

立法會
Legislative Council

LC Paper No. CB(2)1255/12-13(06)

Ref : CB2/PL/SE

Panel on Security

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 4 June 2013**

Sexual Conviction Record Check Scheme

Purpose

This paper summarizes the past discussions on the Sexual Conviction Record Check Scheme ("the Scheme") by the Panel on Security ("the Panel").

Background

2. In February 2010, the Law Reform Commission ("LRC") published a report on "Sexual Offences Records Checks for Child-related Work: Interim Proposals", recommending the Administration to establish an administrative mechanism as an interim measure which enabled 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 through the Auto-Telephone Answering System so as to enhance protection to children and MIPs.

3. Based on LRC's recommendation, the Scheme was implemented in stages by the Police. The first stage, which was implemented on 1 December 2011, covers employers of organizations or enterprises whose work involve children or MIPs. According to the Administration, the Scheme operates under the following principles -

- (a) the objective is to enhance protection of children or MIPs from sexual assault;
- (b) the scope covers prospective employees involved in work related to children or MIPs;

- (c) the Scheme is voluntary in nature. Employers may request for the conduct of checks with the consent of prospective employees. The application for checking is made by the prospective employee;
- (d) the operation and use of the Scheme is subject to the Personal Data (Privacy) Ordinance (Cap. 486) and provisions in relation to data protection;
- (e) simple checking procedures to facilitate employers and prospective employees to use the Scheme -
 - (i) the Police provides prospective employees with a one-stop application service;
 - (ii) by using the 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
 - (iii) applicants are charged for the service under the "user pays" principle.

Deliberations of the Panel

Scope of the Scheme

4. Some members expressed concern whether the Education Bureau ("EDB"), upon 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. Concern was also raised as to how the Administration would prevent persons convicted of sexual offences from operating or working at tutorial centres and whether parents could check the sexual conviction records of tutors.

5. Members were advised 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. Members were further advised that the Scheme did not cover employers of tutorial centres. However, parents could enquire the tutorial centre whether its tutors had undertaken sexual conviction record check before deciding whether to send their children to that tutorial centre.

The Administration would consider extending the Scheme to parents and volunteers at a later stage.

6. Some members were worried that some employers might force their employees to resign and apply for the job again for sexual conviction record check if the Scheme did not cover existing employees. The Administration responded that existing employees might have been working in their companies for a period a time and developed trust with their employers. The employers were thus unlikely to force the existing employees to do so simply to obtain their sexual conviction records. In any case, if an existing employee was involved in any misconduct, the employer might terminate the employment of the employee in accordance with the employment contract.

Arrangement for conducting checks

7. Members expressed divergent views on whether the applicant for checking sexual conviction record should be the prospective employer or employee. The Administration considered that sexual conviction record, if any, belonged to the prospective employee. LRC also suggested that such record should only be disclosed voluntarily by the prospective employee to the prospective employer.

8. When queried by members why the fingerprint instead of the identity card number of a person was used for sexual conviction record check, the Administration explained that there was a possibility of impersonation in that a person might use the identity card of his sibling to apply for a sexual offence record check. There were also cases where foreigners who had been convicted of sexual offences entered Hong Kong on genuine or bogus travel documents and subsequently succeeded in obtaining an identity card through marriage. The taking of fingerprints was thus a more reliable means of verifying an applicant's identity.

9. Concern was raised about possible errors in the answers provided by the telephone enquiry system that arose from hacking or human errors. The Administration explained that if a sexual conviction record against the applicant was located, the record would not be uploaded automatically on the telephone enquiry system. 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.

10. Members expressed grave concern over the abuse of the Scheme. The Administration advised that the Police would request the prospective employees who submitted applications to the Scheme to produce documentary proofs issued by their prospective employers to show that they were applying for child-related work.

Prospective employers were not allowed to use a telephone with blocked number to conduct the check. Records were kept on the telephone numbers from which enquires were made. Audit trail would be adopted in the automatic telephone enquiry system. Pursuant to the Ombudsman Ordinance (Cap. 397), the Ombudsman might investigate complaints relating to alleged breaches of the Code of Access to Information against the Police.

11. On the suggestion of issuing the result of sexual offence record check in writing, the Administration had accepted LRC's recommendation that such records should only be disclosed verbally to the prospective employers. The Police would not issue any written records on "clean" checking results to applicants or employers. The reason was to avoid creating a situation in which there was a sub-class of people in society who were unable to produce a no-sexual offences conviction certificate for general employment purposes, putting them at a disadvantage in seeking employment generally and undermining the opportunities for offenders to rehabilitate and lead a new life. The Administration considered that any "clean" written record might be counterfeited by criminals. Even the Police could issue a "clean" written record, the applicant might, after obtaining the written record, commit sexual offence and leave a conviction record. In such special circumstances, a "clean" written record could not reflect the latest conviction record. Thus the suggestion was not recommended.

Establishing a legislative scheme for sexual offence record checks

12. Most members were in support of enacting legislation to address the problem of child sexual abuse. Some members were concerned that although 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 legislative process for the protection of children against sexual abuse as well as the provision of counselling services and assistance for the rehabilitation of sex offenders, the Administration had taken more than a year to come up with an administrative scheme which would be implemented in stages. These members urged the Administration to provide a timetable for the enactment of legislation to address the issue.

13. The Administration explained that LRC had considered 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. Noting that a comprehensive legislative scheme would take some time to be implemented, 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. It was however the Administration's intention to introduce a legislative

scheme in the longer term.

Review of the Scheme

14. Some members expressed concern whether the Administration would establishing a review mechanism for the Scheme. The Administration advised that the Scheme would be implemented in stages. The first stage only covered employers of organizations or enterprises whose work involved children or MIPs. The Administration would start reviewing the Scheme six months after the implementation of the first stage, and would revert to the Panel on the review results.

Relevant papers

15. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
31 May 2013

**Relevant papers on
Sexual Conviction Record Check Scheme**

Committee	Date of meeting	Paper
Panel on Security	2.3.2010 (Item VI)	<u>Agenda</u> <u>Minutes</u>
Legislative Council	10.3.2010	<u>Official Record of Proceedings</u> <u>Pages 213 - 268 (Motion on</u> <u>establishing a sexual offences</u> <u>records checks for child-related</u> <u>work)</u>
Panel on Security	8.4.2010 (Item I)	<u>Agenda</u> <u>Minutes</u>
Panel on Security	3.5.2011 (Item V)	<u>Agenda</u> <u>Minutes</u>

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 31 May 2013