTIONS

Q2. Does the Code of Practice clearly summarise the different sanctions that might be imposed? If you have answered no, please explain how the information might be improved.

Views were divided on whether the Code of Practice clearly summarises potential sanctions. Nine respondents agreed that the Code of Practice did clearly summarise the sanctions whilst seven respondents disagreed and one respondent was unsure.

There was confusion among respondents on what sanctions would be imposed, who they would be imposed upon and when they would be imposed.

Table 2 Q2. Does the Code of Practice clearly summarise the different sanctions which might be imposed?

Response	Number of Respondents
Yes	9
No	7
Unsure	1
Total	17

Seven respondents thought the Code of Practice did not clearly summarise the different sanctions that might be imposed and one was unsure. These respondents, as well as one respondent who thought sanctions were clearly summarised, provided comments or suggested improvements to the information provided.

- Five respondents sought clarity on how sanctions will operate and how each sanction will be imposed and if there would be differences depending on the category of immigrant.

“It should identify how the sanction will be applied to each class of immigrant. For example what happens if a person with Indefinite Leave to Remain violates a primary sanction versus someone on a student visa?” (Individual)

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- Two respondents thought there were three classes of sanctions, namely civil penalties, immigration sanctions and refusal to issue an ID card. One of these respondents pointed out that refusal to issue an ID card was included within immigration sanctions in one section of the Code of Practice but not in another. Therefore, the respondent felt, it was unclear in which circumstances there could be a refusal of an immigration application rather than a refusal to issue an ID card. This was important to the respondent because one decision was appealable, but not the other.
 - Two respondents were generally concerned about how decisions would be made on which sanctions to use and the potential for discriminatory impact. Two respondents were worried that an immigration sanction might be imposed on those who were unable to afford a civil penalty and that the Code of Practice would discriminate against the less well off. One respondent was unclear as to which sanctions were more, and which were less, serious.

The respondent who agreed that sanctions were clearly summarised did, however, raise concerns that the distinction between a sanction and a civil penalty was unclear.

“The Code makes no clear statement of the hierarchy of preference: whether a penalty will normally be preferred to an immigration sanction, or vice versa. Seriousness is stated at 3.2 to be a consideration, but no indication is given as to which sanction is regarded as the more serious.” (Organisation)

“(We are) concerned that immigration officers may use immigration sanctions to penalise those who are less able to afford to pay civil penalties. Groups such as the disabled and women, whose earning capacity tends to be lower on average could potentially suffer more greatly if the requirement is applied as we read it.”
(Organisation)

- Two respondents were unclear about the role the Secretary of State would play in relation to sanctions and the extent of discretionary power held by this Office.
- One respondent sought clarification on the process of removal from the UK if sanctions were breached.
- One respondent felt the distinction between sanctions was confusing and arbitrary, particularly as the sanctions could not be applied to all categories of migrants.

IMMIGRATION SANCTIONS

Q3a. Does the Code of Practice clearly outline the circumstances when an immigration sanction would not be imposed for failure to comply with a compliance requirement?

Respondents were divided on whether the Code of Practice clearly outlines the circumstances in which an immigration sanction would not be imposed for failure to comply with a compliance requirement. Seven respondents agreed and eight disagreed. Two respondents were unsure.

Table 3 Q3a. Does the Code of Practice clearly outline the circumstances when an immigration sanction would not be imposed for failure to comply with a compliance requirement?

Response	Number of Respondents
Yes	7
No	8
Unsure	2
Total	17

Seven of the eight respondents who felt the Code of Practice did not clearly outline the circumstances when an immigration sanction would not be imposed commented on this view or suggested how the information might be improved.

- Three respondents sought clearer definitions to better understand this issue, particularly in respect of what are ‘compelling reasons’. One wanted clarification on what would be a ‘compelling reason’ for cancelling Indefinite Leave to Remain (ILR); another stated that the guidance was unclear on what would be compelling reasons.

“This is anything but clear as no guidance whatsoever is given as to what would constitute compelling reasons.”
(Organisation)

- Three respondents thought that it was unclear how sanctions would apply to different categories of immigrants and how the Code of Practice

would interrelate with other provisions such as human rights legislation and international conventions on refugee status. Although the Code of Practice does address the position asylum seekers, these responses indicate that it is not clear how this would work in practice.

“...the Code should clarify the position of asylum seekers who for whatever reason fails to comply with the requirements. The Home Office needs to ensure that the requirements for asylum seekers do not conflict with the UK’s obligation under the Refugee Convention.” (Organisation)

We do not think it is entirely clear when an immigration sanction will not be imposed as one of the circumstances is when it would be “contrary to the person’s Refugee Convention rights, or their rights under the European Convention on Human Rights”.
(Organisation)

Suggestions

- One respondent suggested a non-exhaustive list of factors be provided that could lead to the cancellation of ILR.
- Another respondent suggested cases need to be decided based on individual circumstances.

Q3b. Does the Code of Practice clearly outline the circumstances when the Secretary of State would refuse an immigration application for an identity card for foreign nationals?

Ten respondents said that the Code of Practice does not clearly outline the circumstances in which Secretary of State would refuse an immigration application or an application for an ID card for foreign nationals. Six respondents thought that these circumstances were clearly outlined and one respondent was unsure.

Table 4 Q3b. Does the Code of Practice clearly outline the circumstances when the Secretary of State would refuse an immigration application and an application for an identity card for foreign nationals?

Response	Number of Respondents
Yes	6
No	10
Unsure	1
Total	17

Q3c. Does the Code of Practice clearly outline the circumstances when a person’s existing leave to remain in the UK might be varied (curtailed) or cancelled?

Nine respondents said that the Code of Practice did not clearly outline the circumstances in which a person’s existing leave to remain in the UK might be varied (curtailed) or cancelled. Seven respondents agreed that these circumstances were clearly outlined in the Code of Practice. One respondent was unsure.

Table 5: Q3c. Does the Code of Practice clearly outline the circumstances when a person’s existing leave to remain in the UK might be varied (curtailed) or cancelled?

Response	Number of Respondents
Yes	7
No	9
Unsure	1
Total	17

Nine respondents commented on their negative response to how clearly circumstances were outlined for the refusal of immigration applications and ID cards and/or the curtailment or cancellation of ILR.

- Five respondents felt the wording of the Code of Practice was ambiguous or subjective. They felt it was not clear how many infringements of primary and secondary requirements would lead to an effect on ILR. Respondents wanted to know what weight a primary requirement had, compared to a secondary requirement.

“The wording usually is ambiguous and needs to be definitive to ensure equal application of the law.” (Organisation)

“The fundamental issue that there is such wide discretion and arbitrariness applied in immigration and asylum law generally.” (Individual)

These respondents felt that the process needs to be more open and transparent. Words such as ‘reasonable’ were disputed. One respondent made the point that it could be quite ‘reasonable’ for a refugee not to have a permanent address or to have several different addresses over time, but that immigration officials had not viewed this as ‘reasonable’ in past cases.

“We feel that the circumstances where an application would be refused hangs on the interpretation of key words, and so it becomes subjective.” (Organisation)

Suggestions

- Three respondents felt that a complete list of definitions was required to clarify when applications or rights could be refused, curtailed or cancelled. One respondent suggested listing each primary requirement with the immigration sanction that will be applied shown next to it.

“The Code should specify the circumstances when (i) both penalties or (ii) each one of the penalties would apply.” (Organisation)

- One respondent called for a right of appeal to be guaranteed.
- One respondent said there should be no immigration sanction for non-compliance with secondary requirements.

Q3d. Does the Code of Practice clearly outline the circumstances when a person might appeal against the imposition of an immigration sanction? If you have answered no, please explain how the information could be improved.

The 15 respondents who gave a view on whether the Code of Practice clearly outlines the circumstances in which a person might appeal against the imposition of immigration sanctions were divided. Seven respondents agreed and five disagreed. Three respondents were unsure.

Respondents sought clarification on when an appeal would be possible and were concerned that a lack of appeal rights in some circumstances would lead to more judicial reviews. It was felt that the appeal process may be difficult for a lay person to understand and that legal representation may be required.

Table 6: Q3d. Does the Code of Practice clearly outline the circumstances when a person might appeal against the imposition of an immigration sanction?

Response	Number of Respondents
Yes	7
No	5
Unsure	3
Total responses to question 3d	15
No response, and no comment	2

All the respondents who said the Code of Practice did not clearly outline the circumstances in which a person might appeal against the imposition of an immigration sanction, and two of those who were unsure, commented on their view or suggested how the information might be improved.

- Three respondents saw a need to clarify when an appeal is possible. One felt it was not clear when the sanction would be to refuse of an application for leave, or curtailment of existing

- leave, rather than refusal to issue an ID card. Hence, they felt it was not clear when an appeal would be possible. Another said that the current Code of Practice may lead to many cases going to the Appeal Courts. This respondent pointed out that decisions are made at different times by different parts of Government and the process is not clear. Given the confusion and lack of clarity around various aspects of the process, the third respondent called for appeals to be allowed on the issue of ID cards.

“It is not clear when the sanction will be refusal of an application for leave or curtailment of existing leave rather than refusal to issue an ID card, so it is not obvious when a person will have appeal rights.” (Organisation)

“So you could get permission to come, and then, if you’re successful, he (Secretary of State) would have to sort out your card. And it’s the immigration tribunal who decide. So who is doing what? The Secretary of State makes decisions, and the Immigration Tribunal check the validity e.g. how many primaries and secondaries were broken in how many years? This part needs a great deal more ‘flesh’ to the guidance ‘bones’ if both those applying the legislation and making the decisions are not going to create an awful lot of work for the Appeal Courts.” (Organisation)

- In a similar vein, another respondent believed the lack of appeal rights on the granting of ID cards will lead to more cases of judicial review and that the consultation document does not provide details of costs anticipated if there is an increase in the number of applications for judicial review.

Suggestions

- Two respondents called for either more structure or greater detail to the proposals. One of these respondents felt the system could be too complex for immigrants to understand.

“This scheme is extremely complicated for an overseas national to understand ie he might have a right of appeal against a decision, but not against a decision relating to the identity card application, despite the fact that these applications will be inextricably linked.” (Individual)

- Following on the point of the complexity of the Code of Practice, a further respondent said that it may be understandable to a legal professional but not to a lay person. This respondent recommended that those facing appeal are advised to take legal advice.

CIVIL PENALTIES

Q4a. Does the Code of Practice clearly outline the circumstances when the Secretary of State may issue a civil penalty notice? If you have answered no, please explain how the information could be improved.

Eight respondents said that the Code of Practice did not clearly outline the circumstances in which the Secretary of State may issue a civil penalty notice. Five respondents thought that these circumstances were clearly outlined and two respondents were unsure.

Some respondents sought a list of criteria when a civil penalty notice may be issued and sought clarification as to which categories of immigrants civil penalty notices would apply.

Table 7: Q4a. Does the Code of Practice clearly outline the circumstances when the Secretary of State may issue a civil penalty notice?

Response	Number of Respondents
Yes	5
No	8
Unsure	2
Total responses to question 4a	15
No response, and no comment	2

Seven of the eight respondents who said that the Code of Practice did not clearly outline the circumstances in which the Secretary of State may issue a civil penalty notice, and the two who were unsure, either commented on their view or suggested improvements to the information provided.

- Two respondents were unclear on when and how this option would apply to different categories of immigrants. One asked how students would be affected and another had concerns about the potential for a civil penalty being imposed on a vulnerable person.

- One respondent suggested scenarios or examples of relevant situations be provided.
- One respondent felt that not all circumstances could be set down and that the scheme would become clearer through operation.
- One respondent expressed outright opposition to a civil penalty scheme.

Suggestions

- Four respondents wanted to see a list setting down criteria that would be seen as ‘compelling’. These respondents felt that this could take some of the ambiguity out of the process.

“... there is no indication of the kinds of circumstances that would be considered ‘compelling’ in the context of indefinite leave to remain ... We would suggest a non exhaustive list in order to guide decision makers in relation to the kinds of factors that might be considered compelling.”
(Organisation)

“... you should be able to provide a more extensive table of appropriate penalties and reserve the right not to impose the penalty for extenuating circumstances.” (Individual)

- These four respondents were concerned about who would make the decision on a civil penalty notice or immigration sanction and what might lead to such a decision being made. Two of the respondents suggested that decisions were subjective. One example given was whether a complaint from a neighbour could trigger the process.

Q4b. How important should the following factor be in determining the amount of the civil penalty? i) Whether the person has failed to meet a primary or secondary compliance requirement?

Ten of the 15 respondents felt that failure to meet a primary or secondary compliance requirement should be very important (6) or important (4) in determining the amount of the civil penalty. One respondent said that it was not very important. Four respondents were unsure about the importance of this factor.

Table 8: Q4b. How important should the following factor be in determining the amount of the civil penalty? i) Whether the person has failed to meet a primary or secondary compliance requirement?

Response	Number of Respondents
Very important	6
Important	4
Not very important	1
Not at all important	0
Unsure	4
Total responses to Question 4bi	15
No response, and no comment	2

**Q4b. How important should the following factor be in determining the amount of the civil penalty?
ii) Whether the person has a history of non-compliance?**

Twelve of the 15 respondents who answered this question felt that a history of non-compliance was very important (8) or important (4) in determining the amount of the civil penalty. Two respondents thought it was not very important and one was unsure.

Table 9: Q4b. How important should the following factor be in determining the amount of the civil penalty? ii) Whether the person has a history of non-compliance?

Response	Number of Respondents
Very important	8
Important	4
Not very important	2
Not at all important	0
Unsure	1
Total responses to Question 4bii	15
No response, and no comment	2

**Q4b. How important should the following factor be in determining the amount of the civil penalty?
iii) Whether there are children aged under 18, who have also failed to comply, in the person's household?**

Respondents were divided on the importance of the presence in the household of children under the age of 18 who have also failed to comply. Eight of the 15 respondents thought this was very important (3) or important (5) whilst five respondents thought it was not very important (1) or not at all important (4). Two respondents were unsure.

Table 10: Q4b. How important should the following factor be in determining the amount of the civil penalty? iii) Whether there are children aged under 18, who have also failed to comply, in the person's household?

Response	Number of Respondents
Very important	3
Important	5
Not very important	1
Not at all important	4
Unsure	2
Total responses to Question 4biii	15
No response, and no comment	2

Q4b. How important should the following factor be in determining the amount of the civil penalty? iv) Whether the person has limited financial means?

Ten of the 15 respondents thought that whether a person has limited financial means should be a very important (6) or important (4) factor in determining the amount of the civil penalty. Four respondents thought this was not very (2) or not at all (2) important and one respondent was unsure.

Table 11: Q4b. How important should the following factor be in determining the amount of the civil penalty? iv) Whether the person has limited financial means?

Response	Number of Respondents
Very important	6
Important	4
Not very important	2
Not at all important	2
Unsure	1
Total responses to Question 4biv	15
No response, and no comment	2

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

Seven respondents said that parents with parental responsibility should be considered as a ‘designated responsible adult’. The same number of respondents said that adults given responsibility through the court for a child’s care should be considered a ‘designated responsible adult’. Four respondents thought adults given care of children through private fostering and three respondents that other responsible adults should be considered as ‘designated responsible adults’. Two respondents thought that people with parental permission should be considered. Five respondents were unsure as to who should be considered a ‘designated responsible adult’.

Table 12: Q4c. Which, if any, of the following should be considered as a ‘designated responsible adult’? Please tick all that apply.

Response	Number of Respondents
Person with parental permission	2
Person with parental responsibility	7
Adult given responsibility for child’s care through courts	7
Adult given care of child through private fostering	4
Other responsible adult	3
Unsure	5
Other	2
Total	17

- One respondent said that none of the above applied, as it is not uncommon in some circumstances that, and through no fault of their own, a parent may not be able to control the conduct of their child.

Suggestions

- Two respondents suggested other responsible adults who should be considered as ‘designated responsible adults’. One thought that a Points-Based System sponsor or anyone with on going parental responsibilities should be designated. Another thought that adults given responsibility by the legal system in the country of origin should be designated. This respondent highlighted the issue of young people living without family members or paperwork. Even with this addition, this respondent felt the proposals did not cover the range of relationships across ‘families and extended communities’.

Q4d. Does the Code of Practice clearly outline the circumstances when a person might object and appeal to a civil penalty notice? If you have answered no, please explain how the information could be improved.

Respondents were divided on whether the Code of Practice clearly outlines the circumstances for objection and appeal to a civil penalty notice. Seven of the 15 respondents thought that circumstances were clearly outlined but five respondents disagreed. Three respondents were unsure and one had mixed views.

Table 13: Q4d. Does the Code of Practice clearly outline the circumstances when a person might object and appeal to a civil penalty notice?

Response	Number of Respondents
Yes	7
No	5
Mixed views	1
Unsure	2
Total responses to Question 4d	15
No response, but commented	1
No response, and no comment	1

Five respondents either commented on why they thought the Code of Practice did not clearly outline the circumstances when a person might object and appeal to a civil penalty notice, or suggested improvements to the information outlined in the Code of Practice.

- Three respondents sought greater clarity on rights of objection and appeal. One asked how individuals would find out that they had failed to comply with the requirements. Another was concerned that the process was confusing, with objections being made to the Secretary of State and appeals to the Crown Court. This respondent wanted to know how objections and appeals, as well as individual support and advice, would be paid for. A third respondent was

similarly concerned about the cost of objecting or appealing and had concerns about how the process would operate. This respondent also raised concerns about how orders would be served, noting references to use of facsimile and email and questioning what requirement would be put on ID card holders to keep BIA updated on changing contact details.

- One respondent was concerned that information about objection and appeal rights should be accessible to all. This respondent noted that some materials were to be translated into ten languages but suggested this might not cover all those affected.
- One respondent felt that examples and scenarios would make the process clearer.

Q4e. Do you think 20 working days is a suitable period within which to object to a civil penalty notice?

Twelve of the 17 respondents thought that 20 working days was not a suitable period within which to object to a civil penalty notice. Three respondents thought this period was suitable, one respondent was unsure and one had mixed views.

Table 14: Q4e. Do you think 20 working days is a suitable period within which to object to a civil penalty notice?

Response	Number of Respondents
Yes	3
No	12
Unsure	1
Mixed views	1
Total	17

Q4f. If you have answered ‘No’ to the question above, what period do you believe should be introduced?

Ten of the 12 respondents who thought 20 days was not a suitable period within which to object to a civil penalty notice suggested an alternative time period.

Suggestions

- Seven respondents suggested 30 days; one of these respondents stated at least 30 days was required. Two respondents suggested 40 days, one specified at least 40 days, and one suggested 90 days.

Table 15: Q4f. If you have answered ‘No’ to the question above, what period do you believe should be introduced?

Response	Number of Respondents
10 working days	0
15 working days	0
25 working days	0
30 working days	7
40 working days	2
90 working days	1
No suggestion made	2
Total	12

PROVISIONS FOR VULNERABLE PEOPLE

Q5a. Does the Code of Practice clearly outline the circumstances when the Secretary of State would consider the person to be vulnerable?

Eight respondents thought the Code of Practice did not clearly outline the circumstances in which the Secretary of State would consider the person to be vulnerable but five respondents agreed that the circumstances were clearly outlined. Three respondents were unsure.

Respondents sought a wider definition of vulnerable people and recognition that the Code of Practice did not account for all possible groups. Particular concerns were raised in regard to victims of trafficking, those with physical or mental health disabilities and minors.

Table 16: Q5a. Does the Code of Practice clearly outline the circumstances when the Secretary of State would consider the person to be vulnerable?

Response	Number of Respondents
Yes	5
No	8
Unsure	3
Total responses to Question 5a	16
No response, and no comment	1

Nine respondents commented on and/or made suggestions to improve the way this information is outlined in the Code of Practice.

- Three respondents were concerned that the list of ‘vulnerable’ categories provided was exclusive and that there may be many other categories of ‘vulnerable’ people. These respondents felt each case should be dealt with on its merits.

“We consider that section 7 should make clear that the list is not exhaustive and that a person might fall within the ‘vulnerable’ category depending on their particular circumstances.” (Organisation)

- Three respondents had concerns for how victims of trafficking were dealt with. One respondent quoted past situations where a great burden of proof was required from trafficked individuals and they faced detention before their status was agreed. Another referred to the difficult situation of trafficked individuals. One respondent suggested a three month grace period to allow victims of trafficking to apply for ID cards.

“The victims of trafficking will apparently have to prove that they did not intentionally fail to co-operate. Proving a negative in such circumstances may be very difficult. This may be especially so as people traffickers may threaten their “clients” to ensure that they do not co-operate with the authorities in the UK.” (Organisation)

- Two respondents felt that more details were needed on what constitutes relevant ‘serious’ medical conditions. A further respondent sought clarification on the timeframe within which requirements may be delayed for serious medical conditions.

“The Code should provide a definition of ‘serious medical conditions’ and should also provide a non exhaustive list of conditions that might be considered serious.” (Organisation)

One of these respondents also had particular concerns in relation to those with limited mental capacity. This respondent felt these individuals should be independently assessed to ensure vulnerable status was not being abused.

- Two respondents had concerns about the lack of coverage for minors within the Code of Practice. One of these respondents referred to those with limited mental capacity due to ‘extreme youth’.

Another respondent wanted adults and children who had suffered persecution to be defined as ‘vulnerable’.

- One respondent sought clarity on whether a person nominated to be responsible for the ‘vulnerable’ person’s obligations would be subject to penalties.

Q5b. Are there any other circumstances which the Secretary of State should consider under the provisions for vulnerable people – if so, what?

Seven respondents commented on other circumstances the Secretary of State should consider under the provisions of vulnerable people.

None of the suggestions below was mentioned by more than one respondent.

- Treat children as vulnerable.
- Adopt definition of vulnerable as used in the government’s Homelessness Guidelines, namely ‘those who are less able than the ordinary person to comply with the relevant requirements’.
- Victims of domestic violence.
- Foreign domestic workers.
- People with issues from substance and alcohol misuse.
- Those living in geographically isolated areas of the UK.
- People intimidated by those in authority such as unscrupulous employers.
- People with low literacy skills in their own or English language.
- Older and younger people who are unused to challenging or influencing.
- Insecurity of housing tenure (especially among students).

Suggestions

Two respondents each made one other suggestion, these suggestions did not relate to additional categories of vulnerable people.

- Need for independent evaluation of those with mental incapacity.
- Take cultural considerations into account (e.g. avoiding using male staff to deal with the photographing and fingerprinting of females from some cultural, social and religious backgrounds).

WHEN A SANCTION MAY NOT BE IMPOSED

Q6a. Does the Code of Practice clearly outline the circumstances when a sanction would not be imposed?

Nine respondents thought the Code of Practice did not clearly outline the circumstances in which a sanction would not be imposed, but seven respondents agreed that the circumstances were clearly outlined. One respondent was unsure.

Table 17: Q6a. Does the Code of Practice clearly outline the circumstances when a sanction would not be imposed?

Response	Number of Respondents
Yes	7
No	9
Unsure	1
Total	17

Seven respondents commented on their view that the Code of Practice does not clearly outline the circumstances in which a sanction would not be imposed or make suggestions for improvements to the information provided.

- Five respondents sought clarification on what would be defined as ‘satisfactory’ evidence. They pointed out the difficulty of proving a negative. One respondent gave an example of a student house where a communication may not be received but it would be difficult to prove that the communication had not arrived. Another respondent referred to the need for ‘credible’ evidence which they felt may come down to whether or not the individual is believed by the Secretary of State.

“Some examples of satisfactory evidence in the listed situations might clarify the circumstances when a sanction would not be imposed. Proving a negative is always very difficult.”(Organisation)

“The standards for ‘satisfactory evidence’ and ‘credible evidence’ are not defined.”

(Individual)

One of these respondents suggests instituting an internal review of representations, suggesting this could save money.

Suggestion

- Two respondents thought further work was needed on how to communicate with those who have little or poor English.

Q6b. Do you think there are any other circumstances in which the Secretary of State should consider not issuing a sanction for non-compliance?

Over half (8) of the 14 respondents were unsure if there were any other circumstances in which the Secretary of State should consider not issuing a sanction for non-compliance. Four respondents thought there were other circumstances and two thought there were no other circumstances.

Table 18: Q6b. Do you think there are any other circumstances in which the Secretary of State should consider not issuing a sanction for non-compliance?

Response	Number of Respondents
Yes	4
No	2
Unsure	8
Total responses to question 6b	14
No response, but commented	1
No response, and no comment	2

Six respondents expanded on the other circumstances in which the Secretary of State should consider not issuing a sanction for non-compliance. Two had replied yes to this question, three were unsure and one had not indicated a response.

Suggestions

- Two respondents thought that sanctions for non-compliance should not be issued in cases of vulnerability or in genuine circumstances where an ID card holder may be unaware of committing a breach of the Code of Practice. One of these respondents cited Hansard and assurances given by Ministers that sanctions would not be applied without consideration of circumstances and that a test of ‘reasonableness’ would be applied.

“The Secretary of State is bound by the law to act reasonably and to respect a person’s human rights. This involves taking into account all the circumstances of the case. Ministerial assurances have been given on this point.” (Organisation)

- One respondent suggested that a list should not be exhaustive as there are so many possibilities and there should be opportunity to explain in each case.
- One respondent felt that ‘outside of his control’ should be removed as it introduces and complicates the residual category by introducing two subjective tests. This respondent thought this could create difficulties for decision makers.
- One respondent stated that there should be no sanction for missing a biometric appointment and that applicants should be able to choose the time of their appointment.
- One respondent felt that the catch-all of ‘other circumstances’ allows flexibility.

Q7. Please feel free to provide any other comments on any aspect of the Code of Practice.

Ten respondents provided other comments on various aspects of the Code of Practice.

- Four respondents mentioned concerns about the effect the Code of Practice and its sanctions would have on human rights and civil liberties.

- Two raised concerns about data storage including safety and security of data.
- Two were concerned that no consultation would be sought on the "process before issuing a sanction".
- Arrangements for academics and students under these proposals.

Each of the following suggestions came from a single respondent.

- There is a need for an awareness of cultural differences. Another stated that there should be a requirement for English language skills.
- Time frames should be included for each aspect of the process and appropriate time limits for appeals.
- There should be stronger penalties for non-compliance, including removal from the country and the extension of the period required to achieve ILR or citizenship.
- The Code of Practice will be better understood when it is operational but that a Regulatory Impact Assessment will be required as soon as practicable.
- A new agency should deal with biometric information.
- One respondent felt that the financial standing of the ID card holder should be taken into account when imposing civil penalty whereas another felt this should not be considered as immigrants are already required to show that they have financial means.

Each of the following concerns was raised by one respondent:

- Lack of consultation on the process of supplying ID cards to foreign nationals.
- Which court appeals are heard and who would be able to represent the individuals concerned and whether immigration advisers would be allowed to present cases or whether this would be limited to lawyers.

ANNEX 1: RESPONDENT PROFILE TABLES

Table 19: Thinking of the response that you have given to this consultation, who are you responding on behalf of?

Response	Number of Respondents ²
Member of the general public	4
In a professional capacity	5
On behalf of an organisation	9
Other	1
Prefer not to state	0
Total	17

Table 21: From the list below, please select the option which best describes your current nationality.

Response	Number of Respondents
UK National	8
Other EEA or Swiss National	0
Non-EEA National	2
Dual Nationality	1
Prefer not to state	6
Total	17

Table 20: Which, if any, of the following best describes your organisation? (Please select all that apply)

Response	Number of Respondents ²
Voluntary/community organisation or charity	3
Educational institution	2
Local government	1
Immigration advice or legal advice provider	5
Healthcare provider	1
Central government	0
Private sector company	0
Other (Trade Union)	3
Prefer not to state	0
Total	11

² Multiple responses could be selected for this question, therefore the number of respondents per category does not add up to the total number of respondents answering this question.

ANNEX 2: RESPONDING ORGANISATIONS

- Equality and Human Rights Commission
- Immigration Law Practitioners Association
- Joint Council for the Welfare of Immigrants
- Northern Ireland Human Rights Commission
- Office of the Immigration Services Commissioner
- Royal College of Nursing
- UK Council for International Student Affairs
- University of Edinburgh
- West Norfolk Diverse Community Forum