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Panel on Security

**Updated background brief prepared by the Legislative Council
Secretariat
for the meeting on 8 July 2014**

RESCUE Drug Testing Scheme

Purpose

This paper gives an account of the past discussions by the Panel on Security ("the Panel") on the Administration's proposed RESCUE¹ Drug Testing Scheme ("RDT").

Background

2. In October 2007, the Task Force on Youth Drug Abuse ("the Task Force") was set up under the chairmanship of the Secretary for Justice to tackle the youth drug abuse problem. The Task Force concluded its work and published a Report and an Executive Summary on 11 November 2008 with some 70 recommendations. In its Report, the Task Force recommended, inter alia, that the Government should look into whether and how a compulsory drug testing scheme might be made available in Hong Kong. The Task Force further suggested that a proposal for a compulsory drug testing scheme should be set out in a detailed consultation paper and public views should be invited before taking forward the proposal.

3. The Chief Executive announced in his Policy Address 2011-2012 that stakeholders and the public would be consulted on the way forward in introducing community based drug testing.

4. On 25 September 2013, the Action Committee Against Narcotics ("ACAN") issued a consultation paper on the proposed RDT, which proposed

¹ "RESCUE" is an acronym for "Reasonable and Early Screening for Caring and Universal Engagement".

for the community to consider the proposed RDT as an additional measure to help identify drug abusers as early as possible, and to refer them to social workers or healthcare professionals for counselling and treatment programmes. The public consultation would last for four months.

Deliberations of the Panel

5. The subject of compulsory drug testing and the proposed RDT had been discussed at a number of meetings of the Panel. The Panel also held a meeting to receive views from professional organisations on the proposed RDT. The deliberations are summarised in the following paragraphs.

Whether the proposed RDT should be introduced

6. Some members objected to the mandatory approach of the proposed RDT which, they considered, would result in more cases of hidden drug abuse. They also shared the views of some deputations that the proposal would cause infringement on the privacy and human rights of individuals. As law enforcement officers would be empowered under the proposed drug testing procedures to require a person to undergo drug testing, these members worried that the power of the Police might be expanded unnecessarily resulting in possible abuses. These members considered that the proposed RDT was inconsistent with the common law principle of presumption of innocence and Article 28 of the Basic Law which prohibited arbitrary or unlawful search of the body of any resident of Hong Kong.

7. Some other members, however, expressed support for the proposed RDT and agreed with the views of some psychiatrists and medical practitioners that the proposed RDT would provide an extra entry point of intervention before the drug had inflicted irreversible damage on the body of drug abusers, hence reducing the long-term medical and social cost associated with disability arising from drug abuse. They considered that the proposed RDT, which should be applicable to people of all ages to ensure fairness, would facilitate the early identification of drug abusers for early rehabilitation and treatment. As legislation against drug driving was already being implemented and the proposed RDT was modelled on such legislation, they could not see why the proposed RDT would contravene human rights.

8. Members noted that ACAN, having reviewed the anti-drug work in the past few years and the latest drug situation, was of the view that there was a case for considering the proposed RDT as an additional anti-drug measure. The purpose of the proposed RDT was to help drug abusers through early identification rather than punish them. Drug abusers might not be identified

until the dangerous drugs consumed caused psychiatric illness or serious urinary bladder malfunction in years' time. The median drug history of drug abusers who voluntarily sought help through non-governmental organizations in 2012 was 5.2 years, while those intercepted by law enforcement officers ("LEOs") had a median drug history of 2.6 years. The proposed RDT would facilitate the identification of drug abusers at an early stage. There was a general shift in recent years from consumption of opiate drugs to psychotropic substances. The drop in the overall number of drug abusers reported to the Central Registry of Drug Abuse reflected a change in the mode of drug abuse in recent years. The proposals under RDT were modelled on existing legislation on drug driving, on which new legislation would be made and there was no issue of constitutionality.

9. Concern was raised over whether introducing a mandatory requirement on a drug abuser to undergo drug testing was proportionate to the aim of fighting against drug abuse given that it would provide LEOs with self-incriminating information used against that drug abuser. Some members considered that if a drug abuser assaulted others under the influence of drugs, prosecution could be instituted against the drug abuser concerned for inflicting harm on others.

10. According to the Administration, there had been an increasing number of cases in recent years in which drug abusers lost control of themselves and assaulted others, threw objects from height or committed arson. Among some 800 patients of the Castle Peak Hospital, 47 had inflicted harm on others under the influence of drugs. The casualties arising from drugs were significantly more than the casualties arising from drug driving.

Protection of human rights under the proposed RDT

11. Some members were concerned whether similar drug testing had been implemented in other common law jurisdictions. They were concerned whether measures would be adopted under the proposed RDT to safeguard human rights, especially for persons under the age of 18. There was a view that the requirement for presence of substances suspected to be dangerous drugs in the near vicinity might be open to abuse by police officers.

12. Some other members considered it unlikely for a police officer to abuse his power under the proposed RDT, as it would at most result in the person concerned being required to undergo urine testing. To address concerns about human rights, consideration could be given to the involvement of an intermediary body or a committee in the drug testing process.

13. According to the Administration, drug testing was also in place in some overseas jurisdictions as part of their law enforcement efforts. For instance, similar drug testing was found in Sweden. The benchmark for triggering the proposed RDT was rather high. It was proposed that the proposed RDT would be applied only when both of the following conditions were met -

- (a) the person's physical state, behaviour and belongings showed signs of drug use; and
- (b) the presence of substances suspected to be dangerous drugs in the near vicinity.

14. Members noted that for minors under the age of 18, ACAN proposed that a third person such as his or her parents or a person independent of law enforcement agencies should be present during the provision of bodily samples to ensure procedural fairness. Under the proposed testing procedures, only authorized and trained LEOs would be allowed to implement the proposed RDT, and the process should be conducted in a designated place in law and video-recorded. Members of the public were welcome to give views on the proposed testing procedures, including those in respect of minors.

Whether persons who abused drug for the first time should be given a chance of non-prosecution

15. Noting that the consumption of dangerous drugs was a serious arrestable offence under section 8 of the Dangerous Drugs Ordinance (Cap. 134), some members expressed concern whether it was legally in order to give a drug abuser identified under the proposed RDT a chance of non-prosecution. Moreover, the proposal of non-prosecution of persons identified under the proposed RDT for the first time might convey a false message that persons who consumed dangerous drugs for the first time was not in breach of the law. Some other members considered that providing drug abusers identified under the proposed RDT with a chance of non-prosecution might encourage hidden drug abusers to seek help. There was a view that drug abusers identified under the proposed RDT should be required to undergo mandatory rehabilitation and treatment service.

16. Members noted that ACAN had no established position on the matter. It was one of the views under the proposed RDT that no criminal record should be kept for persons who were identified under the proposed RDT and had received mandatory drug treatment.

Views of parents and doctors on the proposed RDT

17. Information was sought on the views and percentage of parents who supported the proposed RDT. According to the Administration, most parents who had expressed views were supportive of the proposed RDT. The survey findings released by a non-governmental organisation providing counselling service to drug abusers and their parents in November 2013 indicated that more than 90% of parents were supportive of the proposed RDT.

18. Some members were concerned about the view expressed by the chairman of a medical association that as it would be very difficult for a doctor to differentiate between whether a person was drunken, had abused drugs or had consumed psychotropic substances, it would be equally difficult for police officers to do so.

19. According to ACAN, many doctors, especially those with first-hand experience with drug abusers, were supportive of the proposed RDT. Overseas experience indicated that psychiatrists who had received relevant professional training could very effectively distinguish drug abusers. LEOs who received relevant professional training should thus be able to distinguish drug abusers. The proposed RDT would ensure that the police officers were well trained.

Downstream support services

20. Some members expressed concerns about the adequacy of downstream support services for young drug abusers and their parents to complement the proposed RDT. According to the Administration, additional resources had been provided under the Beat Drugs Fund for initiatives to promote parental awareness. The public drug helpline 186 186 had also been enhanced in June 2012 to provide round-the-clock service. The Administration was aware of the importance of allocating sufficient resources for provision of support services to complement the proposed RDT. In the past few years, resources for anti-drug work had been increased through the injection of \$3 billion into the Beat Drugs Fund, the increase of about 100 social workers and three additional outreach teams. The number of Counselling Centres for Psychotropic Substance Abusers and Substance Abuse Clinics had also been increased. If there was general public consensus that the proposed RDT should be taken forward, consideration would be given to seeking more resources for downstream support services.

Latest development

21. According to the Administration, ACAN would consider views on the proposed RDT collected during the first stage public consultation exercise. If there was a consensus that the proposed RDT should be pursued in principle, details for the mechanism of referral and follow-up would be worked out for a second-stage public consultation exercise to be conducted in 2014. The Administration would provide the Panel with an update on the proposed RDT at its meeting to be held on 8 July 2014.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
2 July 2014

Appendix

Relevant papers on RESCUE Drug Testing Scheme

Meeting	Date of meeting	Paper
Panel on Security	2.12.2008 (Item IV)	<u>Agenda</u> <u>Minutes</u> <u>Report of the Task Force on Youth Drug Abuse</u> <u>CB(2)261/08-09(01)</u> <u>CB(2)347/08-09(03)</u>
	5.6.2012 (Item V)	<u>Agenda</u> <u>Minutes</u>
	5.4.2013 (Item IV)	<u>Agenda</u> <u>Minutes</u>
	5.11.2013 (Item IV)	<u>Agenda</u> <u>Minutes</u>
	7.1.2014 (Item IV)	<u>Agenda</u> <u>Minutes</u>

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