

LEGISLATIVE COUNCIL BRIEF

REGISTRATION OF PERSONS (AMENDMENT) BILL 2001

INTRODUCTION

At the meeting of the Executive Council on 18 December 2001, the Council ADVISED and the Chief Executive ORDERED that the Registration of Persons (Amendment) Bill 2001, at Annex, should be introduced into the Legislative Council (LegCo).

BACKGROUND AND ARGUMENT

General Background

2. We announced in October 2000 our plan to introduce a new smart identity (ID) card with multi-application capacity. A non-recurrent commitment of \$747,037,000 for implementing Phase I of the new ID card project was approved by the Finance Committee of LegCo on 9 March 2001. The fund will cater for the conversion of the historical microfilmed ID card records and some old paper index cards into electronic images, the purchase and development of a new computerized Registration of Persons (ROP) System, the acquisition of the necessary implementation services, and the procurement of 1.2 million blank smart cards.

3. We informed Members of the Panel on Security of the progress of the new ID card project on 7 November 2001 vide LC Paper No. CB(2)243/01-02(02) covering tendering work, design of the card face and legislative amendments as necessitated by the introduction of a smart ID card.

Legislative Amendments

4. Legislative amendments to the ROP Ordinance and the ROP Regulations will be required to provide for the introduction of the new ID

card. Taking into account the views of LegCo Members, comments of the Privacy Commissioner for Personal Data and the recommendations of the first consultancy study on privacy impact assessment, we have identified **four** major areas in the existing ROP legislation which will require amendments. They are -

- (a) provisions relating to changes brought about by the smart element of the new ID card and revised work processes under the new ROP system;
- (b) provisions relating to the inclusion of non-immigration applications in the new ID card;
- (c) provisions relating to the protection of data privacy; and
- (d) provisions relating to the launching of an ID card replacement exercise.

(a) Changes brought about by a Smart ID Card and Revised Work Processes

5. Schedule 1 to the ROP Regulations sets out the content of forms of an ID card. To cover the “smart element” of the new ID card, i.e. a chip and the data to be stored therein, we propose to amend the Schedule to specify the additional data items to be printed on the surface of the ID card and stored in the chip. To cater for storage of data in the chip in an ID card, better reflect the resultant revised procedures in registration, record storage and/or retrieval of personal data, provide for the taking of the applicant’s two thumbprints and extend the storage of records to include scanning and image capturing, we propose to amend the relevant provisions of the ROP Ordinance (i.e. section 7(2)(c), (e), (g) and (h)) and the ROP Regulations (i.e. regulations 4 and 8(2)). We also propose amendments to the ROP Regulations to make unauthorized alteration to the chip of the ID card an offence (i.e. regulation 12) and to clearly specify the duty to report corrections so as to cover the non-visible data contained in the chip (i.e. regulation 18(1)).

(b) Inclusion of Non-immigration Applications in the Smart ID Card

6. To cater for the incorporation of multi-applications on the ID card, we propose to amend the long title of the ROP Ordinance. We also propose to add new provisions in the ROP Ordinance/Regulations to provide the Chief Executive in Council with the power to set out in a new Schedule the non-immigration applications that require the storage of additional data in the chip or printed on the card surface. The primary objective of the amendments to the ROP Ordinance is to establish the framework for the “smart element” of the ID card, while leaving the actual implementation of non-immigration applications to be dealt with in the relevant legislation, where appropriate.

(c) Protection of Data Privacy

7. To address concerns about data privacy, we propose to introduce additional privacy safeguards. Regulation 4 of the ROP Regulations stipulates the personal information to be furnished to a registration officer when applying for registration under regulation 3 or for an identity card under any of these regulations. However, there is no provision in the ROP Ordinance to expressly specify the use of ROP data so collected. It is proposed to add a new provision to restrict the purposes for which the data collected may be used.

8. Regulation 24 of the ROP Regulations prohibits a registration officer from disclosing ROP data, except with the written permission of the Chief Secretary for Administration. It is proposed to move this prohibition provision into the ROP Ordinance to raise its status.

9. Under the existing ROP Ordinance/Regulations, there is no provision to penalize unauthorized access, use, storage and disclosure of ROP information. It is proposed to make them an offence under the ROP Ordinance, subject to suitable penalties.

10. To facilitate the secure authentication of card holder’s identity in case of doubt, it is necessary to add new provisions to empower members of the Immigration Service and Police and other authorized persons to direct a card holder to provide his thumbprint(s) for matching with the template of

his thumbprints in the chip. Failure to comply will be an offence. This is a one-to-one matching merely for the purpose of verification of identity and immigration control. Provisions relating to the manner of inspecting an identity card will be added to remove ambiguity.

(d) Launching of the ID Card Replacement Exercise

11. Section 7B of the ROP Ordinance provides that the Secretary for Security may direct, by order published in the Gazette, members of the public to come forward in accordance with a specified call-up programme (e.g. within a specified period of time and according to age groups) to the designated issuing offices for replacement of their identity cards issued before a cut-off date (i.e. “1 July 1987”). It is proposed to amend such a cut-off date to a date to be specified by the Commissioner of Registration by notice in the Gazette.

Legislation for Non-immigration Applications

12. The non-immigration applications recommended for incorporation into the smart ID card (i.e. use of the smart ID card for checking of driving licence data in the backend computer systems by 2005/2006, for embedding a digital certificate and for accessing library services) are set out in a separate information paper issued to Members today by the Information Technology and Broadcasting Bureau (ITBB). Legislative amendments arising from these non-immigration applications are spelt out in paragraphs 24 to 26 of that information paper. However, because of differences in the authority and timing required for initiating the amendments, they are not covered by this Bill and would be dealt with separately.

THE BILL

13. The main provisions are-

- (a) Clause 2 of the Bill expands the scope of the ROP Ordinance as reflected in the long title to enable other value-added, non-immigration applications to ride on the new ID card;

- (b) Clause 4 empowers the Chief Executive in Council to make regulations to cater for changes arising from the new work processes (e.g. the scanning and capturing of images instead of photographing), the new card design (e.g. storing of data in the chip), the use of biometrics (i.e. fingerprint-matching technology) for secure authentication of the card holder's identity, etc.;
- (c) Clause 7 imposes restrictions on the use or disclosure of particulars collected under the Ordinance to a few pre-defined circumstances, and to make it an offence for unauthorized handling of such particulars;
- (d) Clause 13 empowers an officer of the Immigration Department or a police officer or an authorized person to verify a person's identity by fingerprint matching;
- (e) Clause 14 prohibits unlawful use or alteration of data in the chip and makes it an offence for a person to possess an ID card with unlawfully altered data;
- (f) Clause 20 specifies additional contents of a new ID card (e.g. thumb print template and conditions of stay, if any); and
- (g) Clause 21 provides for a new Schedule to the ROP Regulations to set out the non-immigrations applications to be incorporated in the new ID card which require storage of additional data in the chip or printing of additional information on the card surface.

LEGISLATIVE TIMEABLE

14. The legislative timetable will be -

Publication in the Gazette	28 December 2001
First Reading and commencement of Second Reading debate	9 January 2002
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

BASIC LAW IMPLICATIONS

15. The Department of Justice advises that the proposed legislative amendments do not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

16. The Department of Justice advises that the proposed legislative amendments are consistent with the human rights provision of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

17. The proposed amendments will not affect the current binding effect of the ROP Ordinance and Regulations.

FINANCIAL AND STAFFING IMPLICATIONS

18. The introduction of the new smart ID card and the subsequent launch of the four-year region-wide ID card replacement exercise will entail a total non-recurrent expenditure of \$1.541 billion (including the provision for 564 contract staff) and the creation of 367 time-limited posts at a total staff cost of \$992 million. The Immigration Department will explore the scope for employing more contract staff in place of in-house staff for the ID card replacement exercise. In addition, the new ID card system will entail an annual recurrent expenditure of \$90 million from 2004-05 onwards and a net 20 additional posts at an annual staff cost of \$13 million for maintenance and on-going support. The project will also entail additional accommodation costs, estimated at \$112 million in non-recurrent expenditure and \$5 million in annual recurrent expenditure from 2003-04 onwards, which will be absorbed by the Government Property Agency from within its existing resources. Based on the above estimates, the total cost of the project over the seven-year period from 2001-02 to 2007-08 will amount to \$3.145 billion. This has not included the costs of development and implementation of other non-immigration applications which will be dealt with separately.

19. The costs of the project will be partly offset by savings of \$425 million in the corresponding period, arising from savings in accommodation

and maintenance of the microfilm records, reduction in consumables, and avoidance of additional investment in staff and equipment to keep the existing system running. In addition, the new ID card is essential for the automated passenger clearance system which, if fully implemented, will bring about substantial savings in staff costs.

20. As mentioned in paragraph 2 above, the Finance Committee of LegCo approved on 9 March 2001 a new commitment of \$747,037,000 for implementing Phase 1 of the new ID card project. We intend to revert to the Finance Committee in early 2002 for approval to increase the commitment by \$794,404,000 to carry out the activities in Phase 2, including the setting up of nine new ID card issuing offices, employment of contract staff, procurement of the tag and appointment systems and purchase of the remaining batches of blank smart ID cards.

21. The financial implications of implementing the initial non-immigration applications are set out in paragraphs 32 to 35 of ITBB's information paper referred to in paragraph 12 above.

ECONOMIC IMPLICATIONS

22. The proposed legislative amendments are not expected to create compliance burden on businesses. The introduction of a smart ID card with multi-application capacity will contribute to making Hong Kong a digital city and enhance the environment for e-commerce developments. This could generate business opportunities and hence jobs in the long run.

PUBLIC CONSULTATION

23. Since October 2000, the LegCo Panel on Security and the Office of the Privacy Commissioner for Personal Data (PCO) have been fully briefed of this project and consulted on the data privacy issues. The Bill has taken into account the views of LegCo Members and the PCO as appropriate.

24. Besides, a public consultation campaign was conducted between November 2000 and February 2001 including briefings to 18 District Councils, roving exhibitions in shopping malls and universities and launching of a dedicated web page to inform the public of details of the new ID card project. The feedback reflects a strong public support for using a multi-application smart ID card. Although there are some concerns on data privacy, the public are in general content with the data protection measures proposed by the Government.

PUBLICITY

25. A press release will be released on 20 December 2001 and a spokesman will be available to answer media and public enquiries. A publicity campaign will be launched in due course.

ENQUIRIES

26. For any enquiries on the brief, please contact Mr Alan Chu, Principal Assistant Secretary for Security, at 2810 2506.

20 December 2001
Security Bureau

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REGISTRATION OF PERSONS (AMENDMENT) BILL 2001

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A BILL

To

Amend the Registration of Persons Ordinance to make provision for the issue and application of identity cards embodying chips, to re-enact regulation 24 of the Registration of Persons Regulations as a section of that Ordinance, to confer a power to require production of identity card and to verify identity by matching fingerprint, to prohibit tampering with identity cards or chips therein, to restrict use of particulars and handling of particulars as set out in the new sections 9 and 11 in section 7 of this Ordinance and to increase the maximum fine that may be imposed by regulation made under the Ordinance and to make consequential amendments to the Specification of Public Offices and the Immigration Service Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Registration of Persons (Amendment) Ordinance 2001.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

2. Long title amended

The long title to the Registration of Persons Ordinance (Cap. 177) is amended -

- (a) by repealing "persons in Hong Kong, and of" and substituting "and recording of particulars relating to persons in Hong Kong and";
- (b) by repealing "and production" and substituting ", production and application".

3. Interpretation

Section 1A is amended -

- (a) by renumbering it as section 1A(1);
- (b) in subsection (1), by adding -

"chip" (晶片) means a chip -

- (a) which forms a component part of an identity card issued on or after the specified date; and
- (b) is capable of -
 - (i) recording, storing and processing data; and
 - (ii) transmitting data to or receiving data from any device electronically;

"fingerprint" (指紋) includes a thumb-print;

"specified date" (指明日期) means the date specified under subsection (2);";

- (c) by adding -

"(2) The Commissioner of Registration may, by notice published in the Gazette, specify a date

for the purposes of the definition of "specified date" in subsection (1).

(3) A notice referred to in subsection (2) is not subsidiary legislation."

4. Power to make regulations

Section 7 is amended -

(a) in subsection (2) -

(i) in paragraph (c) -

(A) by repealing "facsimiles" and substituting "records";

(B) by repealing "印取" and substituting "套取";

(ii) in paragraph (e), by adding ", scanning or image capturing" after "photographing";

(iii) by repealing paragraph (f);

(iv) by adding -

"(gb) the use of digital images and the reproduction of such digital images in relation to identity cards;"

(v) by repealing paragraph (h) and substituting -

"(h) the issue of identity cards (including the issue of permanent identity cards to persons with the

right of abode in Hong Kong

wherever resident) and their form;

(haa) information or particulars to be

included in identity cards and

data to be stored in chips;"

(vi) in paragraph (j), by adding "and matching of fingerprints for verification of identity" after "cards".

(b) in subsection (3), by repealing "of \$20,000" and substituting "at level 5".

5. Requirement to apply for new identity cards

Section 7B(1) is amended by repealing "1 July 1987, or issued" and substituting "the specified date, or issued on or".

6. Power to declare old identity cards invalid

Section 7C(1) is amended by repealing "1 July 1987, or issued" and substituting "the specified date, or issued on or".

7. Sections added

The following are added -

"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.

10. Duty not to disclose photographs, fingerprints and particulars

Subject to the provisions of regulation 23 of the Registration of Persons Regulations (Cap. 177 sub. leg.), a registration officer shall not -

- (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
- (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.),

except and unless with the written permission of the Chief Secretary for Administration which may -

- (c) refer to a person or class or category of persons by name, office or description; and
- (d) contain such terms and conditions as the Chief Secretary for Administration may deem fit to impose.

11. Prohibition of unauthorized handling of particulars

Any person who, without lawful authority or reasonable excuse, gains access to, stores, uses or discloses, any particulars furnished to a registration officer under this Ordinance shall be guilty of an offence and shall be liable to a fine at level 5 and to imprisonment for 2 years."

Registration of Persons Regulations

8. Interpretation

Regulation 2(1) of the Registration of Persons Regulations (Cap. 177 sub. leg.) is amended by adding -

"officer of the Immigration Department" (入境處人員) means an immigration officer or an immigration assistant within the meaning of the Immigration Ordinance (Cap. 115);".

9. Registration, issue and renewal requirements

Regulation 4 is amended -

(a) by repealing subregulation (1)(a)(ii) and substituting -

"(ii) the taking and recording of -

(A) his left and right thumb-prints;

(B) where it is only possible to take one thumb-print from him, his only

thumb-print and one other fingerprint;

(C) where it is not possible to take any thumb-print from him, his fingerprints of 2 other fingers;"

(b) in subregulation (1)(b), by adding -

"(xia) (where the applicant does not have a right of abode in Hong Kong) the conditions of stay (including a limit of stay) imposed in relation to him under section 11 of the Immigration Ordinance (Cap. 115);"

(c) in subregulation (4), by repealing "left thumb-prints or other single".

10. Regulation added

The following is added -

"4A. Inclusion of particulars and data

(1) Without prejudice to regulation 5(1)(a), the Commissioner or any person acting pursuant to a permission given by the Commissioner may -

(a) include in an identity card such information or particulars; or

(b) store in a chip such data,

as may be necessary for the identity card to be applied for such purposes -

- (c) which -
 - (i) require inclusion of information or particulars or storage of data other than the particulars referred to in regulation 4(1) in the chip; and
 - (ii) are provided for in any Ordinance; or
- (d) which require inclusion of such information or particulars or storage of such data other than the particulars referred to in regulation 4(1) in the chip,

as may be prescribed in Schedule 5.

(2) A permission referred to in subregulation (1) may be -

- (a) given by the Commissioner -
 - (i) to any person or any class of persons;
or
 - (ii) generally or in a particular case,
in such manner; and
- (b) subject to such condition,

as the Commissioner thinks fit."

11. Duty to keep and maintain records

Regulation 8(2) is repealed and the following substituted -

"(2) For the purposes of such records or for such other purposes as a registration officer may consider necessary, he may record fingerprints, information and documents furnished or made

for the purposes of registration or for the issue or renewal of an identity card by -

- (a) photographing;
- (b) scanning; or
- (c) image capturing."

12. Duty to carry and produce identity card

Regulation 11(3) is amended -

- (a) by repealing "the left thumb-print, or, if this is not possible, such other single fingerprint" and substituting "2 fingerprints";
- (b) by repealing "時印" and substituting "時套";
- (c) by repealing "及印" and substituting "及套".

13. Regulation added

The following is added -

"11A. Power to verify identity by fingerprint match

(1) If a police officer, an officer of the Immigration Department or an authorized person has reason to doubt the identity of any person who holds an identity card, the officer or authorized person may -

- (a) require the person to produce his identity card;
or
- (b) scan the person's thumb-print or other fingerprint and match the same with the template included in

the identity card referred to in paragraph 1 of Schedule 1.

- (2) Any person who, without reasonable excuse -
 - (a) fails to produce his identity card when required to do so under subregulation (1)(a); or
 - (b) fails to allow a police officer, an officer of the Immigration Department or an authorized person to scan his thumb-print or fingerprint under subregulation (1)(b),

shall be guilty of an offence and shall be liable to a fine at level 2.

(3) In this regulation, "authorized person" (獲授權人士) means any person or member of a class of persons authorized for the purposes of this regulation by the Chief Executive by notice published in the Gazette.

(4) A notice referred to in subregulation (3) is not subsidiary legislation."

14. Prohibition against making alteration to identity card

Regulation 12 is amended -

- (a) by adding -

"(1A) Any person who, without lawful authority -

- (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.";
- (b) in subregulation (2) -
 - (i) by repealing "the authority of the
Commissioner," and substituting "lawful
authority or reasonable excuse, uses or";
 - (ii) by repealing "defaced or";
- (c) by adding -
 - "(2A) Any person who, without lawful
authority or reasonable excuse, uses or has in his
possession an identity card embodying a chip in
respect of which an offence under subregulation
(1A) has been committed shall be guilty of an
offence.";
- (d) in subregulation (4), by repealing "or (2)" and
substituting ", (1A), (2) or (2A)".

15. Duty to report corrections

Regulation 18(1)(b) is amended by adding "or includes" after "shows".

16. Burden of proof

Regulation 21(1) is repealed and the following substituted -

"(1) Subject to regulation 22, the burden of proving the truth of -

- (a) the contents of any written application for an identity card; or
- (b) 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 -

- (c) the applicant;
- (d) the person to whom the identity card has been issued; or
- (e) any other person alleging the truth of such contents."

17. Power to certify and furnish certified copies

Regulation 23 is amended by repealing "facsimile of his left" and substituting "record of his left or right".

18. Duty not to disclose photographs, fingerprints and particulars

Regulation 24 is repealed.

19. Savings and transitional

Regulation 27 is amended -

- (a) in subregulation (1) -
 - (i) by repealing "the Registration of Persons (Amendment) Regulations 1987 (L.N. 178 of 1987)" and substituting "section 5 of the

Registration of Persons (Amendment)

Ordinance 2001 (of 2001)";

(ii) by repealing "those regulations" and substituting "that section";

(b) in subregulation (2) -

(i) by repealing "the commencement of the Registration of Persons (Amendment) Regulations 1987 (L.N. 178 of 1987) may be issued as if those regulations" and substituting "the commencement of section 5 of the Registration of Persons (Amendment) Ordinance 2001 (of 2001) may be issued as if that section";

(ii) in paragraph (a), by repealing "their commencement" and substituting "the commencement of that section".

20. Contents of Forms of Identity Card

Schedule 1 is amended -

(a) by repealing "[reg. 5]" and substituting "[regs. 5 & 11A]";

(b) in paragraph 1 -

(i) in subparagraph (f), by repealing "and";

(ii) in subparagraph (g) -

(A) by adding "data," after "such";

(B) by repealing the full stop and substituting "; and";

(iii) by adding -

"(h) in the form of data stored in the chip in the identity card -

(i) template of the applicant's thumb-prints or other fingerprints taken under regulation

4(1)(a); and

(ii) (where the applicant does not have a right of abode in Hong Kong) the conditions of stay (including a limit of stay) imposed in relation to him under section 11 of the Immigration Ordinance (Cap. 115).".

21. Schedule 5 added

The following is added -

"SCHEDULE 5

[reg. 4A]

PURPOSES REFERRED TO IN REGULATION 4A

1. Storage of a certificate defined in section 2(1) of the Electronic Transactions Ordinance (Cap. 553) issued by the Postmaster General and recognized under section 22 of that Ordinance."

Consequential Amendments**Specification of Public Offices****22. Schedule amended**

The Specification of Public Offices (Cap. 1 sub. leg.) is amended, in the Schedule where the Chief Secretary for Administration is the specified public office, by repealing "Registration of Persons Regulations (Chapter 177 subsidiary legislation), regulation 24." and substituting "Registration of Persons Ordinance (Chapter 177), section 10."

Immigration Service Ordinance**23. Scheduled Offences**

Schedule 2 to the Immigration Service Ordinance (Cap. 331) is amended, in Part I -

- (a) in item 1, in columns 2 and 3, by adding -

"section 11 unauthorized handling of
particulars";

(b) in item 2, in columns 2 and 3, by repealing -

"regulation 12(4) making alteration to
identity card"

and substituting -

"regulation 12(1) making alteration to
identity card or documents

regulation 12(1A) tampering with chip in
identity card

regulation 12(2) possession of altered
identity card or documents

regulation 12(2A) possession of identity card
embodying chip tampered
with".

Explanatory Memorandum

The object of this Bill is to -

(a) amend the Registration of Persons Ordinance (Cap. 177) ("the Ordinance") and the Registration of Persons Regulations (Cap. 177 sub. leg.) ("the Regulation") for the limited purposes of -

(i) providing for the issue and application
of new identity cards embodying chips in

- which data (including template of fingerprint) may be stored (clauses 2, 3, 4(a), 5, 6, 8, 9, 10, 11, 12, 14, 15, 16, 17, 19, 20 and 21);
- (ii) prohibiting tampering with identity cards and chips in identity cards (clause 14);
 - (iii) re-enacting regulation 24 of the Regulation as a section of the Ordinance (clauses 7 and 18);
 - (iv) empowering certain persons to require production of identity card and to verify identity by matching fingerprints with the template of fingerprint included in identity cards (clauses 4(a) and 13);
 - (v) imposing restrictions on using and handling of particulars furnished to a registration officer under the Ordinance (clause 7);
 - (vi) increasing the maximum fine that may be imposed under regulation made under the Ordinance (clause 4(b));
- (b) make consequential amendments to the Specification of Public Offices (Cap. 1 sub. leg.) (clause 22) and Immigration Service Ordinance (Cap. 331) (clause 23).