

Sexual Conviction Record Check Scheme

Questions and Answers

(revised in July 2021)

1 What school posts are covered under the Sexual Conviction Record Check (SCRC) Scheme?

A In principle, only prospective employees seeking child-related work or work relating to mentally incapacitated persons (MIPs) whose usual duties involve, or are likely to involve, frequent or regular contact with children (i.e. persons under 18) or MIPs (with no age restriction) are eligible to apply for SCRC to the Police at the provision of a documentary proof from their employers. In general, the usual duties of the relevant work may conform to any of the following criteria:

- providing services mainly for children or MIPs, such as teachers, tutors working in tutorial centres, tutors of interest classes, social workers looking after children, paediatricians and nursing staff, teaching and non-teaching staff in special schools and boarding sections of such schools, etc.;
- working in premises that provide services for children or MIPs, such as general staff or assistants, librarians, janitor staff, cooks and watchmen in schools (including boarding sections) or tutorial centres, etc.; or
- 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..

In view of the above, the Scheme is basically applicable to all school posts.

2 Other than teachers and staff members, there are other persons, e.g. guest speakers, repair technicians, renovation workers, student teachers, etc., entering into the school premises from time to time. Should a school require them to undergo SCRC?

A If the services provided by outsourced service providers do not involve frequent or regular contact with children or MIPs and their work will be properly monitored, or when institutions employ contract staff through outsourced service provider like short-term repair technicians, deliveryman, guest speakers and guest performers, etc., the Scheme is not applicable to them.

3 Should a school require serving contract staff to undergo SCRC in the same way as prospective employees upon renewal of their contracts?

A At present, only prospective employees (including newly-appointed teachers/staff

members on transfer from other schools) are eligible to apply for SCRC to the Police at the provision of a documentary proof from their employers. The Scheme does not cover contract staff working in the same school under continuously renewed contracts without break. In principle, if the staff members concerned have to undergo an open recruitment exercise to compete with other candidates for the posts and subsequently the school re-employs them by signing new contracts, the School Management Committee (SMC) / Incorporated Management Committee (IMC) should request them to undergo SCRC on condition that they have not undergone SCRC before. For the arrangement regarding contract staff under continuously renewed contracts without break to be deployed by the sponsoring bodies to other member schools, please see A4.

4 Some sponsoring bodies would deploy teachers to other schools under their sponsorship in view of operational needs (for the purposes of promotion, handling teacher redundancy, etc.). Are these teachers on transfer exempted from SCRC?

A Given the importance of safeguarding students' well-being, schools must adopt the Scheme to verify the sexual conviction records declared by the prospective employees. The checking result will enable schools to make appointment decisions on an informed basis. In principle, if a teacher who has not undergone SCRC is to be employed by or to have contract renewal in another school under the same sponsoring body via an open recruitment exercise, the SMC/IMC of the school employing the teacher/renewing the contract with the teacher should request the teacher concerned to undergo SCRC.

5 May a school request the staff of outsourced service providers (such as extra-curricular activity/interest class tutors, security guards or cleaners) to be deployed to work in the school at frequent/regular intervals to undergo SCRC?

A Given that the Scheme aims to protect children and MIPs, the terms "employer" and "work" are broadly defined in the Scheme proposal put forward by the Law Reform Commission (LRC). Although there is no employer-employee relationship between a school and the staff of outsourced service providers, if the relevant work conforms to the criteria set out in A1, the school should ask the outsourced service providers to arrange the staff to be deployed to work in the school to undergo SCRC and inform the school of the checking result in writing. Prior consent of the staff concerned should be obtained for such arrangement. To this end, schools should include a specific requirement (which requires the outsourced service providers to request their staff who will be deployed to work in the school to undergo SCRC) in the tender and/or contract document. To facilitate the Police to verify whether an applicant's work falls within the scope of SCRC, the outsourced service provider should issue documentary proof to the staff members so that they can apply for SCRC from the Police.

6 In view of the wide variety of services outsourced by schools, the nature of the work to be performed by the staff concerned, the length of time they work in the school and their contact with students may vary a lot. Should a school request all staff of an outsourced service provider to be deployed to work in the school to undergo SCRC?

A In principle, if the work of the staff of an outsourced service provider conforms to the criteria set out in A1, the school should request such staff to undergo SCRC. The Scheme serves to reduce the risk of sexual abuse to children and MIPs and give them better protection. In determining whether it is necessary to request staff of certain types of outsourced service providers to undergo SCRC, the school should take into account the nature of the work to be performed by such staff, whether their duties in the school involve frequent or regular contact with students and whether their contact with students will be properly monitored. Should the school, after careful assessment, consider that not having such staff undergo SCRC will not increase the risk of sexual abuse to students, there should be a thorough deliberation by the SMC/ IMC in a formal meeting of the Committees and the justifications for the decision have to be properly documented in the notes of meeting. Taking the outsourced service of lunch supply as an example, some staff members of the school lunch supplier are only responsible for delivery of lunch boxes. Although their work may involve contact with students, if such contact in the short time they work in the school will be properly monitored (e.g. by parent volunteers/teachers), and if they will leave the school immediately after finishing the work, the school may consider not requesting such staff members of outsourced service providers to undergo SCRC.

In view that outsourced services involve a wide variety of work and the actual operation of the same type of work may vary among schools, we encourage schools to consider whether to request the staff of outsourced service providers to be deployed to work in the school to undergo SCRC in a reasonable and rational manner based on the principle of protecting students.

7 If a school requests outsourced service providers to have their staff undergo SCRC, should the school make such request for checking at the tendering stage?

A The outsourced service providers should as far as possible request their staff concerned to conduct the check before they are deployed to provide services to a school. The practice by the outsourced service provider to request their staff to conduct checking as early as at the tendering stage can have little effect. The reason is that there may be staff change within the outsourced service provider, and the checking result of the staff may change before service provision.

8 May a school request a social worker who is newly deployed to work in a secondary school by a non-government organization (NGO) to undergo SCRC?

A At present, the Social Welfare Department subsidizes 34 NGOs to provide school social work service to secondary schools. The school social workers are deployed by the NGOs to different schools to provide the service. Hence, there is neither employment relationship nor contractual relationship between the school social worker and the school. However, a school social worker has frequent and unmonitored contact with students. Given the importance of safeguarding students' well-being, it is necessary for schools to clarify whether the school social worker who is deployed to work in the school by the service provider has any sexual conviction records. The school social work service provider and the social worker concerned should be cooperative. The NGO may inform the school of this piece of personal information (e.g. the checking result or self-declaration of sexual conviction records) of the social worker concerned in writing after seeking his/her consent. The school should keep proper record for future checking.

9 May a school request a self-employed person to undergo SCRC?

A The arrangement mentioned in A5 is also applicable to self-employed persons providing services to schools.

10 Some supply teachers work in a school for a few days only. Does the school still need to request them to undergo SCRC?

A Given the importance of safeguarding students' well-being, schools must adopt the Scheme even if appointing a supply teacher to undertake the work in view of pressing operational need. It should still request the teacher to undergo SCRC and allow the school to access the checking result. As a matter of fact, many supply teachers will not only serve in a school for one time, but will also take up supply teacher appointments again in the same school or other schools. If a supply teacher who has not fulfilled his/her undertaking to undergo SCRC applies again for another supply teacher post, the school concerned should examine his/her past records and performance in all aspects so as to carefully consider whether he/she is suitable for employment.

Should all schools adopt the requirement, the number of supply teachers who have undergone SCRC will increase. We believe that in the near future it will be easier for schools to find supply teachers possessing checking results while meeting the requirements of the school concerned.

11 Is it mandatory for a school to request prospective employees for all school posts to undergo SCRC?

A Given the importance of safeguarding students' well-being, schools must adopt the Scheme to verify the sexual conviction records declared by prospective employees. The checking result will enable schools to make appointment decisions on an informed basis. For the protection of students, schools should in principle request prospective employees for all school posts to undergo SCRC.

12 Can a school request all job applicants to undergo SCRC immediately after the application has closed?

A Selection of school staff members must be determined according to a set of criteria relevant to the work requirements of the positions (such as qualifications and relevant work experience, etc.). Schools should request prospective employees to undergo SCRC at the advanced stage of the appointment process (for example, when some suitable applicants have been selected for interview). The checking result provides schools with important reference to select suitable applicants for the positions. As the Police will update the checking result on a daily basis, schools are advised to double check the latest checking results of the prospective employees before the recruitment exercise ends.

13 How should a school handle the application if the applicant refuses to declare his/her criminal record or previous cancellation/refusal of teacher registration, or refuses to undergo SCRC?

A Schools should, on the application form, state the consequences if the applicant refuses to provide such information or undergo SCRC. For the protection of students, it is a reasonable and responsible practice for schools to require applicants to do so. If the applicant refuses to make such declaration or undergo SCRC, the job application of the applicant will not be processed.

14 If an applicant declares his/her criminal record(s), how should the school concerned verify the declared non-sexual conviction record(s)?

A If an applicant declares his/her criminal record(s), the school concerned may require him/her to provide further details, for example, the criminal record summary issued by the Police.

15 Does it constitute discrimination or contravene the Hong Kong Bill of Rights

(HKBOR) for the employer to request a prospective employee to undergo SCRC or reject an applicant with a previous sexual conviction record having regard to such factors as the nature and requirements of the work to be performed?

A In the LRC's report, it is stated that the Government has a constitutional duty under the International Covenant on Civil and Political Rights (ICCPR) to protect children from sexual exploitation. It is also stated that differential treatment between the different types of offenders would be permissible under the HKBOR if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the ICCPR.

Moreover, according to the proposal put forward in the LRC's report, the SCRC Scheme is not a Scheme to automatically or mandatorily bar previous sex offenders from working in child-related fields or with MIPs. Rather, it is a Scheme which enables employers to decide discretionally whether to employ a person with a previous sexual conviction record for child-related work on a fully informed basis. The nature of the Scheme reduces its impact on the human rights and rehabilitation of sex offenders.

Selection of school staff members must be determined on the basis of qualifications and experience according to a set of criteria relevant to the requirements of the work post. If an applicant has been convicted of a criminal offence (including a sexual offence), the school concerned should prudently consider whether he/she is fit for employment with regard to the nature and gravity of the offence and such other factors as the nature and requirements of the work post.

16 Is it necessary for schools to wait for the checking result before signing the contract with a prospective employee (including the staff of outsourced service providers to be deployed to work in the school) or allowing him/her to undertake the relevant work?

A It is very important to safeguard the well-being of students. Schools should, as far as practicable, wait for the checking result before signing the contract with a prospective employee or allowing him/her to undertake the relevant work. In general, the checking result of an applicant without any sexual conviction record will be uploaded to the Auto Telephone Answering System of the Police within seven working days after the application.

To meet pressing operational need (such as the urgent need for a supply teacher to substitute a teacher on sick leave), schools may sign the contract with a prospective employee or allow him/her to undertake the relevant work before the checking result is available. In this situation, schools should adopt a reasonable and feasible measure, such as requesting the prospective employee to declare in writing that he/she has or does not

have sexual conviction record or involved in any ongoing criminal investigation, which is to be confirmed with reference to the checking result when it is available. If the employee is later found, via the check, to have intentionally provided false information or withheld material information, the school may take disciplinary action (such as dismissal) proportionate to the nature and gravity of the case according to the terms and conditions stated in the relevant documents (such as application form, employment contract, etc.).

Schools may also deal with the staff of outsourced service providers in the same way mentioned above. However, they should make sure that the outsourced service providers have taken cautious measures, including requesting staff to be deployed to work in the school to declare in writing that they have or do not have sexual conviction record and to apply for SCRC as soon as practicable.

17 Can a school dismiss a teacher/staff member if he/she is found to have sexual conviction record(s) after he/she is employed by the school?

A If the teacher/staff member has understood the consequences of providing false information/withholding material information before employment and is found by the employing school to have intentionally provided false information/withheld material information after employment, it is legitimate for the school to proceed with disciplinary action. As a good employer, the school should take appropriate action against staff misconduct in accordance with the principles of lawfulness and reasonableness and its prescribed policy on disciplinary measures. If it has been ascertained that an appointee has intentionally provided false information/withheld material information, the school should carefully decide on the disciplinary action to be taken proportionate to the nature and gravity of the case, rather than resorting to dismissal indiscriminately. Moreover, the teacher/staff member concerned might also be subject to legal liabilities.

18 May a school request serving teachers/staff members to undergo SCRC?

A At present, the Scheme only covers prospective employees. Schools, therefore, are not required to request serving teachers/staff members to undergo SCRC.

Note: For details of the Scheme (such as protocol, application procedures and a template for documentary proof of possible employment related to children or MIPs from employers), please visit the website of the Hong Kong Police Force at <http://www.police.gov.hk/scrc>.