

Responses to Questions

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| <p>(a) What are the differences and relationship between “records kept by the Commissioner on particulars furnished to a registration officer under this Ordinance”, “a register of persons” and “particulars furnished under regulation 4(1)(b)” in the proposed sections 9, 10 and 11?</p> | <ul style="list-style-type: none"> • The “records kept by the Commissioner on particulars furnished to a registration officer under this Ordinance” refers to the Registration of Persons (ROP) records maintained at the Immigration Department. Such records include an applicant’s photograph and fingerprint as stipulated in regulation 4(1)(a) of the ROP Regulations, the particulars set out in regulation 4(1)(b) and particulars reported by the applicant pursuant to regulation 18. • A “register of persons” is intended as a reference to the records kept by the Commissioner. For avoidance of doubt, we propose a Committee Stage Amendment (CSA) to the effect that the Commissioner is using the particulars furnished to a registration officer to keep records on such particulars. • “Particulars furnished under regulation 4(1)(b)” specifically refers to the particulars furnished by an applicant to a registration officer pursuant to that regulation. |

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| (b) What is the need for adding in particular a reference to the "fee prescribed for the purposes of section 9A" in section 7(2)(p) of the principal ordinance? | <ul style="list-style-type: none"> • Consequent to the moving of regulation 23 to the principal Ordinance, the addition of "(including any fee prescribed for the purposes of section 9A)" is an improvement to the current provision of section 7(2)(p). |
| (c) Under what legislative authority (section 9 or 10 or other legislative provisions) is the legitimate request referred to as an example in paragraph 2(f) of your Bureau's paper issued on 7 February 2003 on the Proposed Committee Stage Amendments made? What are the other legitimate requests? What makes such requests legitimate – the existence of a statutory authority for the requested particulars to be granted e.g. section 9(c)? | <ul style="list-style-type: none"> • The application for a Certificate of Registered Particulars is provided for in existing regulation 23 of the ROP Regulations, which has been moved to the principal Ordinance as the new section 9A in our proposed CSA. • Other requests for information, duly approved by the Chief Secretary for Administration under the proposed section 10, will not be subject to the penalty provision in section 11. • Details provided in the Administration's paper (CB(2)871/02-03(01)) on the legislation or legal authority which authorize, permit or require a person to use ROP particulars are also relevant. |
| (d) In the proposed section 10, what persons are intended to be referred to in the written permission, registration officer(s) or person(s) whose photograph or particulars are to be disclosed or both? | <ul style="list-style-type: none"> • Both. |

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| <p>(e) In the proposed definition of “portable smartcard reader”, should paragraph (a) be restricted to proposed paragraph 1(h) of Schedule 1 and what about the additional information in the proposed Schedule 5?</p> | <ul style="list-style-type: none"> • Portable identity card readers (previously referred to as portable smartcard readers) will be used by members of the Immigration Service and police officers in field operations to confirm instantly the identity of a person and/or if a person's permission of stay (in case of a temporary resident) is valid. Particulars in Schedule 1 help the public officer concerned to identify an individual. Viewing of non-immigration data in Schedule 5 will not be allowed for this purpose. |
| <p>(f) Is the newly proposed regulation 4A(a) intended to cover information that will not be stored in the chip?</p> <p>If so, would it affect the content of forms in Schedule 1 or regulation 5(1)(a), which requires such content to be in a form approved by the Chief Executive in Council?</p> | <ul style="list-style-type: none"> • The proposed regulation 4A(1)(a) is intended to provide for the inclusion, at the option of cardholders, of information or particulars specified in column 2 of Schedule 5 in the identity card. Regulation 4A(1)(b) provides for the storage, at the option of cardholders, of data specified in column 2 of Schedule 5 in the chip. • No, it would not affect the content of forms in Schedule 1 or regulation 5(1)(a) as these two provisions are to provide for the inclusion of ROP data in the identity card and for the issue of identity card. The non-immigration related information to be included in the identity card or stored in the chip, if any, will be specified in the proposed Schedule 5 to the ROP Regulations. |

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| <p>Would the information or data referred to in column 2 of Schedule 5 be furnished by the "applicant" or if not, be regarded as furnished by him?</p> <p>Can a holder of an identity card apply for the inclusion or storage or withdraw his consent at any time?</p> | <ul style="list-style-type: none"> • What the Administration has proposed to include is only the digital certificate, as spelt out in column 2 of Schedule 5. The digital certificate is not "furnished" by the applicant for the purpose of the ROP Ordinance, but is to be generated and issued by the Postmaster General under the Electronic Transactions Ordinance, upon a separate application from the cardholder himself. • Yes, this is governed in Regulation 4A. |
| <p>(g) Would the amended regulation 12(2) apply or not apply to an identity card which has been tampered with other than by unlawful alteration?</p> | <ul style="list-style-type: none"> • No, it will not apply. |
| <p>(h) What is the consequence of a failure to discharge the burden in the amended regulation 21? What is the relevance of the burden to regulation 9 and 19? Will the Commissioner be regarded as alleging the truth of the contents of the identity card by virtue of issuing it? If not, why is it necessary to clarify the burden for the purpose of the example given in the LC Paper No. CB(2)1150/02-03(02)?</p> | <ul style="list-style-type: none"> • The aim of regulation 21 is to state clearly that the burden of proving the truth of the content of a written application for an identity card or the content of an identity card which are the particulars furnished under regulation 4(1)(b) should fall on the applicant but not the Commissioner of Registration. • Regulation 21 has the effect of precluding that by |

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| | <p>virtue of issuing an identity card, the Commissioner will be regarded as alleging the truth of the contents of the identity card. Whilst the burden of proof is always on the prosecution in any criminal prosecution brought under regulation 19, regulation 21 makes it clear that the defendant cannot rely on the mere fact that he has been issued with an identity card as official confirmation that he is the rightful holder or that the particulars contained therein are correct. In that sense, the regulation may be relevant to regulation 19 especially when the offences are only committed "without reasonable excuse".</p> |
| <p>(i) How would the proposal, if implemented, to provide self-service kiosks with smart card readers to facilitate use by the public (discussion paper CB(1)666/01-02 (01) for the LegCo Panel and Security issued by the Information Technology and Broadcasting Bureau in December 2001 and page 6 of LC Paper No. CB(2)1150/02-03(02)) affect what appears to be a general prohibition against free access to data stored in a chip as proposed to be added to regulation 12(1A)?</p> | <ul style="list-style-type: none"> • Self-service kiosks with smart card readers will be installed on Immigration Department premises to facilitate the card holders to check the immigration data stored in the chip after authenticating with their fingerprint. Those who have opted for a digital certificate may also use Immigration kiosks for PIN management functions. • Citizens can also, of course, conduct online transactions with the digital certificate embedded on their identity cards using any computers equipped with a smart card reader, as well as self-service kiosks under the Electronic Service |

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| <p>Would there be any safeguard to ensure that only the card holder can read the data on the card at such a kiosk?</p> | <p>Delivery Scheme.</p> <ul style="list-style-type: none"> • For avoidance of doubt, we propose a CSA to introduce a new subregulation (1B) under regulation 12 to specify that a person to whom an identity card is issued has lawful authority to gain access to data specified in Schedule 1 which are stored in the chip if he gains such access by using facilities provided by or with the approval of the Government; or in respect of data specified in Schedule 5, for and only for the purpose for which the data are stored. • The identity card will be equipped with advanced security features to prevent unauthorised access. For cardholders to read the data in the chip, they would need to authenticate with their own fingerprint. As for using the digital certificate, cardholders would need to enter their own e-Cert PIN. |