

**立法會**  
***Legislative Council***

Ref : CB2/PL/SE/1

LC Paper No. CB(2) 2276/03-04

(These minutes have been seen by the  
Administration)

**Panel on Security**

**Minutes of meeting held on Friday, 2 April 2004  
at 4:30 pm in Conference Room A of the Legislative Council Building**

**Members present** : Hon James TO Kun-sun (Chairman)  
Hon WONG Yung-kan (Deputy Chairman)  
Hon Albert HO Chun-yan  
Dr Hon LUI Ming-wah, JP  
Hon Margaret NG  
Hon LAU Kong-wah, JP  
Hon Ambrose LAU Hon-chuen, GBS, JP  
Hon Michael MAK Kwok-fung  
Hon IP Kwok-him, JP  
Hon Audrey EU Yuet-mee, SC, JP

**Members absent** : Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP  
Hon CHEUNG Man-kwong  
Hon Andrew WONG Wang-fat, JP  
Hon Howard YOUNG, SBS, JP

**Public Officers attending** : Item III

Mrs Margaret CHAN  
Principal Assistant Secretary for Security (A)

Mr K W LEUNG  
Assistant Commissioner (Boundary and Ports) (Atg)  
Customs and Excise Department

Item IV

Ms Winnie NG  
Principal Assistant Secretary for Security (E)

Mr Victor LO  
Assistant Commissioner of Police (Crime)

Mr Danny CHEUNG  
Superintendent (Criminal Records Bureau)  
Hong Kong Police Force

Item V

Miss CHEUNG Siu-hing  
Deputy Secretary for Security 1

Mr Hubert LAW  
Assistant Secretary for Security (E)2

Mr Ian WINGFIELD  
Law Officer (International Law)  
Department of Justice

Item VI

Miss CHEUNG Siu-hing  
Deputy Secretary for Security 1

Miss Rosalind CHEUNG  
Assistant Secretary for Security (E)3

**Clerk in attendance :** Mrs Sharon TONG  
Chief Council Secretary (2)1

**Staff in attendance :** Mr LEE Yu-sung  
Senior Assistant Legal Adviser 1

Mr Raymond LAM  
Senior Council Secretary (2)5

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**I. Information papers issued since the last meeting**

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(LC Paper No. CB(2)1827/03-04(01))

1. Members noted that a submission relating to right of abode from a member of the public had been issued since the last meeting.

**II. Date of next meeting and items for discussion**

(LC Paper Nos. CB(2)1873/03-04(01) and (02))

2. Members agreed that the following items would be discussed at the next meeting to be held on 13 May 2004 at 2:30 pm -

- (a) Progress of review of the Interception of Communications Ordinance - follow-up issues;
- (b) Policy on integrity checking for disciplined forces; and
- (c) Police's handling of cases of intimidation or violence against public figures and civil servants in their performance of duties.

3. Regarding the item on "Guidelines in the Force Procedures Manual on the seizure of property" in the list of outstanding items for discussion, members agreed that the Clerk should seek Mr Tommy CHEUNG's view regarding whether there were still matters that should be followed up, before the Panel decided how the item should be dealt with.

Clerk

**III. Expansion of Customs and Immigration Facilities at Shataukok Control Point**

(LC Paper No. CB(2)1873/03-04(03))

4. At the invitation of the Chairman, Principal Assistant Secretary for Security (A) (PAS(S)A) outlined the Administration's plan to expand the main building at Shataukok Control Point to provide additional space to cater for operational needs and to improve services to the public.

5. Mr LAU Kong-wah asked whether there was provision for further expansion of the Control Point to cope with future increases in passenger traffic.

6. PAS(S)A responded that the proposed expansion works were mainly intended for meeting operational needs. Whether the Control Point would be further expanded would involve considerations of site constraints, availability of resources, implications for existing services, the need for corresponding expansion works on the Mainland side, and the additional boundary crossing facilities to come on stream with the completion of new control points. She stressed that the Administration would continue to closely monitor passenger and vehicular traffic at

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the Control Point.

7. Mr WONG Yung-kan asked about the improvements referred to in paragraph 5 of the Administration's paper.

8. PAS(S)A and Assistant Commissioner of Customs and Excise (Boundary and Ports) (Acting) responded that covered walkways and canopies would be constructed at the alighting and re-boarding areas to provide proper shelter and connecting facilities for passengers. The customs clearance cubicle for processing departure passengers at the main building would be relocated so as to enlarge the queuing space.

**IV. Mechanism for review of the List of Recordable Offences and disclosure of such review by the Police**  
(LC Paper No. CB(2)1649/03-04(06))

9. Ms Audrey EU said that many legal practitioners found it difficult to advise whether an offence fell within the Police's List of Recordable Offences. She asked whether the Police would draw up a list of offences recordable by the Police so that any person who wished to apply for migration to another country or a job which required no previous conviction could know whether he would be able to obtain a Certificate of No Criminal Conviction (CNCC).

10. Principal Assistant Secretary for Security (E) (PAS(S)E) responded that the Police's mechanism for maintaining records of convictions mainly sought to cater for the need of the Police in discharging their statutory duties of investigation, detection and prevention of crime. There were a number of guiding principles, as set out in paragraph 3 of the Administration's paper, for determining whether a conviction should be recorded by the Police. The criteria for determining if offences should be recordable by the Police would need to have regard to the Police's functions of investigation, detection and prevention of crime. She added that in the processing of applications for migration, the main consideration of many countries was whether the applicant concerned had been convicted of a criminal offence in Hong Kong, but not whether the person's conviction was recorded.

11. The Chairman asked about the legal basis for the statement in paragraph 3 of the Administration's paper that where the court ordered that a particular conviction be recorded, the Police would be legally obliged to do so.

12. Assistant Commissioner of Police (Crime) (ACP(C)) responded that he did not have such information on hand. He informed members that there were about 167 offences, which were subdivided into more than 2 000 data fields in the Police's record system, that were recordable by the Police. Besides such offences, the Police would also record a person's conviction during the serving of a suspended sentence and offences where a heavier sentence would be imposed on reconviction. He

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added that under the Personal Data (Privacy) Ordinance, a person was entitled to know his personal data kept by the Police.

13. Ms Audrey EU asked about the criteria for issuing a CNCC. ACP(C) responded that an applicant could submit an application for a CNCC at the designated office, where the Police would issue CNCCs under certain circumstances upon application.

14. Referring to paragraph 4 of the Administration's paper, Mr MAK Kwok-fung asked about the offences which would normally not be recorded and circumstances under which such offences would become recordable. He also asked whether there was a mechanism for the removal of a person's offence from the Police's record.

15. ACP(C) responded that offences normally not recorded were those where the punishment involved a fine only but not imprisonment. However, such offences would be recordable if a heavier sentence was imposed on reconviction. He said that although the Rehabilitation of Offenders Ordinance prohibited unauthorised disclosure of the previous convictions of offenders who had not been reconvicted for three years, the conviction would still be maintained in the Police's record and listed in a CNCC. PAS(S)E added that besides the Police, other government departments also maintained their own records on a need basis.

16. The Chairman expressed concern that some minor offences were recordable merely because a heavier sentence would be imposed on reconviction. He added that consistent criteria should be adopted in the issuing of CNCCs.

17. Mr Albert HO asked whether the civil or criminal nature of an offence was a criterion for determining whether the offence was recordable. SALA1 said that to his knowledge, offences were not classified according to their civil or criminal nature.

18. PAS(S)E reiterated that the guiding principles for determining whether a conviction should be recorded in the Police's records were set out in paragraph 3 of the Administration's paper. ACP(C) added that the original intent of the Police was to maintain a record of serious offences. The list was subsequently broadened to accommodate the Judiciary's need to examine whether an offence was reconvicted.

19. The Chairman and Mr Albert HO considered that the meaning of a criminal record should be defined clearly in legislation.

20. Miss Margaret NG considered that the records of convictions maintained by the Police should be separated from the system for issuing of CNCCs. She said that the meaning of a criminal record should be clearly defined and the criteria for recording a conviction should be set out clearly.

21. PAS(S)E responded that the Administration appreciated the concern about

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the implications of the Police's list of recordable offences on CNCCs. She said that the Security Bureau would examine the issue with the relevant government departments, having regard to the practice in other countries.

Adm

22. The Chairman requested the Administration to -

- (a) provide the list of some 167 offences which might be recordable by the Police;
- (b) explain the criteria for recording an offence, including conviction during the serving of a suspended sentence and offences where a heavier sentence would be imposed on reconviction;
- (c) explain the circumstances under which the court would order that a particular conviction be recorded, the legal basis of such an order and whether such an order was still given by the court; and
- (d) provide information on the circumstances under which a CNCC would be issued.

23. The Chairman suggested that the subject matter be followed up by the Panel.

**V. Progress of review of the Interception of Communications Ordinance**  
(LC Paper No. CB(2)1873/03-04(04))

24. At the invitation of the Chairman, DS for S1 briefed members on the review undertaken by the Administration on interception of communications. She first outlined the existing legal provisions, and then elaborated on the Administration's paper. She also provided the following supplementary information -

- (a) the inter-departmental working group formed to review interception of communications comprised representatives from the Security Bureau, the Police, the Department of Justice and the Independent Commission Against Corruption;
- (b) the working group would study the following issues and related matters -
  - (i) existing legislation relating to interception of communications;
  - (ii) relevant legislation and practices in other jurisdictions and the latest developments especially after the "911" incident; and
  - (iii) the regulatory regime.

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25. DS for S1 said that the working group had admittedly taken longer than expected in proceeding with its work. This was due to the fact that the work involved much complex information which required considerable time to collate and analyze. Overseas developments in the past few years also had to be taken into account. In addition, the Security Bureau had had to accord priority to other more pressing work. DS for S1 added that the working group would endeavor to balance all relevant considerations, for example, the need to increase transparency and accountability, protection of privacy, and ensuring the confidentiality and effectiveness of law enforcement. She said that upon the working group's completion of the review, the Administration would consult the public before implementing any recommendations.

26. Mr Albert HO said that in the United Kingdom (UK), the Queen did not have the power to withhold implementation of a piece of legislation passed by the parliament. He asked whether the Chief Executive (CE) was default of his constitutional duty to defer indefinitely the implementation of the Interception of Communications Ordinance (IOCO) which had been passed by the Legislative Council (LegCo) in 1997 and signed by the then Governor.

27. DS for S1 responded that the Administration had no intention to defer indefinitely the implementation of IOCO. It was conducting a comprehensive review, having regard to overseas experience and the concerns of different parties, on the relevant issues which were complicated and had long-term implications. She said that the public officer concerned had the discretion to decide when a piece of legislation should be implemented, having regard to whether it was in the interest of the public to do so.

28. Law Officer (International Law) (LO(IL)) said that in the case of *R v Secretary of State for the Home Department, ex parte Fire Brigades Union and others* in the United Kingdom, the House of Lords held that the Home Secretary, who was the authority in that case to bring the legislation into effect, was under no legally enforceable duty to bring certain sections of the legislation concerned into force since he had a discretion to bring those provisions into effect when it was appropriate to do so. It was mentioned in the judgment of the House of Lords in the case that there were many pieces of legislation, some of which dated back to 1928, that had not been brought into operation and had not been repealed. There were also a number of statutory provisions both in UK and in Hong Kong that had not been brought into force. He informed members that there was a book entitled "Is it in Force?" which set out some 150 pages of statutory provisions in UK that had not been brought into force. Miss Margaret NG requested the Administration to provide members with a copy of the case of *R v Secretary of State for the Home Department, ex parte Fire Brigades Union and others*.

(Post-meeting note : The information provided by the Administration on the case was circulated to members vide LC Paper No. CB(2)1987/03-04 on 13 April 2004.)

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29. Mr Albert HO said that if the Administration considered it not in the interest of the public to implement a piece of legislation, it should have opposed the enactment of the legislation in the legislative process and sought to repeal the legislation after enactment.

30. DS for S1 responded that the former Secretary for Security had actually pointed out the problems associated with the relevant legislative proposal in the legislative process. The Administration had strongly opposed to the bill at the time.

31. The Chairman said that Article 64 of the Basic Law (BL64) provided that the Government of the Hong Kong Special Administrative Region (HKSARG) should implement laws passed by LegCo.

32. LO(IL) said that BL64 required that HKSARG should implement laws passed by LegCo and already in force. Thus, it referred to legislation that had been brought into force. The power to bring a piece of legislation into force was vested in CE.

33. Mr Albert HO asked whether CE had a constitutional duty to bring a piece of legislation into effect within a reasonable period after it was passed by LegCo. He considered that indefinitely delaying the implementation of a piece of legislation would be no different from repealing the legislation.

34. LO(IL) responded that he did not consider that there was such a duty on the part of CE. He said that there was a duty to consider whether it was appropriate to bring a piece of legislation into effect and the power to bring it into effect was vested in the relevant public officer.

35. Miss Margaret NG disagreed with the views of LO(IL). She considered that the Administration should highlight the provisions in IOCO which were difficult to implement.

Adm 36. The Chairman said that the Administration should provide members with a list of problems associated with IOCO and advise members of the latest development of its work in addressing the problems. Miss Margaret NG added that the Administration should provide a progress report on its review of IOCO.

37. DS for S1 responded that the Administration was conducting a comprehensive review on the matter. Besides the provisions in IOCO, other related matters would also have to be examined. It would, therefore, be more meaningful for a holistic approach to be adopted. She stressed that members would be consulted on the proposed way forward after the review was completed.

Adm 38. The Chairman said that besides providing members with a list of problems



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associated with IOCO and a progress report, the Administration should inform members of the options being considered and the Administration's inclination on the way forward regarding interception of communications. DS for S1 reiterated that the Administration was currently conducting a comprehensive review and would consult members when the review was completed.

SALA1

39. Miss Margaret NG asked the Legal Service Division of the LegCo Secretariat to provide a paper on existing local legislation relating to interception of communications and a comparison of the effects between implementing and not implementing IOCO.

Clerk

40. The Chairman said that a research study on the regulation of interception of communications in overseas countries should be conducted by the Research and Library Services Division of the LegCo Secretariat. LO(IL) said that the Regulation of Investigatory Powers Act 2000 of UK might be a good starting point.

Adm

41. The Chairman requested the Administration to provide a paper on -

- (a) the scope of CE's discretion under BL64 and section 1(2) of IOCO in deciding whether and when IOCO should come into operation; and
- (b) the criteria for determining whether and when IOCO should come into operation.

42. The Chairman asked whether the Administration could complete its review and issue a consultation paper in about a year's time.

43. DS for S1 responded that as time was needed for studying relevant overseas legislation and other related issues, she was not in a position to provide a definite timetable for completion of the review at this juncture.

44. The Chairman expressed strong dissatisfaction that the Administration was quick in seeking additional power but slow in the review of existing power. He suggested that the subject matter be followed up at the next meeting. He added that S for S should be invited to attend the meeting and explain to members the difficulties encountered in the review of IOCO and the timetable for completion of the review.

**VI. The Law Reform Commission report on "The Regulation of Debt Collection Practices" - way forward**  
(LC Paper Nos. CB(2)2657/01-02 and CB(2)1710/03-04(01))

45. DS for S1 informed members that the Security Bureau and other relevant bureaux and government departments were carrying out a comprehensive study on issues relating to the recommendations in the Law Reform Commission (LRC)

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report on "The Regulation of Debt Collection Practices", including -

- (a) developments after the LRC report was issued, such as the Code of Practice on Consumer Credit Data issued by the Office of the Privacy Commissioner for Personal Data;
- (b) the impact of the proposals in the Report on Civil Justice Reform given that a number of respondents had previously pointed to the need for the civil judicial process to be streamlined as the long term solution to the problem of abusive debt collection practices;
- (c) the enforceability of the proposal of creating the criminal offence of harassment of debtors and others, having regard to the views expressed by different sectors, and the interface between this proposal and a similar recommendation in the LRC report on stalking; and
- (d) whether a licensing scheme should be introduced for debt collectors, its objectives and hence the design and coverage of such a scheme.

46. DS for S1 informed members that debt collection practices involving intimidation, criminal damage to property and assault could already be dealt with under existing legislation. She said that the Administration would, where necessary, consult the relevant sectors and examine the practices as well as problems encountered in other jurisdictions. The results of the Administration's study would be made public and public consultation on the way forward would be conducted. She stressed that the Police and many non-government organisations were taking steps to assist debtors and their families.

47. Mr Albert HO expressed concern that the Administration's study might take a long period of time. He asked about the Administration's policy intent regarding LRC's proposals on making unlawful harassment of debtors and others a criminal offence and licensing.

48. DS for S1 responded that as there was much similarity between harassment and stalking ,e.g., the making of a large number of unwanted faxes or telephone calls, unwelcome visits etc. Therefore it would be more appropriate to consider the proposal of making harassment of debtors and others a criminal offence in conjunction with the proposals in the LRC report on stalking, which was being followed up by the Home Affairs Bureau. She said that many abusive debt collection practices could be dealt with under existing legislation. During the consultation by the LRC sub-committee on debt collection practices, some respondents were opposed to the enactment of additional legislation to regulate debt collection practices. The Administration would need to take these and other views into account and draw a conclusion after the comprehensive review on the matter was completed.

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49. Mr Albert HO asked whether there was a timetable for the Administration's review.

50. DS for S1 responded that the Administration hoped to complete the review as soon as possible. However, there was not a timetable for the review.

51. Mr WONG Yung-kan said that there were many complaints at the district level about debt collection practices. He considered that the Administration should expedite its work on the regulation of debt collection practices.

52. The Chairman said that there were deep concerns in the community about debt collection practices since 1993. The matter had been discussed for many years at meetings of the Fight Crime Committee and studied by LRC for many years. He asked whether the Administration would expedite its review. He also asked whether the Administration would implement the proposals in stages and enact legislation to protect third parties first.

53. DS for S1 responded that the proposals, if adopted, could be implemented in stages as necessary. She said that the Security Bureau was consulting the Department of Justice regarding the enforceability of the LRC recommendations. She added that the Fight Crime Committee had stressed the importance of an efficient civil judicial process as well. The Administration had therefore asked its legal advisers to look into the implications of the civil justice reform announced recently on the regulation of debt collection practices. The Chairman said that the Administration should not wait for the outcome of civil justice reform, which would probably take a number of years to complete.

54. In response to the Chairman, DS for S1 said that a common problem encountered in law enforcement was the difficulty in identifying who the creditor was.

55. The Chairman said that the problem could be addressed through making it a requirement for debt collection agencies to state the creditor whom he represented. DS for S1 said that in many cases, there were problems in the identification of the debt collector in the first place.

56. Mr WONG Yung-kan said that many neighbours of debtors had complained about serious disturbance from debt collectors, such as knocking at the doors without lawful excuse, even though the debtors had moved to live at another place. He considered that there was an urgent need to address the problems faced by third parties.

57. DS for S1 responded that the behaviour of knocking at the door without lawful excuse could be dealt with under section 4(22) of the Summary Offences Ordinance (SOO).

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58. The Chairman said that many debt collection agencies had their own legal advisers and were aware of the provisions in section 4(22) of SOO. He pointed out that if there was a licensing scheme for debt collectors and a code of practice prohibiting debt collectors from knocking at the doors when the debtor had moved to live at another place, a debt collector would be in breach of the code of conduct, if he exhibited such behaviour.

59. DS for S1 responded that if the code of conduct was so detailed, it might adversely affect the work of the debt collection trade. She said that it was necessary to consider the concerns of different parties. She stressed that the Police would certainly follow up any complaint lodged.

60. The Chairman considered that there was an urgent need to implement the recommendations in the LRC report. He said that if there were difficulties in implementing some of the recommendations, those which were easier to implement should be implemented first. DS for S1 undertook to consider the views expressed by members.

Adm

61. There being no other business, the meeting ended at 7:10 pm.

Council Business Division 2  
Legislative Council Secretariat  
11 May 2004