

# 立法會

## Legislative Council

LC Paper No. CB(2)1200/02-03(02)

### Bills Committee on Registration of Persons (Amendment) Bill 2001

#### Summary of amendments proposed by organisations/individuals to specific clauses in the Bill which are reflected/not reflected in the proposed Committee Stage amendments

Clause	Amendments proposed	Remarks
7	<p>The existing protections preventing unauthorised uses of card readers should be strengthened by amendments to the Registration of Persons Ordinance (ROPO) prohibiting any uses of card readers except those approved by Regulations subject to positive vetting by the Legislative Council (LegCo). (proposed by Professor Graham GREENLEAF)</p> <p><u>Proposed new section 9</u></p> <p>The phrase "enabling identification of individuals" in the proposed section 9(b) should be revised as follow to set out that the identification was for purposes specified in law (proposed by Professor Matthew LEE) -</p> <p><b>“9. “Restriction on use of particulars</b></p> <p>Subject to section 10, particulars furnished to a registration officer under this Ordinance may be used for</p>	<p>The Administration has proposed a Committee Stage amendment (CSA) to the proposed regulation 11A to authorise only Police officers and members of the Immigration Service to use portable smart card readers</p> <p>The Administration has proposed a CSA to the proposed section 9(b) to make it clear that ROP particulars could be used for enabling verification of identity of individuals by public officers in discharge of their official duties or by others for lawful purposes</p>

<b>Clause</b>	<b>Amendments proposed</b>	<b>Remarks</b>
	<p>and only for the following purposes -</p> <ul style="list-style-type: none"><li>(a) enabling the Commissioner to keep a register of persons;</li><li>(b) enabling identification of individuals <u>as may be authorized, permitted or required by or under any Ordinance</u>; or</li><li>(c) such other purposes as may be authorized, permitted or required by or under any Ordinance.”</li></ul> <p>Any new uses of the ROP database under the proposed section 9 should require positive vetting but not negative vetting by LegCo. (proposed by Professor Graham GREENLEAF)</p> <p><u>Proposed new section 10</u></p> <p>The proposed section 10 should be revised as follows to the effect that the permission given by the Chief Secretary for Administration in respect of disclosure of information would be subject to some reasonable checks and balances (proposed by Professor Matthew LEE) -</p>	<p>Suggestion seems not reflected in the proposed CSAs</p> <p>The Administration has proposed a CSA to require the Chief Secretary for Administration to state the reason for giving permission to disclose ROP records kept by the Commissioner.</p>

Clause	Amendments proposed	Remarks
	<p><b>“10. Duty not to disclose photographs, fingerprints and particulars</b></p> <p>Subject to the provisions of regulation 23 of the Registration of Persons Regulations (Cap. 177 sub. leg.), a registration officer shall not -</p> <ul style="list-style-type: none"><li>(a) produce for inspection, or supply a copy of, the photograph of a person registered under the provisions of the Registration of Persons Regulations (Cap. 177 sub. leg.) or his fingerprint; or</li><li>(b) disclose or supply a copy of the particulars furnished under regulation 4(1)(b) of the Registration of Persons Regulations (Cap. 177 sub. leg.),</li></ul> <p>except and unless with the written permission of the Chief Secretary for Administration which <del>may</del> –</p> <ul style="list-style-type: none"><li>(c) <u>may</u> refer to a person or class or category of persons by name, office or description; <del>and</del></li><li>(d) <u>may</u> contain such terms and conditions as the Chief Secretary for Administration may deem fit to impose. ; <u>and</u></li><li>(e) <u>must state the reason or reasons for making such written permission.”</u></li></ul>	

Clause	Amendments proposed	Remarks
	<p>There might be a need to make provision in clause 7 for digital/electronic transfer of data. (proposed by Hong Kong Computer Society)</p> <p>New forms of disclosure from the ROP database by the Immigration Department to external organisations, defined by class of persons, should only be made by Regulations (not merely approval in writing), and thereby subject to LegCo scrutiny. (proposed by Professor Graham GREENLEAF)</p> <p><u>Proposed new section 11</u></p> <p>The penalty proposed for unauthorised storage or tampering of data in the chip of a smart identity card should be increased as far as possible to strengthen the deterrent effect. (proposed by Professor Matthew LEE)</p>	<p>The Administration has advised in a previous response (LC Paper No. CB(2)67/02-03(01)) that clause 7 (the proposed new section 10) imposed restriction against disclosure or transfer of ROP data. What the new section prohibits was the act of disclosing, i.e. making known ROP data to third parties, and the prohibition was capable of covering disclosure or transfer by whatever means.</p> <p>Suggestion seems not reflected in the proposed CSAs</p> <p>The Administration has advised in a previous response (LC Paper no. CB(2) 48/02-03(02)) that the proposed penalty for any person who committed an offence under the new section 11 would be a fine at level 5 and imprisonment for two years. This penalty was the maximum level as stipulated in the proposed amended section 7(3) of the ROPO.</p>

<b>Clause</b>	<b>Amendments proposed</b>	<b>Remarks</b>
	<p>To avoid any doubt, the proposed section 11 should state that 'particulars' included any information stored on the identity card. (proposed by Professor Graham GREENLEAF)</p>	<p>Suggestion seems not reflected in the proposed CSAs</p>
13	<p>Further thought should be given to spelling out the precise circumstances under which a citizen might be compelled to provide his thumb-print or finger-print to a Police officer, an officer of the Immigration Department or an authorised person who had reason to doubt the identity of the cardholder. (proposed by Office of the Privacy Commissioner for Personal Data)</p> <p>The Bill should define precisely which classes of persons could be made 'authorized persons' under ROP Reg 11A, and that any expansion of that potential class of 'authorized persons' should only be made by Regulations and therefore subject to LegCo approval. (proposed by Professor Graham GREENLEAF)</p>	<p>The Administration has advised in a previous response (LC Paper No. CB(2) 25/02-03(01)) that the proposed new Regulation 11A already specified the only circumstance in which fingerprint verification could be effected, namely, that the Police officer and member of the Immigration Service had reason to doubt the identity of a person. The provision would make it clear that identity card checks could not be conducted for other unrelated purposes.</p> <p>The Administration has proposed a CSA to the proposed regulation 11A to authorise only Police officers and members of the Immigration Service to verify identity by fingerprint match</p>

14	<p>Regulation 12(1A) should be amended as follow to criminalise the unauthorised access to and use of data stored in the chip of a smart identity card (proposed by Professor Matthew LEE) -</p> <p>“(1A) Any person who, without lawful authority – <u>(a1) gains access to data in a chip;</u> (a) stores data in a chip; (b) adds to, erases, cancels or alters any data stored in a chip; or (c) renders a chip ineffective, shall be guilty of an offence.”</p> <p>Regulation 12(1A) might need to include unlawful or unauthorised retrieval, alteration or manipulation of data stored in a chip. (proposed by Hong Kong Computer Society)</p>	<p>The Administration has proposed a CSA to the proposed regulation 12(1A) to make it an offence for any person to gain access to data stored in the chip of an identity card without any reasonable excuse</p> <p>The Administration has advised in a previous response (LC Paper No. CB(2) 67/02-03(01)) that the proposed regulation 12(1A) of ROP Regulations would make it an offence for any person who, without lawful authority or reasonable excuse, gained access to, stored, added to, erased, cancelled or altered any data stored in a chip and rendered a chip ineffective.</p>
15	<p>Unless justification could be given by the Immigration Department on the collection of personal data of citizens, such as residence, place of business, employment, the reporting requirement under Regulation 18 (1) should be revised to bring it consistent with actual need (if any) and with Data Protection Principle 1(1) of the Personal Data (Privacy) Ordinance (PDPO). (proposed by Office of the Privacy Commissioner for Personal Data)</p>	<p>The Administration has advised in a previous response (LC Paper No. CB(2) 25/02-03(01)) that for the purpose of registration of persons, it was necessary to require an applicant to furnish the particulars stipulated in Regulation 4 of the ROP Regulations. Such particulars would be useful if there were doubts on the identity of a person. It also assisted in tracing the whereabouts of a person, should this become necessary.</p>

		<p>The Administration has also advised that it was the legislative intent of Regulation 18(1) of the ROP Regulations for identity card holders to report correction of particulars. The onus must rest on the cardholders themselves as they were the ones who knew which particulars had become incorrect. This was also in line with Principle 2 of Schedule 1 to PDPO in that all practical steps should be taken to ensure the accuracy of personal data.</p>
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