

Information paper on
21 February 2003

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

Prosecution and Defence under the Proposed Regulation 12(2A)

INTRODUCTION

This paper informs Members of the burden and standard of proof on the prosecution and the defendant under the proposed regulation 12(2A).

PROSECUTION UNDER REGULATION 12(2A)

2. Under the proposed Regulation 12(2A), any person, who without lawful authority or reasonable excuse, uses or has in his possession an identity card embodying a chip which has been altered in the manner specified in the proposed regulation 12(1A) shall be guilty of an offence. As specified in regulation 12(1A), unlawful alteration includes gaining access to, addition, erasure, cancellation, alteration of data in the chip or rendering the chip ineffective.

3. It is the responsibility of the prosecution to bring a case against an offender and the prosecution is charged with the burden to prove the case against the offender on the criminal standard, i.e. beyond all reasonable doubt, throughout the proceedings. Specifically, to consider pressing a charge under regulation 12(2A), the prosecution has the burden to adduce evidence to prove all elements of the offence which include:

(a) the offender used or possessed the said identity card;

(b) the said identity card was issued by the relevant authority to a particular person on a date with relevant data stored in the chip; and

(c) the said identity card/chip is confirmed, after examination by relevant authority and expert, to have data accessed, stored, added, erased, cancelled, altered or the chip has been rendered ineffective.

4. However, there are situations under which no prosecution action will be recommended even when the data in the chip has been altered, erased, etc. For instance, if there is evidence to show that the data stored in the chip can be altered, erased, etc. by means unknown to the cardholder (say by contactless electronic means) or the chip can be rendered ineffective due to no fault of the cardholder, no prosecution action will be instituted.

BURDEN OF PROOF ON THE DEFENDANT

5. Under the proposed regulation 12(2A), though the suspected offender has the burden of proving "lawful authority" or "reasonable excuse", the lower standard of proving on the balance of probabilities applies. The prosecution has the burden to adduce evidence to rebut the suspected offender's version. If the prosecution is satisfied that the benefit of doubt should be given to the suspected offender and/or the prospect of securing a conviction is doubtful, no prosecution action will be recommended.

6. If a suspected offender whose case has been brought to court claims that he has "no knowledge" that the chip has been altered or rendered ineffective, etc., or has reasonable excuse or lawful authority to do so, he will not be convicted of the offence if the court accepts his version and/or has "reasonable doubt(s)" about the case.