

立法會
Legislative Council

LC Paper No. CB(2)1180/09-10(01)

Ref : CB2/PL/SE

Panel on Security

**Background brief prepared by the Legislative Council Secretariat
for the special meeting on 8 April 2010**

**Law Reform Commission Report on
"Sexual offences records checks for child-related work : interim proposals"**

Purpose

This paper provides background information and summarizes discussions of the Panel on Security (the Panel) on the report of the Law Reform Commission (LRC) on sexual offences records checks for child-related work (the Report).

Background

2. In April 2006, LRC formed a Subcommittee to review the existing sexual offences under the criminal law. In October 2006, the Subcommittee's terms of reference were extended to include consideration of whether a scheme for the registration of offenders convicted of sexual offences should be established.

3. In July 2008, the Subcommittee issued a consultation paper to seek views and comments from the community including organizations such as schools, children and mentally incapacitated persons (MIPs) concern groups, public organizations (including Office of the Privacy Commissioner for Personal Data (PCO) and Equal Opportunities Commission (EOC)) and rehabilitated offender concern groups, as well as members of the public on establishing a mechanism for sexual offences records checks. About 200 written responses were received. LRC subsequently published its report on Sexual Offences Records Checks for Child-related Work: Interim Proposals on 2 February 2010.

4. For the protection of children and MIPs against sexual assault from sex offenders, the Report recommends that the Administration should establish an administrative scheme which would enable an employer to request a job applicant to apply to the relevant authority for proof as to whether the job applicant has any criminal conviction record for sexual offences, before employing the job applicant for work relating to children and MIPs. LRC has also made the following recommendations -

- (a) establishment of an administrative scheme for sexual offences records checks;
- (b) the scheme should only cover work relating to children and MIPs;
- (c) checks should not be made mandatory;
- (d) the proposed scheme should apply to prospective employees in the initial phase, and be extended to cover existing employees at a later stage;
- (e) the current scheme of Certificate of No Criminal Conviction could be modified and adapted to enable the type of checks proposed in the Report;
- (f) only sexual offences specified in the Report could be revealed and broad community notification is not recommended;
- (g) information other than conviction records should not be revealed; and
- (h) spent convictions should not be disclosed.

Deliberations of the Panel

5. The Panel discussed the Report at its meeting on 2 March 2010. The deliberations are summarized in the following paragraphs.

6. On the question of whether the Administration would take forward the LRC's recommendation of establishing an administrative scheme to enable the sexual conviction record of job applicants for child-related work to be checked, the Administration advised that LRC was an independent organization, and the Administration respected the recommendations made by LRC. The Administration would study the recommendations in detail and would revert to the Panel once it had come to a view on the matter.

7. A member considered that to enhance the protection of children against sexual assault, the recommendations in the Report should be implemented without delay. The member enquired whether the Administration had any difficulties in implementing the interim proposals regarding the establishment of a sexual conviction record check mechanism.

8. The Administration responded that there were a number of issues which needed to be addressed in considering the establishment of an administrative scheme to enable employers of child-related work and work relating to MIPs to check the criminal conviction records for sexual offences of prospective employees. LRC had proposed in the Report a wide and diverse range of child-related work for the purpose of obtaining sexual conviction records information. The Administration had to critically consider the scheme's capacity to ensure that the service delivery could meet the public expectation and to take into account the seasonal factors of recruitment in these related sectors. In addition,

the Police had no prior experience in operating such a scheme and needed time to devise a practicable system design.

9. Some members expressed concern about the recommendation of establishing an administrative scheme as an interim measure to enable the criminal conviction records for sexual offences of persons undertaking child-related work to be checked. They considered that even if there was a pressing need to address the question of a possible sexual conviction record check for those engaged in child-related work, it was the responsibility of the Administration, instead of LRC, to draw up such administrative measures.

10. The Administration explained that the scheme was intended as an interim measure which could be implemented quickly by administrative means without the need for enactment of legislation in order to respond to concerns expressed by the public and comments made by judges in some court cases in recent years. According to the Government's understanding, the Subcommittee would continue to consider whether a comprehensive legislative scheme should be introduced to enhance the regulation of sexual offences records checks for child-related work, without unjustifiably infringing the privacy and other rights of the offenders. As that would take some time to complete, LRC had therefore put forward the interim proposals for consideration and implementation pending the formulation of a comprehensive legislative scheme. The Administration stressed that LRC had made the recommendation on its own initiative.

11. A member considered that the need to protect children and the vulnerable had to be balanced against other considerations, including the human rights and rehabilitation needs of ex-offenders. Articles 19 and 34 of the United Nations Convention on the Rights of the Child (UNCRC) required the taking of reasonable and necessary measures to protect children from harm and exploitation by sex offenders.

12. The Administration responded that according to the Report, LRC had given full regard to International Covenant on Civil and Political Rights and UNCRC in drawing up the proposals. It was noteworthy that in July 2008, the Subcommittee issued a consultation paper setting out its recommendations for comment and discussion by the public. The consultation exercise, which ended on 31 October 2008, had elicited some 200 written responses from schools, other organizations and individuals. Having considered the responses received, LRC decided to recommend a scheme that would enable employers of child-related and MIP-related work to have access to necessary information in order to make an informed recruitment decision. The conclusions presented in the Report had reflected the views collected during the consultation period.

13. A member considered that there was a loophole with the existing system as there was no way to prevent persons who had committed sexual offences from working in the education sector. Sex offenders whose teacher registration was suspended under the Education Ordinance could not be barred from operating tutorial schools or taking up child-related and MIP-related work in other sectors.

14. The Administration responded that to its knowledge, LRC and its Subcommittee had considered carefully all relevant considerations, including human rights, privacy and

rehabilitation needs of ex-offenders and proper protection to children, in their deliberations on the feasibility of setting up a sexual offences records checks mechanism. The Administration was in the process of studying the recommendations. When considering the establishment of such a scheme, the Administration would take into account the views of relevant parties, including LegCo Members, EOC, PCO, children concern groups, offenders' rehabilitation concern groups and professional bodies of related sectors.

Related information

15. At the Council meeting on 10 March 2010, Dr Hon Philip WONG moved a motion on establishing a scheme for sexual offences records checks for child-related offences. Hon Emily LAU and Hon Audrey EU moved amendments to the motion. The motion as amended by the two members was carried.

Relevant papers

16. Members are invited to access the Legislative Council's website at <http://www.legco.gov.hk> to view the papers for the Panel meeting on 2 March 2010.

Council Business Division 2
Legislative Council Secretariat
30 March 2010