

Bills Committee on Personal Data (Privacy) (Amendment) Bill 2011

**List of follow-up actions for the Administration
(position as at 13 February 2012)**

Date of meeting	Follow-up actions	Administration's response
8 November 2011	The Administration was requested to provide information on - (a) the arrangements adopted in overseas places in respect of the use of personal data in direct marketing and specifically whether an opt-in or opt-out regime was adopted; and (b) the mechanism under the Administration's proposed opt-out regime for facilitating data subjects to object to the use or transfer of their personal data for direct marketing purposes and sale of their personal data, identify the transferees of their personal data and the original source of data transfer.	The Administration's response was circulated to members vide LC Paper No. CB(2)500/11-12(01) on 6 December 2011 and discussed at the meeting on 7 December 2011.
26 November 2011	The Administration was requested to - (a) consider amending or withdrawing the proposal for the 30-day response period; (b) consider adopting an opt-in regime for the sale of personal data and an opt-out one for the use of personal data; and	Response awaited.

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	<p>(c) device a mechanism to request data users to provide information on each and every transferee of data subjects' personal data upon data subjects' request.</p>	
<p>7 December 2011</p>	<p>The Administration was requested to provide a written response to –</p> <p>(a) the views expressed in deputations' submissions on individual clauses of the Bill; and</p> <p>(b) views and concerns raised by members and the Legal Adviser to the Bills Committee on Personal Data (Privacy) Amendment Bill ("the Bill") on the following clauses -</p> <p><u>Long title</u></p> <p>(i) whether the drafting of the long title of the Bill could be more concise;</p> <p>(ii) the Administration's considerations underpinning the drafting of the long title of an Ordinance, e.g. whether there were any policy considerations behind any change in the drafting;</p> <p><u>Section 2</u></p> <p>(i) the need for changing the plural form of the word "data" to the collective singular in the Personal Data (Privacy) Ordinance</p>	<p>The Administration's response on (a) was circulated to members vide LC Paper No. CB(2)569/11-12(02) (English version issued on 13 December 2011; Chinese version issued on 4 January 2012) and discussed at the meeting on 13 December 2011.</p> <p>The Administration's response on issues relating to the long title and section 2 was circulated to members vide LC Paper No. CB(2)761/11-12(01) on 6 January 2012 and its response on issues concerning section 8 awaited.</p>

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	<p>(Cap. 486) ("PDPO");</p> <p>(ii) in connection with section 2, whether "rule of law" could be replaced by any alternative to avoid confusion with its usual meaning;</p> <p><u>Section 8</u></p> <p>(i) whether the drafting of the proposed amendment to section 8(1)(g) was appropriate, as it did not duly reflect the mutual assistance relationship between Privacy Commissioner for Personal Data ("PCPD") and its counterparts in jurisdictions outside Hong Kong and it was more a power than function;</p> <p>(ii) the appropriateness of using the word "shall" in section 8(1)(g), which might give rise to an interpretation that PCPD had a duty to provide assistance upon request from its counterparts outside Hong Kong and did not have discretion to decide whether to accede to such requests;</p> <p><u>Section 8(2A)</u></p> <p>(i) the existing fee-charging mechanism for PCPD's services and products and past examples on PCPD's fee-charging services and products;</p> <p>(ii) given that it should be PCPD's top priority to devote its</p>	

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	<p>resources to the general public rather than individual organizations, the relationship between PCPD's fee-charging power under the proposed new section 8(2A) and its duty to promote awareness and understanding of, and compliance with, the provisions of PDPO, in particular the data protection principles under section 8(1)(c); and</p> <p>(iii) whether the proposed new section 8(2A) should be revised having regard to members' concerns and suggestions and to reflect the more specific need for charges as outlined in PCPD's submission on its current fee charging arrangement.</p>	
<p>13 December 2011</p>	<p>The Administration was requested to -</p> <p><u>Section 11A</u></p> <p>(a) provide precedents, if any, for the proposed new section 11A on immunity concerning a corporation sole both as a person and a body corporate, the difference in drafting between section 11A and the similar immunity clause in the Ombudsman Ordinance (Cap. 397);</p> <p><u>Section 14(7)</u></p> <p>(b) follow up on the Legal Adviser's letter dated 6 January 2012 to the Administration;</p>	<p>The Administration's response on (b) and (l) was circulated to members vide LC Paper No. CB(2)908/11-12(01) on 30 January 2012 and its response on issues relating to sections 11A and 18 was circulated to members vide LC Paper No. CB(2)761/11-12(01) on 6 January 2012. Response on the remaining items awaited.</p>

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	<p><u>Section 14(9)(c)</u></p> <p>(c) consider replacing section 67(4)(c) with section 67(4) in section 14(9)(c), as section 67(4) should be applicable to the entire section 14(4) because a data user return should be in the specified form;</p> <p><u>Section 14A</u></p> <p>(d) clarify whether the information contained in the data user return under the proposed new section 14A(1) should include accompanying documents and notice of changes;</p> <p>(e) specify the provisions under "if the person is entitled or obliged under this or any other Ordinance" in section 14A(3);</p> <p>(f) consider the Law Society of Hong Kong's revision to the proposed new section 14A(6), which suggests that the knowing or reckless provision of "corrected" but still false or misleading information in the data user return in accordance with the proposed new section 14A(4) should be subject to the sanction under section 14A(6);</p> <p><u>Section 15</u></p> <p>(g) consider making corresponding amendments to section 15 (including sections 15(2)(a) and (b)) in view of the proposed new section 14A under which there might be information provided subsequent to the original data user return;</p>	

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	<p>(h) clarify whether "prescribed form" in section 15(3) of PDPO was different from "specified form" in section 67 of PDPO;</p> <p><u>Section 18</u></p> <p>(i) review the phrase "having the data user informing / supplying..." in the proposed new section 18(5);</p> <p><u>Section 19</u></p> <p>(j) consider whether to increase penalty for data users who was unable to comply with a data access request under the proposed new section 19(1);</p> <p>(k) in connection with the proposed new section 19(1)(b), clarify whether a person who did not hold any such data could still be regarded as a data user as defined and therefore be caught by the duty to inform the requestor that he/she did not hold the data; and</p> <p>(l) follow up on the Legal Adviser's letter dated 6 January 2012 to the Administration on the proposed sections 19(1) and (1A).</p>	
3 January 2012	<p>The Administration was requested to -</p> <p><u>Section 20</u></p> <p>(a) in connection with the proposed amendment to section 20(1)(c) of PDPO under which a data user "shall refuse to comply with a data</p>	<p>The Administration's response on (d) was circulated to members vide LC Paper No. CB(2)908/11-12(01) on 30 January 2012. Response on the remaining items awaited.</p>

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	<p>access request in any other case, if compliance with the request is for the time being prohibited under this or any other Ordinance", specify the other Ordinance(s), if any;</p> <p>(b) in connection with the proposed new section 20(3)(ea) under which "the data user is entitled under this or any other Ordinance not to disclose the personal data which is the subject of the request", specify the other Ordinance(s), if any;</p> <p>(c) provide the justifications for the proposed new section 20(5) and clarify the relevant provisions concerning discovery and inspection referred to therein and whether the High Court's inherent jurisdiction is unable to deal with the situations under section 20(5), identify the possible problems arising from the absence of section 20(5), and confirm whether the Magistrate Ordinance (Cap. 227) and a magistrate are not to be covered by the definitions of "relevant Ordinance" and "specified body" under the proposed new section 20(6); and</p> <p>(d) follow up on the Legal Adviser's letter dated 6 January 2012 to the Administration on the proposed new section 20(5).</p> <p><u>Section 22</u></p> <p>(e) in connection with the proposed transfer of the current section 64(2) of PDPO to the proposed new subsection (4) –</p> <p>(i) consider whether it is too harsh to impose across the board a criminal penalty on the supplying of false or misleading</p>	

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	<p>information in a material particular in a data correction request and whether the penalty is necessary as there is no corresponding offence when the data is first supplied;</p> <p>(ii) clarify whether the supplying of information in (i) has to be in writing;</p> <p>(iii) consider specifying PDPO under which the data correction request under the proposed new subsection (4) is made; and</p> <p>(iv) provide the precedents, if any, for the enforcement of section 64(2).</p> <p><u>Section 31</u></p> <p>(f) consider the Law Society of Hong Kong's suggestion to add "knowingly or recklessly" to the proposed new section 31(4) to demonstrate that there must be mens rea for the offence of supplying false or misleading information by a data user in a matching procedure request made under section 31(1) of PDPO;</p> <p><u>Section 32</u></p> <p>(g) in connection with the proposed new section 32(5), consider imposing a penalty of imprisonment for contravention of any conditions specified in a notice under section 32(1)(b)(i);</p>	

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	<p><u>Section 46</u></p> <p>(h) in connection with the proposed new sections 46(7) to (9), provide information on or consider –</p> <ul style="list-style-type: none">(i) the safeguards for personal data in cross-border commercial transactions; and(ii) the scope of co-operation and relevant agreements between PCPD and the authorities in jurisdictions outside Hong Kong and safeguards for personal data exchanged during the co-operation; <p>(i) whether section 46(8) under which an authority in a jurisdiction outside Hong Kong to which disclosure may be made is too broad; and</p> <p>(j) the policy justifications for sections 46(7) to (9), such as empowering PCPD to disclose matters to other authorities in jurisdictions outside Hong Kong in the absence of consent in writing by a data subject to whom the matter related.</p>	