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Panel on Security

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 5 November 2013**

Community-based drug testing scheme

Purpose

This paper gives an account of the past discussions by the Panel on Security ("the Panel") on the Administration's proposal for a compulsory community-based drug testing¹ ("CDT") scheme.

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 may 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. A summary of the Task Force's recommendations related to compulsory drug testing is in **Appendix I**.

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 CDT.

¹ The community-based approach was named as compulsory drug testing in the report the Task Force on Youth Drug Abuse.

Deliberations of the Panel

Need for a compulsory drug testing scheme

4. Members noted that under section 8 of the Dangerous Drugs Ordinance (Cap. 134), it was an offence to smoke, inhale, ingest and inject a dangerous drug. However, there was currently no legal basis to mandate suspected drug abusers to undergo drug testing. Among the recommendations in the Task Force Report, members in general expressed reservations about the proposed compulsory drug testing scheme. They were concerned that the proposal would cause impairment to the privacy, human rights and freedom of people.

5. The Administration advised that since the release of the Task Force Report in 2008, the Administration had taken various less intrusive measures, based upon a five-pronged strategy of (a) preventive education and publicity; (b) treatment and rehabilitation; (c) law enforcement and legislation; (d) external cooperation; and (e) research, to implement the 70-plus recommendations to tackle the drug problems. The various measures had helped to bring improvements in the drug scene as shown from a decrease in the number of newly reported drug abusers. It was, however, also noticed that the drug history of newly reported drug abusers had almost doubled over the past five years. The increasing hidden nature of drug taking made it difficult for early identification of drug abusers and was a cause of concern. According to the Administration, there were voices in the community urging the Administration to consider taking a step further by introducing drug testing at the community level by legislative means as a necessary and proportionate measure to facilitate early identification of drug abusers and timely intervention, provided that there were adequate safeguards protecting the rights of individuals concerned.

Enforcement and human rights concerns

6. In respect of the concerns about the rights of the individuals and unwarranted intrusion by law enforcement agencies, the Administration advised that the issue would be included in the consultation paper to be issued. Whether and how CDT should be implemented were matters to be decided in the light of the views of the community. The Administration assured members that the primary purpose of the proposed compulsory drug testing

scheme was to enable early intervention for treatment and rehabilitation, instead of facilitating prosecution.

7. Some members considered that the Administration should not proceed with the CDT scheme if similar scheme had not been implemented in other countries. Concern was also raised as to whether prosecution would be instituted against drug abusers identified in drug testing. The Administration advised that prosecution against drug abusers was not the main objective. Whether prosecution would be instituted against drug abusers would be subject to the availability of evidence and the circumstances at scene. It would also be specified in the consultation paper that Police officers could only require people to undergo a drug test when reasonable suspicion was formed.

Scope of application of CDT

8. According to the Administration, there had been general support for the view that a CDT scheme, if implemented, should apply to persons of all ages, rather than young people only, since it was not justifiable to have discriminatory treatment for people of different age groups. Some members considered that appropriate rehabilitative treatment under supervision or guidance should be provided if it was confirmed that young people below 18 had taken drugs.

Latest development

9. The Action Committee Against Narcotics has issued a consultation paper on the RESCUE² Drug Testing Scheme ("RDT") on 25 September 2013, which proposes for the community to consider 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 will last for four months. The consultation paper is available at http://www.nd.gov.hk/en/acan/rdt/consultation_paper.htm.

Relevant papers

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

² "RESCUE" is an acronym for "Reasonable and Early Screening for Caring and Universal Engagement".

Council Business Division 2
Legislative Council Secretariat
30 October 2013

**Summary of Task Force on Youth Drug Abuse's
Recommendations Related to Community-based Drug Testing**

As a matter of principle, new legislation should be introduced to empower law enforcement officers to require a person reasonably suspected of having consumed dangerous drugs to be subjected to a drug test, although important issues including the extent of coverage, human rights concerns, read-across implications on law and enforcement, resources as well as implementation details have to be carefully considered. A proposal for a compulsory drug testing scheme should be set out in a detailed consultation paper and public views should be invited before the proposal is taken forward. (Recommendation 7.1)

2. In particular, public views should be sought as to whether the proposed compulsory drug testing scheme should apply to young persons only or to persons of all ages, and if the former, what the age limit should be. (Recommendation 7.2)

3. The primary purpose of the compulsory drug testing scheme is to enable early intervention for treatment and rehabilitation, instead of facilitating prosecution. The proposed compulsory drug testing scheme for youngsters should therefore comprise a tiered intervention structure offering a warning and/or treatment and rehabilitation option for those who test positive, diverting them away from possible prosecution which should be the last resort. The public should be consulted on the options of a two-tier or a three-tier intervention structure. (Recommendation 7.3)

4. The proposed compulsory drug testing scheme should provide for the taking of body samples of a minor in the presence of his or her parent or legal guardian (or relatives), or an independent person in case the former is not available. The public should be consulted on the possible pool of independent persons. (Recommendation 7.4)

5. Given the trend of and concern about cross boundary drug abuse among young people, the public should be consulted as to whether extra-territorial effect should be introduced to the offence of consumption of drugs (and the extent in terms of the degree of connection of the drug

abusers to Hong Kong), or whether the status quo should be maintained (i.e. no extra-territorial effect). (Recommendation 7.5)

6. Alongside the formulation of a detailed proposal for a compulsory drug testing scheme, the Administration should conduct an assessment on the corresponding increase in the demand for downstream support services, including in particular treatment and rehabilitation programmes, as well as the resource implications. (Recommendation 7.6)

Relevant papers on community-based 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</u> <u>Youth Drug Abuse</u> <u>CB(2)261/08-09(01)</u> <u>CB(2)347/08-09(03)</u>
Panel on Security	5.6.2012 (Item V)	<u>Agenda</u> <u>Minutes</u>
Panel on Security	5.4.2013 (Item IV)	<u>Agenda</u> <u>Minutes</u>

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