

For Discussion
on 3 May 2011

**Legislative Council Panel on Security
Establishing a Sexual Conviction Record Check Mechanism for
Child-related Work**

Purpose

This paper briefly introduces the contents and arrangements of the scheme to be established for sexual conviction record check for child-related work.

Background

2. In February 2010, the Law Reform Commission (LRC) published a report on “Sexual Offences Records Checks for Child-related Work: Interim Proposals” after extensive public consultation, recommending the Administration to establish an administrative mechanism as an interim measure which would enable employers of persons undertaking child-related work and work relating to mentally incapacitated persons (MIPs) to check the conviction records for sexual offences of employees so as to reduce the risk of sexual assault to children and MIPs. The LRC also makes specific recommendations on the implementation of the proposed scheme in a bid to strike a balance between child protection and the rights of rehabilitated offenders. During the course of deliberations by the LRC, it becomes apparent that a comprehensive legislative scheme would take considerable time to be implemented. The public in general consider that a scheme should be in place expeditiously to minimise the risk of children and MIP being sexually assaulted. Hence, the LRC recommends in the report to establish an administrative checking scheme as an interim measure. The LRC would further consider whether a comprehensive legislative scheme should be introduced.

3. 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. Result of 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.

4. The LRC also points out in its report that information about the background history of applicants for job is important to employers 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 whether those who are in child or MIP-related work or employment have any previous convictions for sexual offences by the court.

5. There are concerns that the LRC's proposed scheme may affect privacy and rehabilitation of previous sex offenders. In this regard, the LRC has made detailed responses to these concerns in the report. A number of measures are also introduced to the administration mechanism to address issues of human rights and rehabilitation of offenders. For example, considering the need for the rehabilitation of sexual offenders, what the report suggests is not a scheme to automatically or mandatorily bar previous sex offenders from working in child or MIP-related fields. It enables employers and parents to decide whether to employ a person with a previous sexual conviction record to child-related work on a fully informed basis. Besides, the administrative mechanism is only applicable to work related to children or MIPs and this will not affect other work types 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 a child-related post, they would 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.

6. To address the right to privacy of previous sexual offenders, the report does not recommend adopting some of the practices used in certain overseas jurisdictions whereby publicising 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.

7. After the publication of the report, a number of Legislative Council Members, interest groups and members of the community have expressed their concerns on child sexual abuse incidents and requested the Government to expeditiously set up the mechanism for sexual offences records checks to protect the safety of children and MIPs. The Administration has accepted the LRC's recommendations and will establish a scheme for sexual conviction record check for child and MIP-related work through the Police.

Operation of the scheme for sexual conviction record check

Purpose

8. The main objective of the scheme is to prevent previous sexual offenders from obtaining the trust of employers by deliberately withholding their past sexual conviction records and molesting children or MIPs again through contact with them in the course of their work. The scheme provides employers with a reliable channel whereby they may ascertain whether applicants of child or MIP-related work or employment have any previous convictions for sexual offences. It can help reduce the risk of sexual assault to children or MIPs and give them better protection. Meanwhile, we have to consider the needs of rehabilitation of offenders. The scheme needs to strike a balance between two sides.

9. The scheme should help employers to assess the suitability of applicants for child or MIP-related work. However, a sexual conviction record check in itself cannot take the place of prudent employment practice and proper parental supervision.

10. Moreover, the purpose of the scheme is not to assess or vet the professional qualifications of those who provide services to children or MIPs (such as teachers, childminders, etc.). The monitoring or registered organisations of the relevant professional qualifications will continue to carry out their respective monitoring or registration functions independently for such professionals as required by respective legislation.

Core principles

11. Taking into account the recommendations of the LRC's report, the scheme will operate under the following principles:

- the objective is to enhance protection of children or MIPs from sexual assault;
- the scope will cover prospective employees involved in work related to children or MIPs;
- the scheme should be voluntary in nature. Employers may request for the conduct of checks with the consent of prospective employees. The application for checking would be made by the prospective employee;
- the operation and use of the scheme is subject to the Personal Data (Privacy) Ordinance and provisions in relation to data protection;
- simple checking procedures to facilitate employers and prospective employees to use the scheme:
 - the Police provide prospective employees with a one-stop application service;
 - by using Police's automatic telephone enquiry system to check whether a prospective employee has previous sexual conviction records, an employer does not need to attend the designated Police's office in person to conduct the check; and
- applicants are charged for the service under the "user pays" principle.

Scope of the scheme

12. Only applications voluntarily made by prospective employees for work¹ related to children and MIPs and requested by employers will be accepted. The applicant must produce proofs of possible employment or request for checking by the employer concerned to ensure that he has a chance of taking up a post related to children and MIPs to avoid abuses. The usual duties of the relevant work must involve frequent contacts with a child or MIP. The LRC's report has set out some common examples (**Annex 1**). In general, a position falls within the scope of the scheme if it conforms to one of the following criteria:

- (a) services should provide mainly for children or MIPs (such as teachers, tutors working in tutorial centres, tutors of interest classes, social workers acting as childminders, paediatricians and nursing staff, tutors working in special schools, etc);

¹ The term "work" means services provided to an organisation or enterprise under a contract of employment, apprenticeship with the organisation or enterprise or on a self-employed basis.

- (b) positions that require working in premises that provide services for children or MIPs (such as general staff or assistants, librarians and cleaners in schools or tutorial centres, etc); or
- (c) involving frequent or regular contact, in particular unmonitored contact, with children or MIPs (such as permanently-hired school bus drivers, assistants of children activities, etc).

13. In view of the great variety of areas of work involved, it is difficult to work out an exhaustive list of areas of work for reference of various sectors. We encourage employers to adhere to the principle of protecting children and MIPs in considering whether to check the previous sexual conviction records of prospective employees.

14. If the work does not involve frequent contact with children or MIPs (such as the general retail industry, eateries or the cinema), the report does not suggest applicants for those positions should be requested to undergo checks.

15. The scheme will be implemented in stages. The first stage covers employers of organisations or enterprises whose work involve children or MIPs. When the operation has become smooth, we will consider opening the scheme to parents and volunteers.

Voluntary participation

16. The scheme is voluntary in nature. Employers and prospective employees should communicate with each other beforehand to ascertain that the usual duties of the posts involve frequent contact with children or MIPs. Employers should understand that checks could not be conducted without the consent of prospective employees.

Arrangements for conducting checks

Application for conducting checks

17. An applicant (i.e. prospective employees) as the data subject should appoint a time through telephone booking for submitting application and attend in person the designated Police's office to submit the application.

18. An applicant is required to submit application form and relevant documents (including proofs of possible employment or request for checking by the employer). The staff of office will give him a clear explanation of the points to note, including application procedures and notes on protection of personal data. To ensure the accuracy of checking results, the office will take fingerprints of the applicant. After the completion of the above procedures and when the payment is made, the applicant will be issued a checking code randomly generated by computer. If a sexual conviction record against the applicant is located or the applicant is involved in a sexual offence case, the office will ask the applicant to attend in person the office to verify the conviction record or take follow-up action. After activation, the checking account of the applicant will be valid for six months. During this period, in order to facilitate the making of multiple job applications by the applicant, there is no upper limit set for the number of checks to be conducted by employers through the automatic telephone enquiry system. The relevant results will be deleted from the automatic telephone enquiry system after six months from the activation of the checking account.

19. The Financial Services and the Treasury Bureau will assess the service charge under the “user pays” principle. We expect that it will be similar to the service charge (i.e. HK\$ 169) of Police’s Certificate of No Criminal Conviction.

Conduct of checks by employers

20. The applicant may give the checking code randomly generated by computer to his employer. The employer may, after the activation of the applicant’s account, call the automatic telephone enquiry system and conduct checks by inputting the checking code and the first four digits of identity card number of the applicant. The automatic telephone enquiry system will disclose to the employer that the prospective employee “has” or “does not have” sexual conviction record. However, the details will not be disclosed.

21. An applicant is allowed to request the office to cancel his application. In such a case, the telephone enquiry system will respond that the applicant has “cancelled the application”.

22. We have accepted LRC’s recommendation that all “clean” record check result should not be recorded in writing but would be communicated verbally to the applicant or his employer. The reason is

to avoid creating a situation in which there is a sub-class of people in society who are unable to produce a no sexual offences conviction certificate for general employment purposes. In addition, any “clean” written record may be counterfeited by criminals and cannot reflect the latest conviction records, which is not recommended.

23. The employers must comply with the Personal Data (Privacy) Ordinance and provisions in relation to data protection when he handles the personal data submitted by the applicant under the scheme, just as he handles other personal data submitted by job applicant and employees.

Conviction records covered

24. In accordance with LRC’s recommendation, the scheme will not cover overseas conviction records of the applicant. Nor will it cover cases of which the applicant is not found guilty. The scheme will only cover conviction records of those sexual offences on the list of offences at **Annex 2** as recommended by the LRC. Furthermore, the scheme will not cover conviction records of sexual offences that are regarded as “spent” under section 2 of the Rehabilitation of Offenders Ordinance (Cap 297).

Way forward

25. We plan to establish the scheme through the Police within the second half of this year to enhance protection of children and MIPs from sexual assault. To encourage employers of organisations or enterprises whose work involves children or MIPs to use the scheme, we will maintain communication with sector concerned and conduct wide publicity when the scheme is implemented.

**Security Bureau
Hong Kong Police Force
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Categories of “child-related work”

(Extracted from paragraph 4.33 of the LRC report on
“Sexual Offences Records Checks for Child-related Work:
Interim Proposals”)

4.33 To facilitate the public's understanding of the proposed scheme, we believe that it would be helpful to set out a non-exhaustive list of common examples of work which fall within the scope of child-related work. These examples would include work in relation to:

- (a) educational institutions including secondary schools, primary schools, kindergartens, nursery schools, child care centres and special schools for mentally incapacitated persons;
- (b) community services, remand centres, detention centres, youth centres, training centres or probation services;
- (c) day centres, or refuges or other residential, boarding or camping facilities used by children and mentally incapacitated persons;
- (d) paediatric wards of public and private hospitals;
- (e) special wards for mentally incapacitated persons of public and private hospitals;
- (f) clubs, associations or movements (including of a cultural, recreational or sporting nature) that provide services or conduct activities for children or mentally incapacitated persons;
- (g) activities organised by religious organisations for children or mentally incapacitated persons;

- (h) baby sitting or child minding services;
- (i) coaching or private tuition services of any kind for children or mentally incapacitated persons including sports, music, language, and vocational;
- (j) counselling or other support services for children or mentally incapacitated persons;
- (k) providing transportation service specifically for children or mentally incapacitated persons; and
- (l) providing play facilities specifically for children or mentally incapacitated persons.

A List of Offences Covered by the Proposed Voluntary Scheme for Sexual Offences Records Checks for Child-related Work

(Extracted from paragraph 4.73 of the LRC report on Sexual Offences Records Checks for Child-related Work: Interim Proposals)

Crime Ordinance (Cap. 200)

section 47	Incest by men
section 48	Incest by women of or over 16
section 118	Rape
section 118A	Non-consensual buggery
section 118B	Assault with intent to commit buggery
section 118C	Homosexual buggery with or by a man under 21 (only if the victim was under 16)
section 118D	Buggery with a girl under 21 (only if the victim was under 16)
section 118E	Buggery with a mentally incapacitated person
section 118G	Procuring others to commit homosexual buggery (only if to procure a victim under 16)
section 118H	Gross indecency with or by a man under 21 (only if the victim was under 16)
section 118I	Gross indecency by a man with a male mentally incapacitated person
section 119	Procurement of an unlawful sexual act by threats or intimidation
section 120	Procurement of an unlawful sexual act by false pretences
section 121	Administering drugs to obtain or facilitate an unlawful sexual act
section 122	Indecent assault
section 123	Sexual intercourse with a girl under 13 (only if the offender was 18 or above)

section 124	Sexual intercourse with a girl under 16 (only if the offender was 18 or above)
section 125	Sexual intercourse with a mentally incapacitated person
section 126	Abduction of an unmarried girl under 16
section 127	Abduction of an unmarried girl under 18 for sexual intercourse
section 128	Abduction of a mentally incapacitated person from parent or guardian for sexual act
section 129	Trafficking in persons to or from Hong Kong for the purpose of prostitution
section 130	Control over persons for the purpose of unlawful sexual intercourse or prostitution
section 132	Procurement of girl under 21
section 133	Procurement of a mentally incapacitated person to have unlawful sexual intercourse
section 134	Detention for intercourse or in a vice establishment
section 135	Causing or encouraging prostitution of, intercourse with, or indecent assault on, a girl or boy under 16
section 136	Causing or encouraging prostitution of a mentally incapacitated person
section 138A	Use, procurement or offer of persons under 18 for making pornography or for live pornographic performances
section 140	Permitting a girl or boy under 13 to resort to or be on premises or vessel for intercourse
section 141	Permitting a young person to resort to or be on premises or vessel for intercourse, prostitution, buggery or homosexual act (only if the victim was under 16 and the offender was 18 or above)
section 142	Permitting a mentally incapacitated person to resort to or be on premises or vessel for intercourse, prostitution or homosexual act
section 146	Indecent conduct towards a child under 16

Prevention of Child Pornography Ordinance (Cap 579)

section 3

Offences relating to child pornography

Related inchoate offences

- Inciting another to commit any of the above offences
- Aiding, abetting, counselling or procuring the commission of any of the above offences
- Conspiracy to commit any of the above offences
- Attempting to commit any of the above offences.