

立法會
Legislative Council

LC Paper No. CB(2)2233/10-11
(These minutes have been seen
by the Administration)

Ref : CB2/PL/SE

Panel on Security

Minutes of meeting
held on Tuesday, 3 May 2011, at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon James TO Kun-sun (Chairman)
Hon LAU Kong-wah, JP (Deputy Chairman)
Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Hak-kan
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
Hon WONG Yuk-man

Members absent : Hon Albert HO Chun-yan
Dr Hon Margaret NG
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon CHIM Pui-chung
Hon LEUNG Kwok-hung

**Public Officers : Item IV
attending**

The Administration

Mr LAI Tung-kwok, SBS, IDSM, JP
Under Secretary for Security

Mr David LAU Kam-kuen
Principal Assistant Secretary for Security (A)

Mr Tony WONG Chi-hung
Assistant Commissioner of Police (Operations)
Hong Kong Police Force

Mr CHIU Ming-wah
Deputy District Commander (Border)
Hong Kong Police Force

Mr WONG Shek-kee
Chief Inspector (Operations) (Border District)
Hong Kong Police Force

Mr Charles CHOW Chi-ping
Project Director
Architectural Services Department

Mr LUK Wai-hung
Ch Engineer/Drainage Projects
Drainage Services Department

Item V

The Administration

Mr LAI Tung-kwok, SBS, IDSM, JP
Under Secretary for Security

Mrs Millie NG
Principal Assistant Secretary for Security (E)

Mr Steven Carruthers
Chief Superintendent of Police
(Crime Support) (Crime Wing)
Hong Kong Police Force

Mr Isaac LO
Senior Superintendent of Police
(Identification Bureau)
Hong Kong Police Force

Mr Michael CHAN
Chief Inspector of Police
(Support Section) (Identification Bureau)
Hong Kong Police Force

Clerk in attendance : Mr Raymond LAM
Chief Council Secretary (2) 1

Staff in attendance : Ms Connie FUNG
Senior Assistant Legal Adviser 1

Mr Bonny LOO
Assistant Legal Adviser 3

Mr Ian CHOW
Senior Council Secretary (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)1593/10-11)

The minutes of the special meeting held on 26 January 2011 were confirmed.

II. Information papers issued since the last meeting
(LC Paper Nos. CB(2)1548/10-11(01), CB(2)1551/10-11(01),
CB(2)1571/10-11(01), CB(2)1575/10-11(01), CB(2)1589/10-11(01)
to (02) and CB(2)1598/10-11(01) to (02))

2. Members noted that the following papers had been issued since the last meeting -

- (a) submission from Hong Kong Human Rights Monitor on the Police's handling of public meetings and public processions;

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- (b) letter from Hong Kong Fire Services Department Ambulancemen's Union on first-aid advice;
- (c) Administration's response to the letter from Hong Kong Fire Services Department Ambulancemen's Union on first-aid advice;
- (d) Administration's reply to the letter from Hong Kong Human Rights Monitor on the Trial Scheme on School Drug Testing in Tai Po District;
- (e) Administration's response to the letter from Cathay Pacific Airways Flight Attendants Union on Outbound Travel Alert and other issues relating to the recent nuclear plant incident in Japan;
- (f) Administration's letter to the Panel elaborating on its response to Cathay Pacific Airways Flight Attendants Union;
- (g) joint submission from four unions of the Immigration Department ("ImmD") regarding the resources of ImmD; and
- (h) Administration's response to the issues raised in the submission from the four unions of ImmD.

III. Date of next meeting and items for discussion

(LC Paper Nos. CB(2)1611/10-11(01) and (02))

Regular meeting in June 2011

3. Members agreed to discuss the following items at the next regular meeting scheduled for 7 June 2011 at 2:30 pm -

- (a) Redevelopment of Tai Lam Centre for Women;
- (b) Daya Bay Nuclear Power Station Notification Mechanism; and
- (c) Manpower situation of ImmD.

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Regarding item (c), Ms Emily LAU pointed out that in the joint submission from four staff unions of ImmD, grave concern was expressed on the manpower shortage in ImmD. She suggested that representatives of the four staff unions of ImmD should be invited to attend the meeting. Members agreed.

IV. Construction of a Secondary Boundary Fence arising from the reduced coverage of the Frontier Closed Area – Phase Two
(LC Paper Nos. CB(2)1610/10-11(01) and CB(2)1611/10-11(03))

4. Under Secretary for Security ("US for S") and Project Director, Architectural Services Department ("PD/ASD") briefed members on the Administration's proposal to construct a secondary boundary fence ("SBF") along the boundary patrol road ("BPR"), and new sections of the BPR and the primary boundary fence ("PBF") at certain sections along the Hong Kong Special Administrative Region's boundary with the Mainland in order to take forward the phased implementation of the reduced coverage of the Frontier Closed Area ("FCA").

5. Noting from paragraph 19 of the Administration's paper that eight objections had been received in relation to the acquisition of land for the part of the project undertaken by the Drainage Services Department ("DSD"), Mr CHAN Hak-kan asked about the progress of resolving the objections in accordance with the statutory requirements.

6. Chief Engineer/Drainage Projects, DSD responded that DSD had received a total of eight objections. Two of them were related to access to their lots and the Administration had assured the residents that their access would be maintained. One was related to the reprovisioning of an existing boundary wall for the house of a resident and the Administration had agreed to the reprovisioning request. The remaining five were related to land compensation rate and the Administration had conveyed their views to the Executive Council for decision.

7. Mr CHAN Hak-kan said that to his knowledge, many cross-boundary students crossed the boundary through Chung Ying Street in Sha Tau Kok. He asked whether the Administration would consider establishing a proper boundary control point at Chung Ying Street.

8. US for S explained that in view of geographical constraints, a proper boundary control point could not be established at Chung Ying Street in Sha Tau Kok. There was a suggestion from local residents that a

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side gate at the Sha Tau Kok Boundary Control Point should be opened to cross-boundary students so that they could walk through a bridge above Shenzhen River to the Mainland side. The Administration had studied the suggestion and noted that as there was only a narrow path designed for maintenance purpose on the bridge above the Shenzhen River, it was too dangerous for such students to use the path for crossing the boundary. Nevertheless, the Administration would continue its communication with local residents on the cross-boundary arrangements for such students.

9. Mr CHAN Hak-kan and the Deputy Chairman considered that the Administration should consider the request of local residents for releasing Sha Tau Kok from FCA.

10. US for S advised that owing to historical reasons, there was no boundary control facilities at Chung Ying Street. For security considerations, there was no plan to release Sha Tau Kok from FCA. Nevertheless, the Administration would consider local residents' request for opening up part of Sha Tau Kok for eco-tourism.

11. The Deputy Chairman sought information on the timing for completion of the construction and demolition works arising from the reduced coverage of FCA.

12. Principal Assistant Secretary for Security (A) ("PAS(S)A") advised that the release of land arising from the reduced FCA would be implemented by phases. Construction works for the sections covering Mai Po to Lok Ma Chau Control Point and Lin Ma Hang to Sha Tau Kok would be completed by the end of 2011 and the land concerned would be released in 2012. The section covering Lok Ma Chau Control Point to Ng Tung River would be completed afterwards and the land concerned would be released in early 2013. The section covering Ng Tung River to Lin Ma Hang would be completed by 2015 and the land concerned released in the same year. Interim measures would be implemented to ensure that the demolition works would not affect the timetable for the reduction of FCA in 2015.

13. Ms Emily LAU queried why the Administration's timetable for the reduction of FCA was behind schedule.

14. PAS(S)A explained that the Administration had been closely monitoring the progress of implementation. The resumption of land and liaison with locals had taken more time than expected. The making of subsidiary legislation to stipulate the commencement of the new statutory

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FCA boundary in phases to tie in with the completion of the construction works would also take time.

15. Noting that there had been suggestions for developing the land released from FCA for such uses as boundary shopping centre, special industrial uses, residential development and eco-tourism, Ms Emily LAU asked whether the Administration had any concrete plans on the land use of such released land. PAS(S)A explained that the Planning Department had studied and announced the land use of the land released from FCA, details of which had been provided to the Panel on Development.

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16. Ms Emily LAU enquired whether the Administration had reviewed whether Environmental Impact Assessment ("EIA") for the project was in order. PD/ASD replied in the affirmative. Ms Audrey EU requested the Administration to provide members with the report of the EIA study.

17. Noting in paragraph 15 in the Administration's paper that the EIA report concluded that construction works during the wintering period at the Mai Po Nature Reserve area should be avoided, Ms Audrey EU enquired about the details of the phased implementation of the reduced coverage of FCA.

18. PD/ASD responded that the construction works comprised two phases. The first phase comprised the "Mai Po to Lok Ma Chau Control Point section", the "Lok Ma Chau Control Point to Ng Tung River section" and the "Lin Ma Hang to Sha Tau Kok section". The second phase involved the "Ng Tung River to Lin Ma Hang section", which would require the construction of a new SBF of approximately 9.7 kilometres.

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19. Ms Audrey EU requested the Administration to provide a detailed breakdown of the estimated capital cost of \$254 million for the project as referred to in paragraph 11 of the Administration's paper.

20. Noting that PBFs and SBFs were constructed to prevent the entry of illegal immigrants ("IIs") into Hong Kong unlawfully, Dr LAM Tai-fai enquired about the number of IIs arrested for entry into Hong Kong through the existing BPR.

21. US for S advised that PBFs and SBFs were used to prevent the entry of IIs from the Mainland and other illegal activities such as smuggling, through FCA. Assistant Commissioner of Police (Operations) ("ACP OPS") advised that about 2 000 to 3 000 IIs were

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intercepted in each of the past two years. The numbers of IIs intercepted at Sha Tau Kok were 158 in 2006, 131 in 2007, 77 in 2008, 94 in 2009 and 124 in 2010. Dr LAM Tai-fai requested the Administration to provide a breakdown by nationality of IIs intercepted in FCA.

Admin

22. Dr LAM Tai-fai asked whether the timetable for the reduction of FCA could be advanced and whether there was any plan for totally opening up FCA.

23. US for S responded that as the construction works relating to the reduction of FCA was delayed due to environmental and land resumption requirements, the Administration would seek to expedite the works. He said that it was too early to consider totally opening up FCA.

24. Dr PAN Pey-chyou expressed concern whether the reduction of the coverage of FCA would lead to increased criminal activities such as drugs trafficking, smuggling, human trafficking and trafficking of parallel goods. He asked whether the Administration would adopt any strategy to combat such activities.

25. ACP OPS advised that police manpower deployed at BPR would not be reduced after the reduction of the coverage of FCA. In view of this, the Police had implemented measures to combat IIs-related and cross-boundary crimes, namely 2011 Border District Boundary Operational Priorities. The Chairman requested the Administration to provide more information in writing.

Admin

26. The Chairman concluded that members supported in principle the Administration's submission of the proposal to the Public Works Subcommittee.

V. Establishing a sexual conviction record check mechanism for child-related work

(LC Paper Nos. CB(2)1610/10-11(02) and CB(2)1610/10-11(04))

27. US for S and Chief Superintendent of Police (Crime Support) (Crime Wing) ("CSP") briefed members on the scheme to be established for sexual conviction record check for child-related work ("the scheme"), as detailed in the Administration's paper.

28. Mr CHEUNG Man-kwong urged the Administration to expedite the introduction of a legislative scheme which would enable employers of

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persons undertaking child-related work and work relating to mentally incapacitated persons ("MIPs") to check the conviction records for sexual offences of employees. Noting that the proposed administrative scheme was voluntary in nature, he asked whether the Education Bureau ("EDB"), on knowing the conviction of a teacher of sexual offences, would inform the school for which the teacher worked or revoke the registration of the teacher.

29. US for S responded that in the long term, the Administration would consider the introduction of a legislative scheme on sexual conviction record check. He said that EDB had been closely following up cases involving sexual offences committed by teachers. If it came to the knowledge of EDB that a teacher was convicted of a sexual offence, EDB would gain a full understanding of the case and consider the teacher's registration status in the light of the nature and gravity of the offence.

30. Mr CHEUNG Man-kwong pointed out that to his knowledge, some tutors of tutorial centres were not required to be registered with EDB. He asked how the Administration would prevent persons convicted of sexual offences from operating or working in tutorial centres and whether parents could check the sexual conviction records of tutors.

31. US for S advised that the proposed scheme did not cover employers of tutorial centres. However, parents could enquire tutorial centres whether their tutors had been checked for sexual conviction records before deciding whether to send their children to the tutorial centres. Principal Assistant Secretary for Security (E) ("PAS(S)E") added that the scheme would be implemented in stages. The first stage covered employers of organizations or enterprises whose work involved children or MIPs. When the operation had become smooth, the Administration would consider opening the scheme to parents.

32. Mr WONG Yuk-man said that the Panel passed a motion at its meeting on 8 April 2010 urging the Government to introduce a bill within 12 months to commence the formal process of legislation for the protection of children against sexual abuse as well as the provision of counselling services and assistance for the rehabilitation of sex offenders. He was disappointed that the Administration had only come up with an administrative scheme after more than a year's work. He requested the Administration to provide a timetable for the enactment of legislation to address the issue. The Chairman asked whether the enactment of legislation could be completed within the 2011-2012 session.

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33. US for S responded that a motion calling on the Administration to implement as soon as possible administrative and legislative measures on sexual offence record checks was carried at the Council meeting of 10 March 2010. The Law Reform Commission ("LRC") recommended in its report the establishment of an administrative scheme as an interim measure. As LRC was still studying the issue of enactment of legislation to address the issue, there was not yet a timetable for introduction of a legislative proposal. He said that it was the Administration's intention to introduce a legislative scheme in the longer term.

34. The Chairman expressed concern that it had taken more than a year for the Administration to come up with an administrative scheme which would be implemented in stages. Noting that the first stage of the scheme would only cover employers of organizations or enterprises whose work involve children or MIPs, he asked when the scheme would be extended to parents and volunteers. US for S responded that the Administration would start reviewing the scheme six months after the implementation of the first stage. Subject to the outcome of the review, the Administration would consider opening the scheme to parents and volunteers.

35. Referring to Annex I to the Administration's paper, Ms Cyd HO expressed concern that disputes between employers and employees would easily arise if there was not a full list of common examples of work which fell within the scope of child-related work. US for S assured members that adequate consultation had been conducted and the scope of child-related work would be set out clearly when the scheme was implemented.

36. Noting that the scheme did not cover existing employees, Ms Cyd HO expressed concern that some employers might force their employees to resign and apply for the job again for sexual conviction records check.

37. US for S responded that existing employees might have been working in their companies for a period of time and developed trust with their employers. Thus, the employers were unlikely to force the existing employees to resign and apply for the job again just to obtain their sexual conviction records. In any case, if an existing employee was involved in any misconduct, the employers might terminate the employment of an employee in accordance with the employment contract.

38. Ms Cyd HO expressed concern about possible errors in the answers provided by the telephone enquiry system that arose from hacking of the enquiry system or human errors. She considered that a mechanism for

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appeal or complaint should be provided. US for S explained that an automatic telephone enquiry system would be used. If a sexual conviction record against the applicant was located, the record would not be uploaded on the system automatically. Instead, the Police would ask the applicant to attend in person the designated Police's office to verify the conviction record first. In addition, prospective employees could always conduct the check first before passing the checking code to the employers.

39. Ms Cyd HO and Ms Audrey EU queried why fingerprints instead of identity card numbers were to be used for checking whether a person had any sexual offence record.

40. CSP explained that there was a possibility of impersonation in that a person might use the identity card of his brother or her sister to apply for a sexual offence record check. There were also cases where foreigners entered Hong Kong on genuine or bogus travel documents who were convicted of sexual offences and subsequently succeeded in obtaining an identity card through marriage. The taking of fingerprints was a more reliable means of verifying an applicant's identity.

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41. The Chairman requested the Administration to provide information on whether the system was subject to the regulation of the Personal Data (Privacy) Ordinance and the Ombudsman Ordinance.

42. Ms Emily LAU asked whether the Administration had conducted public consultation on the proposed scheme.

43. PAS(S)E responded that in the past few weeks, the Administration had consulted a number of organizations, including teachers' associations, the education sector, the social-welfare sector, child protection organizations including the End Child Sexual Abuse Foundation ("ECSAF"). A letter was also sent to stakeholders in April 2011 to introduce the arrangements of the scheme and to encourage them to use the scheme when it was implemented. Most of the organizations consulted supported the Administration to expedite the implementation of the scheme. They suggested the Administration should conduct wide publicity to promote the scheme and open the scheme to parents, volunteers and existing employees in the second stage. The Administration would start reviewing the scheme six months after its implementation.

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44. Noting that ECSAF suggested in its submission that a review mechanism should be established for the scheme, Ms Emily LAU asked whether the Administration had considered the suggestion.

45. US for S responded that ECSAF was supportive of the scheme. The Administration would review the scheme after it had operated for a period of time when adequate data and experiences had been collected. The Administration would report the results of the review to the Panel.

46. Ms Emily LAU said that consideration should be given to holding a meeting to receive the views of the public on the proposed scheme. The Chairman cautioned that unless there were strong views on the proposed scheme, the suggestion might result in a delay in the implementation of the proposed scheme.

47. Ms Audrey EU considered that it should be the employers instead of employees who apply for conducting checks. She expressed concern about possible abuse of the proposed scheme, given that there would be no penalty under an administrative scheme.

48. PAS(S)E advised that the sexual conviction records, if any, belonged to the prospective employees. LRC suggested that such records should only be disclosed voluntarily by the prospective employees to the prospective employers. To prevent abuse, the Police would request the prospective employees who submitted applications to produce documentary proofs issued by their prospective employers that they were applying for child-related work.

49. Dr LAM Tai-fai considered that the Administration should resolve the issues raised by members before launching the proposed scheme within the second half of 2011. He enquired whether there were schemes similar to that proposed by the Administration in other countries.

50. US for S responded that many issues raised by members were similar to those raised by stakeholders during the Administration's consultation and would be addressed before the proposed scheme was launched. He said that LRC had indicated in its report that it had studied the experience of other jurisdictions before arriving at its recommendations.

51. Mr Paul TSE considered it a prudent approach to introduce an administrative scheme that struck a balance between protection of children and the privacy of rehabilitated offenders before legislation was

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enacted. He considered it more effective to prevent abuse of the proposed scheme through requiring employees to submit applications for sexual offence record check.

52. US for S responded that in order to prevent abuse, audit trail would be adopted in the automatic telephone enquiry system. Employers were not allowed to use a telephone with blocked number to conduct the check. Records were kept on the telephone numbers from which enquiries were made.

53. Mr Paul TSE asked whether the operation of the proposed scheme would be similar to that of Police's Certificate of No Criminal Conviction ("CNCC"). He enquired whether there had been any complaint regarding the abuse of the CNCC system.

54. CSP advised that CNCC was solely used in connection with a person's application for a visa to visit or reside in another country, or for adoption of children. Where the applicant had no criminal record, a reply would be provided in written form to the consulate or recognized adoption agency concerned directly and the applicant would not receive a written record. Where the applicant had a criminal record, the result would be provided in written form to the consulate or recognized adoption agency concerned directly with a copy provided to the applicant.

55. The Chairman and Mr Paul TSE considered that the results of the checking of whether an applicant had any sexual offence record should be issued in writing by the Police. US for S responded that it was the view of LRC that the results should not be issued in writing. Instead, a unique transaction code would be provided for each checking for record purpose. The Chairman requested the Administration to provide a written response on the suggestion.

Admin

VI. Rules and directions for the questioning of suspects and the taking of statements : caution statement

56. Owing to time constraint, members agreed that the item would be deferred to the regular meeting on 7 June 2011 and the meeting time of that meeting would be extended by 30 minutes.

57. The meeting ended at 4:34 pm.

Council Business Division 2
Legislative Council Secretariat
4 July 2011