

立法會

Legislative Council

LC Paper No. CB(2)498/2022

Ref : CB2/SS/2/22

Paper for the House Committee

Report of the Subcommittee on Social Workers Registration Ordinance (Amendment of Schedule 2) Notice 2022

Purpose

This paper reports on the deliberations of the Subcommittee on Social Workers Registration Ordinance (Amendment of Schedule 2) Notice 2022 (“the Subcommittee”).

Background

Social Workers Registration Ordinance (Cap. 505)

2. The Social Workers Registration Ordinance (Cap. 505) (“SWRO”) was enacted in 1997 to provide for the registration of social workers and disciplinary control of the professional activities of registered social workers, and for related matters.

The Social Workers Registration Board

3. The Social Workers Registration Board (“the Board”) is established under SWRO, comprising 15 members. Eight of the members shall be registered social workers (category 1)¹ elected by registered social workers² in accordance with the relevant rules; six members shall be persons appointed by

¹ A registered social worker (category 1) is defined under section 2(1) of the Social Workers Registration Ordinance (Cap. 505) (“SWRO”) to mean a registered social worker whose name is entered in part 1 of the register established under section 7(1)(a) of SWRO (“Register”).

² A registered social worker is defined under section 2(1) of SWRO to mean a person whose name is currently entered in the Register. Pursuant to section 16(1) of SWRO, the Register has two parts, with part 1 containing the relevant particulars of registered social worker (category 1) and part 2 containing the relevant particulars of registered social worker (category 2).

the Chief Executive, of whom not less than three shall be persons who are neither a registered social worker nor a public officer; and one member shall be the Director of Social Welfare (including his/her representative). Under section 17(4)(a) of SWRO, the Board may refuse to register a person as a registered social worker who has been convicted in Hong Kong or elsewhere of any offence which may bring the profession of social worker into disrepute and is punishable with imprisonment (and whether or not the person was sentenced to imprisonment). Pursuant to section 17(4)(b) of SWRO, the Board shall refuse to register a person as a registered social worker who has been convicted in Hong Kong of any offence coming within any of the descriptions specified in Schedule 2 to SWRO,³ or convicted elsewhere of any offence where the act or omission constituting the offence, if the act or omission had occurred in Hong Kong, would constitute such an offence, unless all the members for the time being of the Board, after considering all the circumstances of the case, resolve that he/she be so registered.

The National Security Law

4. The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("NSL") was enacted by the Standing Committee of the National People's Congress in June 2020. Article 3 of NSL provides, among others, that it is the duty of the Hong Kong Special Administrative Region ("HKSAR") to safeguard national security, and the executive authorities, legislature and judiciary of HKSAR shall effectively prevent, suppress and impose punishment for any act or activity endangering national security in accordance with NSL and other relevant laws. Article 9 of NSL provides, among others, that the HKSAR Government shall take necessary measures to strengthen public communication, guidance, supervision and regulation over matters concerning national security, including those relating to schools, universities, social organisations, the media, and the internet.

Social Workers Registration Ordinance (Amendment of Schedule 2) Notice 2022 (L.N. 109 of 2022)

5. The Social Workers Registration Ordinance (Amendment of Schedule 2) Notice 2022 (L.N. 109 of 2022) ("the Amendment Notice") is made by the Secretary for Labour and Welfare ("SLW") under section 39(2) of SWRO. It adds an offence under the description of "an offence endangering national security" ("the Specified Offence") to Schedule 2 to SWRO. The effect of the

³ The offences listed in Schedule 2 can be found in https://www.elegislation.gov.hk/hk/cap505?xpid=ID_1438403288883_001.

Amendment Notice is that in connection with the registration of a social worker under SWRO, the Board is to pursuant to section 17(4)(b) of SWRO, unless the exception as mentioned in paragraph 3 above applies, refuse to register as a registered social worker a person who has been convicted in Hong Kong of an offence coming within the description of the Specified Offence, or who has been convicted elsewhere of any offence where the act or omission constituting the offence, if the act or omission had occurred in Hong Kong, would constitute the Specified Offence. The Amendment Notice was published in the Gazette on 20 May 2022 and comes into operation on 22 July 2022. It was tabled before Legislative Council (“LegCo”) at its meeting of 25 May 2022 and is subject to scrutiny by LegCo pursuant to the negative vetting procedure.

The Subcommittee

6. At the House Committee meeting on 27 May 2022, members agreed to form a subcommittee to study the Amendment Notice. The membership list of the Subcommittee is in the **Appendix**. Under the chairmanship of Dr Hon Priscilla LEUNG Mei-fun, the Subcommittee has held one meeting with the Administration. The Subcommittee has invited written submissions from the public on the Amendment Notice, and no submission has been received by the specified deadline.

7. To allow more time for the Subcommittee to consider the Amendment Notice and prepare a report on its deliberations for submission to the House Committee, the Subcommittee Chairman moved a motion at the Council meeting of 15 June 2022 to extend the scrutiny period of the Amendment Notice from the Council meeting of 22 June 2022 to the Council meeting of 13 July 2022. The motion was passed.

Deliberations of the Subcommittee

8. Members generally support the addition of the Specified Offence to Schedule 2 to SWRO by the Amendment Notice. In the course of deliberations, the Subcommittee has discussed issues relating to the scope of the Specified Offence, consistency in the criteria for rejecting applications for registration or renewal of registration as social workers and deregistration of social workers in respect of persons who have committed offences endangering national security, provision of relevant guidelines to the Board as well as the appeal mechanism for decisions or orders made by the Board. Details of the Subcommittee’s major deliberations are set out in the ensuing paragraphs.

Scope of the Specified Offence

9. Under the existing Schedule 2 to SWRO, specific descriptions of offences with references to various particular sections of the Affiliation Proceedings Ordinance (Cap. 183), the Crimes Ordinance (Cap. 200) (“CO”), the Offences against the Person Ordinance (Cap. 212), and the Protection of Children and Juveniles Ordinance (Cap. 213) are listed out. However, by the Amendment Notice, the Specified Offence (i.e. an offence under the description of “an offence endangering national security”) is added to Schedule 2 to SWRO, without specifying any particular references to the relevant sections of the Ordinances concerned.

10. In paragraph 6 of the LegCo Brief, it is stated that the offences intended to be covered by the Amendment Notice shall include, but are not limited to, the offences of “secession”, “subversion”, “terrorist activities” and “collusion with a foreign country or with external elements to endanger national security” stipulated in NSL, and the offences of “treason” and “sedition” under CO. It is the Administration’s view that it is not feasible to list all such offences specifically in Schedule 2 to SWRO because some of them may not be, on the face of their elements, offences endangering national security, but could be regarded as such in a particular case under certain circumstances.

Clarification sought by the Legal Adviser to the Subcommittee

11. Members noted that in the light of the above, the Legal Adviser to the Subcommittee has sought clarification from the Administration on (a) the offences which may not be, on the face of their elements, offences endangering national security, but could be regarded as such in a particular case under certain circumstances, for the purposes of Schedule 2 to SWRO; and (b) whether the description of “an offence endangering national security” in the Amendment Notice is sufficiently clear and certain from the legal and drafting perspectives.

Administration’s response

12. The Administration has explained that offences endangering national security are not limited to those offences created by NSL but include other offences of such nature which are provided under the existing laws of Hong Kong (see *HKSAR v Lai Chee Ying* [2021] HKCFA 3, followed by *HKSAR v Ng Hau Yi Sidney* [2021] HKCFA 42). It is therefore not feasible to make an exhaustive list of the offences endangering national security under Hong Kong law, especially in view that, in some cases, whether an offence is one endangering national security may depend on the facts and circumstances of the individual case.

13. SLW is empowered under section 39(2) of SWRO to add “an offence endangering national security” to Schedule 2 to SWRO by notice in the Gazette. While Schedule 2, as it is now, lists out all offences specifically, there is no requirement under SWRO that an offence has to be so described. Whether an offence is an offence endangering national security can be ascertained from the nature of the offence, the facts and circumstances of the case, as well as the judgment of the case. It should also be noted that the meaning of the phrases “*acts endangering national security*” and “*offence endangering national security*” in NSL was discussed in the two judgments cited in paragraph 12 above, and there is no suggestion that such phrases lacked sufficient degree of certainty.

14. Further, the degree of precision required of a law will vary according to the context or subject matter of the law.⁴ The fact that a law is expressed in broad terms does not mean that it must be held to have failed to satisfy the “prescribed by law” requirement. It is well recognized that the law must be able to keep pace with changing circumstances and can never be couched in terms of which the consequences can be foreseeable with absolute certainty. Many laws are inevitably couched in terms which, to a greater and lesser extent, are vague and whose interpretation and application are questions of practice.⁵ In *Leung Kwok Hung & Others v HKSAR* (2005) 8 HKCFAR 229, the Court of Final Appeal (“CFA”) emphasised that there is an inevitable tension between requiring a law to be formulated with sufficient precision and the desirability of avoiding excessive rigidity in the law. The appropriate level of precision must depend on the subject matter of the law in question.⁶

15. In addition, the law needs only to be formulated with such sufficient precision to enable the individual, with appropriate advice when necessary, to regulate his conduct. Ultimately, the question is answered by whether the law is able to enunciate some boundaries which create an area of risk. There will be conduct that falls along the boundaries of the area of risk for which no definite prediction or answer can be given in advance; but the identification of the area of risk will provide guidance to citizens and that suffices for the purpose of certainty.⁷

16. By nature of things, threats to national security may vary in character and

⁴ *Hong Kong Television Ltd. v Chief Executive in Council* [2015] 2 HKLRD 1035, at paragraph 121.

⁵ *Shum Kwok Sher v HKSAR* (2002) 5 HKCFAR 381, at paragraphs 63 to 64 and 89. See also *Mo Yuk Ping v HKSAR* (2007) 10 HKCFAR 386, at paragraphs 61 to 63.

⁶ *Leung Kwok Hung*, at paragraph 28.

⁷ *Hong Kong Television Network Ltd*, at paragraph 121.

may be unanticipated or difficult to define in advance. It should be reiterated that some offences may not be, on the face of their elements, offences endangering national security, but could be regarded as such in a particular case under certain circumstances. As such, any attempt to list “offences endangering national security” exhaustively in Schedule 2 to SWRO would risk excessive rigidity, undermining the legislative intent of the Amendment Notice and HKSAR’s duty under NSL to prevent, suppress and impose punishment for offences endangering national security. On the whole, the Administration considers that the proposed description of “an offence endangering national security” in the Amendment Notice satisfies the “prescribed by law” requirement and is sufficiently clear and certain from the legal and drafting perspectives.

Members’ views

17. Some members have enquired why the Administration does not set out the specific offences that endanger national security in Schedule 2 to SWRO, and requested the Administration to provide examples of such offences. The Administration has explained that offences of endangering national security shall include, but are not limited to the four crimes outlawed by NSL (i.e. “secession”, “subversion”, “terrorist activities” and “collusion with a foreign country or with external elements to endanger national security”). Offences endangering national security are not limited to those offences created by NSL but include other offences of such nature which are provided under the existing laws of Hong Kong. Furthermore, in some cases, whether an offence is one endangering national security may depend on the facts and circumstances of the individual case. It is therefore not feasible to make an exhaustive list of the offences endangering national security under Hong Kong law.

18. Some members have pointed out that as the Administration is taking forward the enactment of local legislation to implement Article 23 of the Basic Law, which will include amendments to relevant Ordinances, they consider it appropriate to draft the Specified Offence in broad terms. These members have also opined that NSL is not a self-contained piece of legislation, and the legislative intention is for NSL to operate in tandem with the laws of the HKSAR. Noting that the meaning of the phrases “acts endangering national security” and “offence endangering national security” in NSL has been discussed in the CFA judgments, these members have requested the Administration to provide information on the relevant CFA judgments to further elucidate the coverage of the Specified Offence.

19. The Administration has explained that according to the CFA judgment in

HKSAR v Lai Chee Ying [2021] HKCFA 3,⁸ “acts endangering national security” (in the context of Article 42(2) of NSL) is construed as referring to “acts of that nature capable of constituting an offence under the NSL or the laws of the HKSAR safeguarding national security” (see paragraphs 53(c)(ii) and 70(d)(ii)). The examples of offences quoted by the Court (see footnote [40] of the judgment) are offences of treason, incitement to disaffection or sedition under Parts I and II of CO. The view expressed in *HKSAR v Lai Chee Ying* was followed and elaborated in another CFA judgment in *HKSAR v Ng Hau Yi Sidney* [2021] HKCFA 42.⁹ The Court in *HKSAR v Ng Hau Yi Sidney* further confirmed that a prohibited act of sedition, including an offence contrary to section 10(1)(c) of CO (which is the offence charged in that case), qualifies as an offence endangering national security.¹⁰

20. Some members have pointed out that given the wide scope of the Specified Offence, there is concern among the social work profession about contravening the law inadvertently. Such concern may adversely affect the services to be provided to their service users. These members have suggested that the Administration should consider taking measures to alleviate the concern, such as providing legal consultancy service to the social work profession.

21. The Administration has explained that the social work profession with the trust of service users, stand to exert on them significant influence in matters including those of concern to national security. Persons convicted of offences endangering national security, if permitted to discharge the duties of social workers, would put the interest of the service users at stake, cast doubt on the integrity of the social work profession and tarnish the professional image of social workers. It is hence important to include offences endangering national security in Schedule 2 of SWRO to underline their seriousness, and to better ensure that a person convicted of any of such offences will not be entitled to be or continue to be a registered social worker, unless all the prevailing members of the Board, after considering all the circumstances of the case, resolve otherwise. The Administration has assured members that the discharge of normal duties by social workers in helping people in need and shouldering social responsibility towards their service users will not constitute acts of endangering national security. The Administration has also agreed to consider members’ suggestion of conducting more exchanges with the social work

⁸ The judgment is available at:
https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=133491&QS=%2B&TP=JU&ILAN=en.

⁹ Please refer to paragraphs 24, 27 and 29 of the judgment available at
https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=140898&currpage=T.

¹⁰ Please see paragraph 31 of the judgment.

profession and providing them with relevant training to enhance their awareness on safeguarding national security.

Criteria for considering applications for registration and renewal of registration as social workers, and deregistration of social workers

22. Some members consider that the criteria for rejecting applications for registration or renewal of registration as social workers and deregistration of social workers in respect of persons who have committed offences endangering national security as stipulated in sections 17, 20 and 22 of SWRO¹¹ are inconsistent. Pointing out that the criteria for application of first registration set out in section 17 appear more stringent than those for renewal of registration set out in section 20,¹² these members have suggested that the Administration should review the relevant sections of SWRO to ensure consistency among its provisions.

23. The Administration has explained that the same principle is applied by the Board in handling applications for registration and renewal of registration as social worker. When the Amendment Notice comes into effect, the Board shall refuse the application for registration or renewal of registration as a registered social worker under sections 17 and 20 respectively by a person convicted of an offence endangering national security as provided in the relevant provision. Similarly, under section 22, a person shall be deregistered as a registered social worker pursuant to a direction of the Board upon its making of a disciplinary order following the person's conviction of an offence endangering national security. The Administration has also advised that it will keep SWRO under review to ensure consistency among its provisions and that it continues to serve its legislative intent effectively.

¹¹ Sections 17, 20 and 22 are related to the first registration, renewal of registration and deregistration of registered social workers respectively.

¹² Under section 17(4)(b), for first registration, the Social Workers Registration Board ("the Board"), "**shall**" (subject to section 17(5)) refuse to register a person as a registered social worker who has been:

- (i) convicted in Hong Kong of any offence coming within any of the descriptions specified in Schedule 2 to SWRO; or
- (ii) convicted elsewhere of any offence where the act or omission constituting the offence, if the act or omission had occurred in Hong Kong, would constitute an offence referred to in the above paragraph (i).

Under section 20(4), the Board "**may**" reject an application for renewal of registration if it is satisfied that the applicant does not continue to comply with the requirements for registration set out in section 17 (except section 17(1)(a), including that section as modified by the provisions of Schedule 1 to SWRO at any time before the relevant date) and, in such case, the Board shall notify the applicant of the rejection and the reasons therefore.

Provision of relevant guidelines to the Board

24. Given that pursuant to section 17(5) of SWRO, a person may be registered as a social worker notwithstanding that he or she has been convicted of an offence coming within any of the descriptions specified in Schedule 2 to SWRO in Hong Kong or elsewhere if, but only if all the members for the time being of the Board, after considering all the circumstances of the case, resolve that he or she be so registered, members have stressed the importance that members of the Board should be provided with guidelines on the criteria and factors to take into account when determining so.

25. The Administration has advised that the relevant disqualification provisions under sections 17 and 20 of SWRO are triggered only upon conviction of the person concerned. If the Board has to ascertain whether the offence of which the person convicted is an offence endangering national security, the Board may refer to, amongst other relevant information, materials and information relating to the relevant criminal proceedings, such as the court's reasons for verdict and reasons for sentence, and whether the case was handled by a designated judge etc. The Administration has further advised that it will also bring Board members' attention to the two relevant CFA judgments mentioned in paragraph 19 above and remind the Board of the need to keep abreast of the development of the law relating to offences endangering national security in discharging its functions under SWRO.

26. Noting that under section 17(4)(b)(i) of SWRO, the Board, subject to section 17(5) of SWRO, shall refuse to register a person as a registered social worker who has been convicted in Hong Kong of any offence coming within any of the descriptions specified in Schedule 2 to SWRO, members have sought clarification on whether the same would apply to a social worker who has been convicted of similar offences elsewhere under section 17(4)(b)(ii) of SWRO. The Administration has advised that section 17(4)(b)(ii) of SWRO serves to extend the application of section 17(4)(b)(i) to offences committed outside Hong Kong. Pursuant to section 17(4)(b)(ii), the Board, subject to section 17(5) of SWRO, shall refuse to register a person as a registered social worker who has been convicted elsewhere of any offence where the act or omission constituting the offence, if the act or omission had occurred in Hong Kong, would constitute an offence referred to in section 17(4)(b)(i). Members have expressed the view that as different countries have their own laws, the Administration should explain to the social work profession the legal consequences of committing any offence that would constitute the Specified Offence if it occurred in Hong Kong.

Appeal mechanism

27. Members note that pursuant to section 33 of SWRO, any person who is aggrieved by any decision made by the Board in respect of him under section 19(1),¹³ 20(4)¹⁴ or 27(8),¹⁵ or any disciplinary order¹⁶ made by the Board in respect of him, may appeal to the Court of Appeal.¹⁷ They have enquired whether the appeal mechanism is applicable to decisions made under those sections following the conviction of the offences currently set out in Schedule 2 to SWRO and the Specified Offence. The Administration has answered in the affirmative, adding that the Court of Appeal may affirm, reverse or vary the decision or disciplinary order appealed against.

Recommendation

28. The Subcommittee has completed scrutiny of the Amendment Notice and will not propose any amendment to it.

Advice Sought

29. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
23 June 2022

¹³ Under section 19(1), the Board may accept or reject an application for registration or renewal of registration.

¹⁴ Please see footnote 12 above.

¹⁵ Under section 27(8), the Board shall, after considering the disciplinary committee's decision or recommendation, the reasons in support thereof, any evidence and findings in respect thereof and all relevant circumstances relating thereto, decide whether the disciplinary offence complained of has been committed and notify the complainant concerned of the decision and the reasons therefor.

¹⁶ Under section 30(1) of SWRO, where the Board has decided that a registered social worker has committed a disciplinary offence, it shall (a) order the Registrar to remove the name of the social worker from the Register permanently; (b) order the Registrar to remove the name of the social worker from the Register for such period (not being more than five years) as the Board thinks fit; (c) reprimand the social worker in writing and order the Registrar to record the reprimand on the Register; or (d) order that the Chairperson of the Board admonish the social worker orally.

¹⁷ Section 33 sets out the appeal mechanism for any person who is aggrieved by such decision or order made in respect of him by the Board.

**Subcommittee on Social Workers Registration Ordinance
(Amendment of Schedule 2) Notice 2022**

Membership list*

Chairman Dr Hon Priscilla LEUNG Mei-fun, SBS, JP

Members Hon Stanley LI Sai-wing, MH
Dr Hon TIK Chi-yuen, SBS, JP
Hon LAM Chun-sing
Hon LAM So-wai
Hon LAM San-keung, JP
Hon CHAN Yung, BBS, JP
Hon TANG Fei, MH
Hon LAI Tung-kwok, GBS, IDSM, JP
Hon Carmen KAN Wai-mun

(Total : 10 members)

Clerk Ms Joyce KAN

Legal adviser Ms Wendy KAN

*Changes in membership are shown in Annex to Appendix.

Annex to Appendix

**Subcommittee on Social Workers Registration Ordinance
(Amendment of Schedule 2) Notice 2022**

Changes in Membership

Member	Relevant date
Prof Hon Nelson LAM Chi-yuen, JP	Up to 18 June 2022

For **changes in LegCo Membership**, please refer to the link below:
(<https://www.legco.gov.hk/en/members/legco-members/changes-in-legco-membership.html>)