

Information paper on
13 January 2003

**Bills Committee of the Legislative Council
Registration of Persons (Amendment) Bill 2001**

**Response to Members' Comments
Relating to the Proposed Sections 9, 10, 11
and Existing Regulation 23**

INTRODUCTION

At the Bills Committee Meeting held on 17 December 2002, Members requested the Administration to explain the implications of the proposed sections 9 and 10, and to consider their views on sections 9, 11 and the existing regulation 23.

IMPLICATIONS OF THE PROPOSED PROVISIONS

Proposed Section 9

2. The proposed section 9 (reproduced at Annex) aims to restrict the legitimate purposes for which the registration of persons (ROP) particulars collected under regulation 4 of the Registration of Persons Regulations (“the Regulations”), Cap. 177 and kept by the Immigration Department (Imm D) could be used. This proposal is in response to the opinion of our privacy impact assessment consultants that the lack of such restrictions at the moment is unsatisfactory.

3. At the Bills Committee meeting on 17 December, some Members commented that care should be taken so that the proposed restriction would not adversely affect the way in which private organizations and individuals use information on ROP particulars. After consideration of Members' views, it is the intention of the Administration to amend Clause 7 of the Bill so as to make it clear that apart from the

purposes set out in the proposed Section 9(a) and 9(c), other purposes would include, in cases where the requesting party is a public officer, enabling him to verify identity of individuals when discharging his official duties, and, in cases where the requesting party is not a public officer, enabling him to verify identity of individuals for lawful purposes.

4. Specifically in relation to the proposed Section 9(c), Members have asked what “any Ordinance” thereunder refers to. The following table shows the legislation or legal authority which “authorize”, “permit” or “require” a person to use ROP particulars furnished to a registration officer -

	Legislation or authority
“Authorized” use	<ul style="list-style-type: none"> • Orders made under the section 47A of the District Court Ordinance, Cap. 336, section 41 of the High Court Ordinance, Cap. 4, Order 24 rule 7A of the Rules of High Court
“Permitted” use	<ul style="list-style-type: none"> • Application of the exemption sections in the Personal Data (Privacy) Ordinance, Cap. 486 • The Chief Secretary for Administration’s permission made under regulation 24 of the ROP Regulations
“Required” use	<ul style="list-style-type: none"> • Requirement of information made under section 4A of the Jury Ordinance, Cap. 3 • Requirement of information made under regulation 6 of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constitution) Regulations, Cap. 541

Since the purposes under the proposed Section 9(c) and other sub-sections are not mutually exclusive, we intend to propose to delete the word "other" to clarify this point.

5. Separately, some Bills Committee Members have pointed out that the existing reference to ROP particulars in the proposed Section 9, especially read together with Section 11 which imposes criminal liabilities for unauthorized handling of particulars, might inadvertently cast the legal net too wide and adversely affect the way in which people can use particulars shown on the identity card as well as particulars duly obtained from Imm D pursuant to a legitimate request. As such parties include not only law enforcement agencies but also private parties such as law firms and the data subjects themselves, many people could face an onerous legal burden in consequence.

6. The Administration agrees with Members' observation and intends to propose a further amendment to the new Section 9 so as to make it clear that the scope of the restriction in the proposed Section 9 applies only to "records kept by the Commissioner on ROP particulars furnished to a registration officer". Importantly, this does not mean that ROP particulars duly released by Imm D can then be disclosed or used at will subsequently by the requesting party, whose status becomes that of a data user who is nonetheless subject to the legal requirements under the Personal Data (Privacy) Ordinance, Cap. 486, under which the principles for handling personal data and legal consequences for non-compliance are clearly spelt out.

Proposed Section 10

7. The proposed Section 10 aims to reproduce in full the approval mechanisms for records of ROP particulars kept by the Commissioner set out in Regulation 24. In view of the support expressed by some Members for Professor Matthew Lee's suggestion that a new sub-section should be added to ensure that the Chief Secretary for Administration (CS) has considered all relevant factors in determining whether to give his written permission for a request for disclosure, the Administration intends to propose an amendment to the new Section 10 along the lines proposed by Professor Lee, viz. to make it a requirement for the CS to state the reason or reasons for all permissions made.

Proposed Section 11

8. Consistent with the clarification of the scope of the proposed Section 9 as explained in paragraph 3 above, the Administration intends to propose an amendment to the new Section 11 to make it clear that criminal liabilities under this Section will only arise where any person, without lawful authority or reasonable excuse, gains access to, stores, uses or discloses, any "records kept by the Commissioner on ROP particulars furnished to a registration officer".

9. It has been queried whether unauthorized copy, reproduction and deletion of particulars should also be made an offence under the proposed Section 11. Legal advice has confirmed that "uses" in the provision is able to cover "copy" and "reproduction". We intend to propose an amendment to the new Section 11 to include the unauthorized "deletion" of particulars as an offence.

Regulation 23

10. Some Bills Committee Members expressed concerns about subjecting the proposed Section 10 to Regulation 23 as that could leave a loophole whereby the operation of Section 10, which is part of the principal legislation, may in future be altered through an amendment to the Regulation which is subsidiary legislation. To allay Members' concern, we intend to propose an amendment which will move the existing Regulation 23 to the principal legislation.

Cap. 177 Registration of Persons (Extract)

Section 9 Restriction on use of particulars

Subject to section 10, particulars furnished to a registration officer under this Ordinance may be used for and only for the following purposes-

- (a) enabling the Commissioner to keep a register of persons;
- (b) enabling identification of individuals; or
- (c) such other purposes as may be authorized, permitted or required by or under any Ordinance.