

**Administration's responses to various issues discussed at Bills Committee meetings**

<b>Date of Meeting</b>	<b>Item No<sup>1</sup></b>	<b>Issues discussed at Bills Committee meetings</b>	<b>Administration's Responses</b>
28-1-2003	2(a)	To explain the difference between a forged identity card and an unlawfully altered identity card, and the difference between the offences against the possession and use of a forged identity card, making alterations to an identity card and possession and use of an unlawfully altered identity card from the prosecution viewpoint.	<ul style="list-style-type: none"> <li>• The terms “forge” and “forgery” (偽造) is defined under section 1A of the Registration of Persons (ROP) Ordinance, Cap. 177. They have the meaning as assigned to those terms by Part IX of the Crimes Ordinance, Cap. 200, which includes the identity card in question being purported to have been- <ul style="list-style-type: none"> <li>(i) made in the form in which it is made by a person who did not in fact make it in that form;</li> <li>(ii) made in the form in which it is made on the authority of a person who did not in fact authorize its making in that form;</li> <li>(iii) altered in any respect by a person who did not in fact alter it in that respect;</li> <li>(iv) altered in any respect on the authority of any person who did not in fact authorize it in that respect; or</li> <li>(v) made or altered on a date on which or place at which or otherwise in circumstances in which it was not in fact made or altered etc.</li> </ul> </li> </ul>

<sup>1</sup> Reference in the relevant minutes of meetings.

			<p>In essence, there exists elements of false pretence and that the identify card in question "tells a lie about itself". The offender in question must be proved to have used or possessed such a "forged" identity card.</p> <ul style="list-style-type: none"> <li>• "Unlawfully altered" is not defined under the ROP Regulations. Its ordinary meaning thus applies. In short, the prosecution needs to prove the offender is in possession of an identity card which has been altered in any respect and the alteration was unlawful in the sense that it was not made by the issuing authority.</li> <li>• The offences of "Possession of a forged identity card" and "Using a forged identity card" are under section 7A(1) of the ROP Ordinance, whereas the offences of "Use or possession of an unlawfully altered identity card" is under regulation 12(2) proposed of the ROP Regulations.</li> <li>• The penalty imposed on an offence of using or being in possession of a forged identity card is comparatively heavier than that relating to an unlawfully altered identity card.</li> <li>• Under section 7A(1) of the ROP Ordinance, any person who without lawful authority or reasonable excuse uses or has in his possession a forged ID card shall be guilty of an offence and is liable-</li> </ul>
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			<ul style="list-style-type: none"><li>(i) on conviction on indictment to a fine at level 6 and to imprisonment for 10 years; and</li><li>(ii) on summary conviction to a fine at level 5 and to imprisonment for 2 years.</li></ul> <ul style="list-style-type: none"><li>• Under the proposed regulation 12(2) of the ROP Regulations, any person who without lawful authority or reasonable excuse, uses or has in his possession an unlawfully altered ID card shall be guilty of an offence and is liable to a fine at level 4 and to imprisonment for 2 years.</li></ul>
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28-1-2003	2(d)	<p>To consider whether it was appropriate to use the term “tampering with” in the proposed description of offence for regulation 12(1A) in Schedule 2 to the Immigration Service Ordinance (Cap. 331).</p>	<ul style="list-style-type: none"> <li>• As law enforcement officers, members of the Immigration Service are empowered under the Immigration Service Ordinance to enforce offences committed under, among others, the ROP Ordinance and ROP Regulations. The relevant offences are specified under Schedule 2 to the Service Ordinance.</li> <li>• The “Description of offence” under Column 3 of the schedule is a general statement describing the nature of the related offences, details of which should be read from the relevant sections or regulations of the ROP Ordinance or ROP Regulations respectively. According to Oxford dictionary, “tamper” means meddle or interfere with, make unauthorized changes in, etc. It should therefore embrace the meaning of unlawful access, addition, erasure, etc. of data stored in the chip of a smart ID card. We do not see any need to change the proposed wording.</li> </ul>
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21-1-2003	2(a)	<p>To consider amending the existing Regulation 11(2) to remove the Commissioner of Police’s power to authorise persons to inspect identity cards, or to consider setting out the classes of authorised persons in the Regulation and upgrading the approving authority from “Commissioner of Police” to “the Chief Executive”.</p>	<ul style="list-style-type: none"> <li>• There is no need to replace the Commissioner of Police by the Chief Executive since regulation 11(1) already empowers the Chief Executive in Council to make an order published in the Gazette requiring every person, or every person of such class or description shall carry his identity card in such area, place, occasion for purposes and circumstances specified in the order. Within the context of an order made by the Chief Executive in Council, the Commissioner of Police could then decide the necessary authorization taking into account operational need.</li> </ul>
21-1-2003	2(d)	<p>To consider the need for the expression “in his possession” in the proposed Regulation 18(1)(b) and to consider revising the Regulation having regard to the fact that some people (e.g. those who are blind) might not be able to see/read the information stored inside the chips of their smart identity cards.</p>	<ul style="list-style-type: none"> <li>• The existing regulation 18(1)(b) of the ROP Regulations requires a person to report corrections if he has in his possession an identity card showing particulars which are different from those previously submitted to a registration officer. Upon the roll-out of the smart identity card in mid 2003, the cardholder’s particulars will not only be printed on the card face but stored in the chip as well. It is therefore proposed to amend this provision so that the duty to report corrections will be extended to include particulars stored in the chip.</li> <li>• We take the view that it is necessary to retain the expression “in his possession” in the existing regulation 18(1)(b). Apart from being the person to whom an identity card relates, there are</li> </ul>

			<p>circumstances in which an identity card is not kept by the person concerned but by somebody else. By way of example, it is common practice for parents to take custody of their children's identity cards, particularly if their children are of young age. If a parent detects that the particulars on the identity card are in variance with those of his child, it is incumbent upon him to report the matter to a registration officer as soon as possible.</p> <ul style="list-style-type: none"> <li>• The Smart Identity Card System being developed will provide ample facilities for Hong Kong residents to view the particulars stored in the chip of their smart identity cards within the existing chain of ROP offices and the new Smart Identity Card Centres. Before an identity card is issued, the person will be invited to read the particulars in respect of the immigration applications by way of a computer terminal and to confirm that the particulars are correct. In addition, there will be self-service kiosks to facilitate the cardholders to read the particulars in the chip, including the particulars in respect of the immigration applications and non-immigration applications.</li> <li>• Experience on the ground tells that it is very unusual for a blind person to attend our office alone. Normally he will be accompanied by his relatives, friends or a social worker. In the event that the</li> </ul>
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			<p>person is unaccompanied, help-through facilities will be provided on the spot and he will be asked if it is necessary to read out the information on the identity card to him. In future, if a blind applicant so wishes, he will be informed of the particulars on the card face and in the chip. He can also choose to use the self-service Immigration kiosks where telephone handsets will be available for him to “hear” the particulars embedded in the chip through audio functions.</p> <ul style="list-style-type: none"><li>• It is possible that some persons will not ever attempt to use the self-service kiosks to view their own particulars. A flexible approach will be adopted in dealing with these cases. If the person can provide a “reasonable excuse” for not knowing what particulars are on the card face or in the chip (e.g. if he is not familiar with terminal operations), he will not be deemed to have breached regulation 18(1).</li></ul>
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21-1-2003	2(g)	To consider the need for the proposed Regulation 21(1)(c) and (d) and the impact of Regulation 21 on third parties.	<ul style="list-style-type: none"> <li>• The existing regulation 21(1) stipulates that the burden of proving the truth of the contents of an written application for an identity card, or the contents of the identity card which are particulars furnished under regulation 4(1)(b) by the applicant for the identity card, shall lie on three categories of persons, namely, the applicant, or the person to whom an identity card has been issued, or on any other person alleging the truth of such contents.</li> <li>• We note that as a long-standing practice, certain symbols or letters are printed on the identity card to denote the holder's residential status, eligibility for Hong Kong Re-entry Permit, place of birth, etc. Since these symbols and letters are allocated by the Commissioner of Registration, the burden of proof should not fall on the cardholder. It is on this basis that we have come up with the proposed regulation 21(1). For the sake of clarity, we have taken the opportunity to itemize the three categories of persons mentioned in paragraph 6 above as regulation 21(1)(c) (i.e. the applicant), 21(1)(d) (i.e. the person to whom an identity card has been issued) and 21(1)(e) (i.e. any other person alleging the truth of such contents).</li> <li>• We think that there is a need to retain regulation 21(1)(c) and 21(1)(d). It is not uncommon that some applications for identity card may contain</li> </ul>
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inaccurate or false information. Where the falsity of information is discovered only after the issue of an identity card, there is a need to invoke regulation 21 to require the “holder:” to prove the truth of the contents or the alleged facts provided by him in the application form. To avoid the argument by the “holder” that by the mere fact that the registration officer had issued the identity card on the basis of the information submitted by him at the application stage the registration officer would be precluded from denying to accept the truth of those information submitted in the application form, regulation 21(1)(c) is to be invoked to put the burden on the applicant to prove the truth of those information contained in the form. Regulation 21(1)(d) will also operate to require the holder to prove the information contained in the identity card is true or correct.

- The proposed regulation 21(1)(c) can be applied to a situation where an application for identity card is being processed but the card has not yet been issued. With this provision, we can make it clear that for the purpose of assessing an application, it is for the applicant to prove the truth of the particulars he furnished to a registration officer.

			<ul style="list-style-type: none"> <li>• Examples where reg. 21(1)(d) (where an identity card has already been issued) may be applied are as below. Thus, for instance, a person reported to a registration officer that he was born in 1948 and obtained an identity card recording the same year of birth. He later filed an application for emigration to Australia and was now required to prove that he was indeed born in that year. The law makes it clear that the burden of proof is on him. He, or any third party, could not ask the Commissioner of Registration to prove it for him on the ground that the alleged year of birth is shown on his identity card.</li> </ul>
20-11-2002	2(a)	To consider providing a paper setting out provisions in the Registration of Persons Ordinance (Cap. 177) where the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) would apply and provisions exempted from PDPO.	<ul style="list-style-type: none"> <li>• Section 3 of the Personal Data (Privacy) Ordinance, Cap. 486, provides that the Ordinance binds the Government. The proposed amendments to the ROP Ordinance, viz the proposed new section 9 and the proposed penalty provision in section 11, are provisions which provide added safeguards to protect personal data.</li> </ul>

28-10-2002	(2e)	<p>To provide information on the number and ranking of law enforcement officers to be issued with handheld smart card readers, the workflow and the ranking of officers to be authorised to access the relevant logs.</p>	<ul style="list-style-type: none"> <li>• Portable smart card readers will facilitate anti-illegal immigration operations during which police officers and members of the Immigration Service can use a reader to confirm instantly the identity of a person and/or if a person's permission of stay (in the case of a temporary resident) is valid without holding him up for further checks.</li> <li>• For the Police Force, police constables will normally use readers during properly planned major police operations under the supervision of officers of the rank of Sergeant or above.</li> <li>• For Immigration Department, immigration assistants will normally use readers in field operations under the supervision of Immigration Officers or above.</li> </ul>
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