

**立法會**  
***Legislative Council***

LC Paper No. LS51/02-03

**Paper for the House Committee Meeting  
on 7 February 2003**

**Legal Service Division Report on  
Proposed Resolution under section 6(1)(b)(i) of the  
Security and Guarding Services Ordinance (Cap. 460)**

The Secretary for Security has given notice to move a motion at the Legislative Council meeting of 19 February 2003. The purpose of the motion is to seek the Legislative Council's approval of the notice setting out the revised criteria ("the 2003 Notice") for issuing a security personnel permit ("the permit") as specified by the Security and Guarding Services Industry Authority ("the Authority") under section 6(1)(b)(i) of the Security and Guarding Ordinance ("the Ordinance").

2. Section 10 of the Ordinance provides that no person shall do security work unless under and in accordance with a permit issued by the Commissioner of Police ("the Commissioner") under section 14(5)(b) of the Ordinance if:

- (a) the Commissioner is satisfied that the person is a fit and proper person to do a type of security work; and
- (b) that person satisfies the criteria specified by the Authority under section 6(1)(b)(i) of the Ordinance in relation to the security work of that type.

3. Section 6(1)(b)(i) of the Ordinance provides that one of the functions of the Authority is to specify, by notice in the Gazette, the criteria that must be satisfied by a person before the Commissioner may issue a permit to him. Sections 6(3) and 6(4) stipulate that such notice is not subsidiary legislation but shall not be published in the Gazette unless and until it has been laid before and approved by the Legislative Council.

4. The Authority issued a set of criteria for issuing the permit ("the 1995 Notice") by notice published in the Gazette on 4 August 1995 under which are:

- (a) four categories of permits, namely:

- (i) Category A: Guarding Work Restricted to a 'Single Private Residential Building';
  - (ii) Category B: Guarding Work for all Types of Premises and Properties;
  - (iii) Category C: Guarding Work, the Performance of which Requires the Carrying of Arms and Ammunition; and
  - (iv) Category D: Installation, Maintenance and/or Repairing of a Security Device and/or Designing (for any particular premises or place) a System Incorporating a Security Device.
- (b) six criteria for the four categories of permits, namely:
- (i) age;
  - (ii) fitness (only applicable to Categories A, B and C);
  - (iii) good character;
  - (iv) certification of employment by prospective employer;
  - (v) arms licence (only applicable to Category C); and
  - (vi) proficiency (only applicable to Category D).

5. The 2003 Notice revises the 1995 Notice in the following aspects:

- (a) Description of categories of permits

To tally with the description of categories in the permit form as set out in Schedule 1 to the Security and Guarding Services (Licensing) Regulation (sub. leg. Cap. 460), the description of categories in the 2003 Notice:

- (i) revises the description of Categories A and B in the 1995 Notice by clarifying that the guarding works under these categories do not require the carrying of arms and ammunition;
- (ii) adds guarding work in respect of persons to Category B and clarifies its scope for premises and properties to those which do not fall within Category A; and
- (iii) amends the existing definition of a 'Single Private Residential Building' in Category A in the 1995 Notice.

(b) The Fitness Criterion

- (i) Under the 1995 Notice, an applicant under Categories A, B and C is required to be of good health and physically fit to perform the job. Its accompanying note lists out the physical items subject to medical check.
- (ii) The 2003 Notice proposes to delete the term "good health" and delete the list of the physical items subject to medical check.

(c) The Good Character Criterion

- (i) The 1995 Notice requires:
  - an applicant to be of good character having regard to his employment history, criminal records and other relevant factors.
  - the Commissioner to consider the nature of the criminal offences committed by the applicant. No person who is convicted of a criminal offence and is on probation or bound over or within 2 years of release from a term of imprisonment will normally be granted a permit.

There is no guideline on the nature of criminal record of the applicant in the Ordinance and the 1995 Notice. Section 17 of the Ordinance only provides for the Commissioner to revoke a permit if the holder is convicted of any offence specified in column 2 of Schedule 2 ("the Offence") and the penalty imposed on him for the Offence is the penalty specified in relation to the Offence in column 3 of that Schedule.

- (ii) The 2003 Notice proposes to tighten the "Good Character" criterion so that no person will normally be granted a permit if he/she:
  - was convicted of the Offence within 5 years before his/her application; or
  - is currently on remission or suspended sentence (in addition to probation and bound over as provided in the 1995 Notice); or
  - is within 3 years (instead of 2 years in the 1995 Notice) of release from a term of imprisonment; or

- was convicted of 3 or more offences within 5 years before submitting his/her application. Offences which are considered minor will be excluded.

The Offence includes sexual and related offences under the Crimes Ordinances (Cap 200) and its specified penalty in the existing Schedule 2 is imprisonment. The Administration intends to amend Schedule 2 so that the specified penalty for sexual and related offences will be changed from "imprisonment" to "any penalty" and thus no permit will be granted to a person convicted of sexual and related offences with any penalty imposed within 5 years before his/her application. We have written to the Administration to clarify its plan and the reply is that the amendment to Schedule 2 will be made by the Chief Executive in Council in accordance with section 29 of the Ordinance and is to be expected to come into operation on the same date on which the 2003 Notice will take effect i.e. 1 April 2003. A copy of our letter to the Administration (Annex A) and the Administration's reply (Annex B) are enclosed in this report.

- (d) The Certification of Employment by Prospective Employer Criterion
- (i) The 1995 Notice requires an applicant to produce a letter of employment from the prospective employer on his/her first application for the permit.
  - (ii) The 2003 Notice proposes to replace the "Certification of Employment by Prospective Employer" criterion for applications under Categories A, B and C by a "Proficiency in Security Work" criterion. Certification of Employment by Prospective Employer will become one of the requirements under the new criterion and will cease to be effective 12 months (instead of 6 months as proposed in the Panel Paper referred to in paragraph 6) after the effective date of the 2003 Notice.

Other additional requirements under the new criterion are :

- passing a trade test within 1 year before application; or
- having not less than 3 years of cumulative working experience in performing security work lawfully in Hong Kong over the past 5 years; or
- having not less than 1 year of cumulative working experience in performing security work lawfully in Hong Kong over the past 2 years (this requirement was not mentioned in the Panel Meeting referred to in paragraph 7).

6. For additional information, Members may refer to the "Proposed Amendments to Criteria for Issuing a Security Personnel Permit" ("the Panel Paper") issued by the Security Bureau in November 2002 (File Ref.:CB(2)235/02-03(04)).

7. Members discussed the proposed amendments to the criteria at the meeting of the Panel on Security on 7 November 2002 ("the Panel Meeting"). Members mainly sought clarifications on the proposals and did not express view on whether they supported the new criteria. A Member was of the view that the "Good Character" criterion should be more stringent when applying to a person convicted of a more serious sexual offence. Due regard should be given to public concern over the criminal record of the security personnel when permits are issued. Another Member asked whether the Administration would consider issuing a permit to a person who exceeded the upper age limit for a particular type of guarding work if he was certified by a registered medical practitioner to be physically fit to perform that type of work.

8. According to the Panel Paper and as advised by the Administration in the Panel Meeting, security companies, trade associations, trade unions and concerned groups/organizations on the rights of ex-convicts were consulted.

9. No difficulties relating to the legal and drafting aspects of the 2003 Notice and the Motion have been identified.

Encl

Prepared by

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Assistant Legal Adviser  
Legislative Council Secretariat  
7 February 2003

LS/R/7/02-03  
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Secretary for Security  
Security Bureau  
(Attn: Miss Eliza YAU  
Prin AS (S)E)  
6/F, Main Wing  
Central Government Offices  
Hong Kong

By Fax (2810 7702) and By Post

30 January 2003

Dear Miss YAU,

**Security and Guarding Services Ordinance (Cap. 460)**

I refer to our telephone conversation today.

The Administration states in paragraph 16 of the "Proposed Amendments to Criteria for Issuing a Security Personnel Permit" issued by the Security Bureau in November 2002 that it will take the opportunity to amend Schedule 2 to the Security and Guarding Services Ordinance so that the specified penalty for sexual and related offences will be changed from "imprisonment" to "any penalty". Please let me know when such amendment will be carried out.

It will be appreciated if your reply, in both Chinese and English, could reach us by close of play of today.

Yours sincerely

(Monna LAI)  
Assistant Legal Adviser

c.c. LA  
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30 January 2003

Urgent by fax : 2877 5029

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(Attn: Miss Monna LAI)  
Assistant Legal Adviser  
Legal Service Division  
Legislative Council Secretariat  
Room 406-407, Prince's Building  
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Dear Miss LAI,

**Security and Guarding Services Ordinance (Cap 460)**  
**Amendment to Schedule 2**

I refer to your letter dated 30 January 2003.

Please note that amendment to Schedule 2 to the Security and Guarding Services Ordinance (the SGSO) is to be made by the Chief Executive in Council in accordance with section 29 of the SGSO. Subject to the Chief Executive in Council and the Legislative Council, our plan is to have the amendment come into operation on 1 April 2003, which is the same date for the revised criteria for issuing security personnel permits to take effect.

Yours sincerely,

(Miss Eliza YAU)  
for Secretary for Security