

Motion on
“Establishing a scheme for sexual offences records checks
for child-related work”
at the meeting of Legislative Council on 10 March 2010

Progress Report

Purpose

At the Legislative Council meeting on 10 March 2010, the motion on "Establishing a scheme for sexual offences records checks for child-related work" moved by Dr Hon Philip WONG Yu-hong, as amended by Hon Emily LAU Wai-hing and Hon Audrey EU Yuet-me, was passed. The wording of the motion is as follows-

“That the occurrence in recent years of a number of incidents in which persons who engaged in child-related work committing sexual offences against children has aroused widespread concern; as employers at present do not have any channel for checking the past sexual offences conviction records of applicants when recruiting personnel for posts which have close contact with children, the Law Reform Commission (‘LRC’) released a report in February this year, putting forward interim proposals for, as an interim measure, the establishment of a scheme for sexual offences records checks for child-related work, and this Council notes the contents of the report; in view of the highly controversial nature of LRC’s proposals, this Council urges the Administration to expeditiously consult various sectors and, after balancing the views of various parties, implement as soon as possible reasonable and practicable administrative and legislative measures, so as to enhance protection for children against sexual assault, and safeguard the human rights of former sex offenders and facilitate their rehabilitation.”

2. This paper updates Members on the follow-up actions taken by the Administration.

Report on “Sexual Offences Records Checks for Child-related Works: Interim Proposals” by the Law Reform Commission (LRC)

3. In February 2010, the LRC published a report on “Sexual Offences Records Checks for Child-related Works: Interim Proposals”, recommending the Administration to establish an administrative mechanism, which would enable employers of persons undertaking child-related work and work relating to mentally incapacitated persons (MIPs) to check the criminal conviction records for sexual offences of employees, without delay. The LRC also revealed that the administrative mechanism was only an interim measure. They would further consider whether a comprehensive legislative scheme should be introduced, and they anticipated that such work would take some time to complete.

4. The LRC points out in the report that in recent years, Judges hearing cases of child sexual abuse involving ex-sex offenders have stated in their judgements that it is necessary for Hong Kong to set up a mechanism similar to those found in other countries, so that the public can be given appropriate and effective protection, and ex-sex offenders can be prevented from molesting children again through contact with them in the course of their work. The public consultation on the proposed mechanism conducted by the LRC also shows that most opinions are in support of the mechanism for sexual offences records checks.

5. The LRC also points out in its report that information about the background history of applicants for job is important to employees seeking to fill position of trust. Where the work involves working with children or MIPs, information as to a job applicant’s sexual conviction record is relevant in assessing the applicant’s suitability. It is reasonable, responsible and necessary to introduce a system whereby the employers or parents may ascertain that a person who assumes any post related to work with children has any previous convictions for sexual offences.

6. The Administration also noted the concerns that the proposed mechanism may affect privacy and rehabilitation of previous sex offenders. In this regard, the LRC has made detailed responses to these concerns in the report, and suggested the introduction of a number of measures to the administrative mechanism to reduce the impact on human rights and

rehabilitation of offenders. For example, considering the need for rehabilitation of sexual offenders, what the report suggests is not a scheme to automatically or mandatorily ban previous sex offenders from working in child-related fields. It enables employers and parents to decide whether to employ any person with a previous sexual conviction record to child-related works on a fully informed basis. In addition, the administrative mechanism is only applicable to work related to children and MIPs and it will not affect or regulate other jobs and sectors such as catering, hospitality, retail, real estate, transport, logistics, etc. Therefore, the report considers that even if previous sex offenders are unable to work in child-related fields, they still have ample opportunities to re-integrate into society. The report also suggests that the scheme for sexual offences records checks should not disclose any conviction records regarded as "spent" under Section 2 of the Rehabilitation of Offenders Ordinance (Chapter 297), to provide rehabilitation opportunities for previous offenders who commit minor offences.

7. To take into account the privacy right of previous sexual offenders, the report does not recommend adopting some practices used in overseas jurisdictions whereby publicizing the list and personal data of sexual offenders in the community. In addition, under the proposed mechanism, an application for the check must be submitted by the job applicant voluntarily. The Administration will not hand over the written information of his conviction record to the employer directly but will give the information to the job applicant concerned. It is up to the job applicant to decide whether he would give this information to his employer for reference.

8. The Administration believes that LRC's research has taken full account of the views of nearly 200 written responses received during public consultation, and has conducted thorough studies on and made practicable suggestions to some major concerns such as human rights, rehabilitation, etc. The administrative mechanism proposed in the report has also made every attempt to strike a balance between child protection and the rights of rehabilitated offenders.

9. We notice that after the publication of the report, a number of Legislative Council members, interested groups, and members of the community have expressed their deep concern on child sexual abuse

incidents through different channels and in various occasions, and requested the Government to expeditiously set up the mechanism for sexual offences records checks for the protection of children. In this connection, the Administration believes that the community has forged a consensus on the establishment of a scheme for sexual offences records checks for child-related work. The Administration welcomes the recommendations made by the LRC on setting up of an administrative mechanism of sexual offences records checks and is examining the report with a view to implement the measure as soon as possible in response to the need of the community.

10. Meanwhile, the Legislative Council Panel on Security held an open meeting on 8 April to discuss the report. Deputations from various sectors were invited to join the discussion and give their views on the interim measure proposed in the report.

11. The Administration is considering the recommendation for implementing the proposed mechanism. It will make reference to the views expressed by Legislative Council members, interested groups and members of the community. We hope that a reasonable, lawful and feasible checks mechanism can be introduced as soon as possible so as to enhance the protection of children and MIPs, and respond to the request to “implement as soon as possible reasonable and practicable administrative and legislative measures, so as to enhance protection for children against sexual assault, and safeguard the human rights of former sex offenders and facilitate their rehabilitation”, as contained in the motion. According to the current progress, it is estimated that the Administration can complete the preparatory work for the mechanism and commence its operation by next year at the soonest.

12. As mentioned in the report, the LRC points out that a comprehensive legislative scheme, which covers various issues, would take considerable time to be deliberated. The judiciary and various members of the public have expressed concerns that there is an immediate need for a system to reduce the risk of children and MIPs being sexually abused. Therefore, the LRC in the report recommends the Administration to consider the introduction of the proposed administrative scheme as an interim measure. We will make reference to the views of related sectors and stakeholders and introduce the mechanism as soon as possible. At the same time, with the

practical experiences to be accumulated, we also hope that legislative proposals for a comprehensive legislative scheme to be recommended by the LRC could be put forward at an early date.

Security Bureau
May 2010