

CONSULTATION PAPER

ON THE

REVIEW OF THE POLICY GOVERNING
THE ISSUE OF SECURITY PERSONNEL PERMITS
TO PERSONS WITH CRIMINAL CONVICTIONS

THE SECURITY AND GUARDING SERVICES
INDUSTRY AUTHORITY

This consultation paper can be found on the Internet at:

<http://www.info.gov.hk/sb/sgsia/consult.htm>

Consultation Paper
Review of the policy governing
the issue of Security Personnel Permits
to persons with criminal convictions

I. Preface

Background for the Review

The main duty of security personnel is to safeguard lives and properties of others. Following the arrest or conviction of a few security personnel in the past for offences committed whilst on duty, there have been demands for a review. The Security and Guarding Services Industry Authority (“the SGSIA”) is reviewing the existing policy governing the issue of security personnel permits (“SPP”). It is prepared to take special caution in striking a balance between the need to ensure only fit and proper persons are serving within the security industry and the need to rehabilitate persons concerned. **If the review results in any tightening of rules, such rules will apply only to new applications for SPPs.**

The licensing authorities

2. The SGSIA is a licensing authority established on 1 June 1995 under the Security and Guarding Services Ordinance, Cap. 460, (“the SGSO”). Its main functions are to consider and determine applications for Security Company Licence (“licence”), as well as to specify the criteria and conditions for issuing SPP. The Commissioner of Police (“the Commissioner”) is the licensing authority for SPP.

The legislation

3. The SGSO was enacted in December 1994 to provide for a licensing scheme to regulate the security industry. Under the scheme, a person will require an SPP and a company will require a licence before they may provide security services in Hong Kong. The SGSO replaces the former Watchmen Ordinance, Cap. 299, under which Watchman’s Permits were issued.

II. Existing policy governing the issue of Security Personnel Permit (SPP)

4. The Commissioner is empowered under section 14(5) of the SGSO to issue SPP when he is satisfied that the applicant is a **fit and proper person** to hold the permit and meets **the criteria** specified by the SGSIA.

(a) ***Fit and Proper Person***

In deciding whether a person is a fit and proper person to hold an SPP, the Commissioner may consider the applicant's criminal record, the nature of the offence(s), the penalty awarded, the age at the time of the offence and if the person had repeated criminal conviction. A conviction that took place more than 5 years preceding the application would normally be disregarded. This is generally referred to as "**the 5-year sanitation rule**".

(b) ***The Criteria***

Pursuant to s.6(1)(b)(i) of the SGSO, the SGSIA has specified the criteria that must be satisfied before the Commissioner may issue an SPP. Under the Criteria, the applicant must satisfy specific requirements on age, physical fitness to perform the job, **good character** and certification of employment. When considering whether a person satisfies the **good character requirement**, the Commissioner shall have regard to his/her criminal record, employment history and other relevant factors. An SPP will not be granted if the applicant is convicted of any criminal offence and is within 2 years of release from imprisonment, or on probation, or bound over.

5. When the SGSO was introduced in 1995 to replace the former Watchmen Ordinance enacted in 1956, there were already some 116,000 people in the security workforce. It was then necessary to accommodate the serving security guards, but improvement measures have been put in place including a 5-year phased program to replace the former Watchman's Permits.

III. Automatic Revocation of SPP on Conviction

6. Under s.17 of the SGSO, the Commissioner may revoke an SPP automatically when the holder is convicted of any of the offences listed under Schedule 2 to the SGSO (or “**Schedule 2 offences**”) and the penalties awarded by the court are as specified in the Schedule.

IV. Schedule 2 Offences

7. “Schedule 2 offences” include sexual offences and those involving triad activities, dangerous drugs, fraud, dishonesty or violence. These offences pose danger to personal safety and the well-being of properties. In view of their serious nature and relevance to security work, the Commissioner and SGSIA both take a serious view of these offences when considering whether a person is fit and proper to hold an SPP. A list of the commonly committed Schedule 2 offences is at **Annex 1**.

Annex 1

V. Revocation of SPP on application by the Commissioner

8. Under s.18 of the SGSO, when the Commissioner considers an SPP holder to be no longer a fit and proper person or where an SPP holder has been in breach of any conditions of the SPP, he may apply to the SGSIA for revocation of the SPP.

VI. Concerns

Concerns from the Community

9. Since introduction of the licensing scheme under the SGSO, there have been concerns from the community over the employment of people with criminal background in the security workforce, especially following the arrest or conviction of security personnel for offences committed whilst on duty.

Statistics

Criminal convictions before the grant of SPPs

10. According to the statistics maintained by the Police, 15,816 (about 9%) of the 178,900 SPP holders registered up to the end of September 2000 have criminal convictions before obtaining SPPs. Of these 15,816 ex-offenders, 10,047 (64%) have committed Schedule 2

offences and 6,238 (40%) have more than one convictions. The majority (77%) of their convictions was committed more than 5 years before they applied for SPPs. These people were granted SPPs despite their criminal background as they have satisfied the existing policy. Some 1,200 people's applications for SPP were rejected on grounds of their criminal records.

Criminal convictions after the grant of SPPs

11. The statistics also reveal that 2,785 security personnel have committed criminal offences after obtaining SPPs. Of these, 1,097 (40%) had prior convictions. Of the 1,097 re-convicted persons, 770 (70%) have prior Schedule 2 offences.

Re-convictions and Tendency

12. An analysis of the statistics indicates that:

- (a) about 8% of the ex-offenders (770 out of 10,047) with previous Schedule 2 convictions were re-convicted after obtaining SPPs. Of the 770 ex-offenders, 474 (representing 62%) were re-convicted of Schedule 2 offences. (This shows that this group of people are more likely to re-commit Schedule 2 offences than Non-Schedule 2 offences);
- (b) about 6% of the ex-offenders (327 out of 5,769) with previous Non-Schedule 2 convictions were re-convicted after obtaining SPPs. Of the 327 ex-offenders, 274 (representing 84%) were re-convicted of Non-Schedule 2 offences. (This shows that these people are more likely to re-commit Non-Schedule 2 offences than Schedule 2 offences.) (See list of the commonly committed Non-Schedule 2 offences at **Annex 2**); and
- (c) about 1% of the SPP holders with previous clean records (1,688 out of 163,084) was convicted after obtaining SPPs. This rate may suggest that this group of people is less prone to commit offences.

Annex 2

VII. Review

13. The licensing scheme under the SGSO aims to regulate the security industry in order to assist in the prevention of crime and protection of public safety. Under the scheme, only fit and proper

persons are granted licence or permit to provide security services, thereby helping to reduce criminality in the security industry and enhance public confidence in private security services.

14. A review of the present policy governing the issue of SPP to persons with criminal convictions indicates that this policy appears to be inadequate for precluding unfit persons from entering the security workforce. For instance, a person who has committed multiple and serious criminal offences over 5 years ago, and who is not currently on probation or bound over, or within 2 years of release from imprisonment, may still be granted an SPP under the existing licensing rules.

15. Briefly described below are three of the more extreme cases to illustrate the kind of problem that this review seeks to deal with. In these examples, since the applicants for SPPs had fully met the existing criteria i.e. the SGSIA's 2 years' "good character" requirement and the Police's "5 years' sanitation rule", the Commissioner had to grant them the SPP notwithstanding many people might consider their criminal records to be a matter for concern:

- (a) An applicant committed a Schedule 2 offence of "Arson" 13 years ago and was sentenced to 3 months' imprisonment. 6 years later, he was convicted of another Schedule 2 offence of "Rape". This time, he was sentenced to 4 years' imprisonment but was released from imprisonment about 3 years ago.
- (b) An applicant committed 8 counts of Non-Schedule 2 offences involving "Gambling" and "Piracy" in 2 to 10 years ago and all offences were fined less than \$10,000. Moreover, he was convicted of 10 offences related to triad, dangerous drugs or gambling more than 10 years ago. The penalties imposed were fines of less than \$10,000 or 3-6 months' imprisonment.
- (c) An applicant committed 2 dangerous drugs related offences 7 and 9 years ago and awarded a fine of \$1,000. He also had 3 convictions of "Publishing an Obscene Article" 2 - 4 years ago, and was awarded 3 months' imprisonment suspended for 12 months when he first committed this offence. He was sentenced to 3 and 4 months imprisonment respectively when he repeated the offence.

16. It is considered that the inadequacy of the existing policy has undermined the objectives of the licensing scheme. Nevertheless, should the review result in any tightening of rules, such rules will apply only to the new applications for SPPs.

VIII. Rehabilitation of Offenders

17. The SGSIA endorses the need to promote rehabilitation of the offenders and has paid due regard to the spirit of the Rehabilitation of Offenders Ordinance, Cap. 297, in reviewing its policy. It is noted that Cap. 297 has provided different forms of protection to the offenders whose offence has not resulted in a sentence of imprisonment exceeding 3 months or a fine exceeding \$10,000. The offender must not also have any previous conviction or be re-convicted within 3 years after the first offence.

18. S.4(2) of Cap.297 has provided an exception under which the said protection is not applicable to the determination of an applicant's suitability to be granted, or to continue to hold a licence or permit under any law.

19. Although the issue of SPP is not subject to the provisions of the Rehabilitation of Offenders Ordinance, the SGSIA is aware of the concerns of certain quarters of the community that any tightening of policy may adversely affect the employment opportunities of the rehabilitated offenders. For this reason, the SGSIA is prepared to take special caution in striking a right balance between the need to reduce the risk of criminality in the security workforce on the one hand, and rehabilitate the offenders on the other.

IX. Integrity of the security workforce

20. The SGSIA believes that all security personnel are placed in a position of trust. They are relied upon to discharge important functions safeguarding lives and properties. In the course of their work, they may also have access to the sensitive information about their clients. The nature of their duties is such that a high standard of personal integrity and credibility is expected of them, perhaps more so than many other professions.

X. Practices in other countries

21. The SGSIA has examined legislation regulating the security or similar services in a number of developed countries. It is noted that all those countries pay special attention to the individuals' criminal records when determining their suitability to hold a security personnel licence. The following summarizes the licensing standards adopted by the countries:

<u>Country/City</u>	<u>Licensing Standards</u>
Australia:	
<i>Queensland</i>	The applicant has not been convicted of any disqualifying offence <u>within the last 10 years before application</u> . The "disqualifying offence" includes assaults, stealing, burglary, endangering life or health, drug misuse etc..
<i>Northern Territory</i>	- Same -
New Zealand	The applicant for a security guard's licence has not been convicted of any crime that led to imprisonment <u>within the last 10 years before application</u> .
Canada:	
<i>British Columbia</i>	The applicant has not been convicted of any indictable offence under an Act of Canada, or an offence that is punishable on summary conviction and prescribed by the Lieutenant Governor in Council <u>within the last 10 years before application</u> .
<i>Quebec</i>	The applicant has not been convicted of or pleaded guilty to any offence under the Criminal Code prosecuted by indictment, or any offence under the Criminal Code punishable on summary conviction <u>within the last 5 years</u> .

This period may be reduced to no less than 1 year depending on the seriousness of the offence.

Singapore

A person who is employed as a security guard has not been convicted of any offence involving dishonesty or moral turpitude, or is in the opinion of the police fit and proper to be employed. For serious offences, the period of debarment ranges from 5-7 years.

Japan

The applicant is not mentally ill or addicted to alcohol, narcotics, opium or stimulant drugs or has not received punishment of fines for violation of the regulations of the Security Guarding Service Law or has received punishment of imprisonment or more within the last 5 years before application.

United States:

California

The applicant has not been convicted of any act or crime prescribed under the Business and Professions Code, such as dishonesty, fraud, etc.. For felony convictions, the period of debarment ranges from 7 - 9 years, depending on an individual basis.

New York

The applicant has not been convicted of any serious offence or of a misdemeanor, which relates to the performance of duties of a security guard. "Serious offence" includes assault, sex offence, kidnapping, burglary, robbery, criminal possession of stolen property etc.. No sanitation period has been specified.

Washington The applicant has not been convicted of any crime that relates to the performance of duties as security guard. The director of the licence issuing authority shall make her or his determination to withhold a licence because of previous convictions notwithstanding the restoration of employment rights act.

Germany The applicant has to submit a certificate of conduct issued by the Federal Central Register. The municipal authority decides whether the possible criminal record is serious enough to refuse the applicant a guarding services licence. The laws do not stipulate any sanitation rule.

Belgium The applicant has not been convicted to a sentence (even suspended) of at least 6 months for any offence or to any sentence of a disqualifying offence, such as theft, indecent assault, trafficking of poisonous substances, etc..

United Kingdom The Private Security Industry Bill has just completed its passage through Parliament on 8.5.2001. The licensing scheme is expected to come into operation around 2003.

22. Comparing with the above countries, it appears that the licensing standards presently adopted by the SGSIA are more relaxed, except for Germany and Washington where the municipal authority and the director of the licence issuing authority has the discretion to consider each application, and Quebec and Japan where a similar 5-year sanitation rule is applied. In order to bring Hong Kong's standards more in line with the practices adopted in other developed countries and in view of the concerns and deficiencies described above, it is considered justified to suitably improve the existing policy governing the issue of SPP.

XI. Options for Change

23. The SGSIA wishes to listen to the views of the security industry as well as the wider community and to balance the views and the needs of the community before seeking approval to revise its criteria for issuing SPP.

24. 5 possible options on the proposed policy governing the issue of SPPs to applicants with past criminal convictions are worked out to facilitate public discussion. Other than status quo, the other 4 options represent some tightening of the existing policy in varying degrees, from the most mild to the more radical changes, whilst the existing 2 sets of criteria, viz. the good character requirement and sanitation rule are retained. Option 1 is the existing policy. Options 2-5 will also deal with remission of sentence, suspended sentence, type of offence, level of penalty and repeat offences. The key information on each option is provided in the following paragraphs:

- (a) Option 1 reflects the status quo that includes the Authority's 2 years' good character requirement and the Police's 5 years' sanitation rules.
- (b) Option 2 – apart from additionally specifying that SPP should not be granted to applicants on remission or suspended sentence, references to type of offence, penalty and the new restriction on recidivism are also made. The good character rule has also been lengthened from 2 to 3 years.
- (c) Option 3 – the good character and sanitation rules are same as Option 2. As regards recidivism, it provides further tightening of the existing policy by the penalty imposed, from substantial penalty to any penalty.
- (d) Option 4 – apart from the 3-year good character rule, the sanitation and recidivism periods have been lengthened from 5 years to 10 years.
- (e) Option 5 – This option represents a full-scale tightening of the present policy, thereby debarring people with any number or nature of convictions within the past 10 years preceding the application.

25. The options have also built in reasonable protection for the offenders having regard to the provisions in the Rehabilitation of Offenders Ordinance. Readers are invited to refer to the table and explanatory notes at **Annex 3** for details and the pros and cons analysis of each option.

Annex 3

XII. Advice Sought

26. The SGSIA aims to promote a high standard of security services. It is open to any views and suggestions that members of the security industry and public may offer. Any organization or person who wishes to comment on the issues discussed in this paper, and/or recommend any improvement to the present policy, are requested to make known their views, **using the attachment entitled “Consultation Points” at Annex 4 or in any other form**, and send the same before **30 September 2001** to:

Annex 4

**The Secretary,
Security and Guarding Services Industry Authority
Room 408, 4th Floor,
Prince’s Building, 10 Chater Road,
Central, Hong Kong.
Fax No.: 2537 5118
E-mail: sbeosgs@hkstar.com**

SGSIA Secretariat
30 June 2001

Schedule 2 Offences

Category	Common Offences
Triad	<ul style="list-style-type: none">● Being a member of a triad society● Being an office bearer of a triad society● Managing an unlawful society
Dangerous Drugs	<ul style="list-style-type: none">● Trafficking in dangerous drugs● Possession of dangerous drugs● Possession of equipment fit and intended for DD
Fraud or Dishonesty	<ul style="list-style-type: none">● Forgery and counterfeiting offences● False accounting● Giving a false statement to an immigration officer● Taking a conveyance without authority● Deception● Bribery offences● Using identity cards belonging to others● Misleading a police officer● Burglary● Theft● Handling stolen goods
Violence	<ul style="list-style-type: none">● Murder● Manslaughter● Kidnapping● Robbery● Wounding● Assault● Arson● Criminal● Blackmail● Criminal intimidation● Possession of offensive weapons
Sexual	<ul style="list-style-type: none">● Rape● Indecent Assault● Unlawful sexual intercourse with girl under 16● Soliciting for an immoral purpose● Managing a vice establishment● Indecency in public

Note: The above are the commonly committed Schedule 2 offences

Non-Schedule 2 Offences

Category	Common Offences
Gambling	<ul style="list-style-type: none">● Engaging in unlawful bookmaking● Operating a gambling establishment● Gambling in a gambling establishment● Street gambling
Dutiable Commodities	<ul style="list-style-type: none">● Unlawful possession of dutiable goods● Selling dutiable goods
Obscene and Indecent Articles	<ul style="list-style-type: none">● Publish obscene articles● Possession of obscene articles for publication
Piracy	<ul style="list-style-type: none">● Possession for the purpose of trade or business of infringing copies of cinematograph films in which copy right subsisted
Immigration	<ul style="list-style-type: none">● Aiding and abetting illegal immigrants to remain in Hong Kong● Employing a person not lawfully employable● Aiding and abetting breach of conditions of stay
Traffic	<ul style="list-style-type: none">● Driving without a licence● Careless driving● Dangerous driving● Dangerous driving causing death● Drunk driving● Driving whilst disqualified
Domestic	<ul style="list-style-type: none">● Bigamy● Child abuse● Abortion
Soft Drugs	<ul style="list-style-type: none">● Possession of Part I Poison
Summary Offences	<ul style="list-style-type: none">● Dropping an object from a building● Causing nuisance in public place● Littering

Note: The above are the commonly committed Non-Schedule 2 offences

Situations where permits are NOT granted

Option	Good Character	Sanitation Rule	Recidivism
1 (Present Policy)	On probation or bound over; or within 2 years of release from imprisonment	Serious offence with substantial penalty within 5 years	Not provided
2	On probation or bound over; or on remission or suspended sentence; or within 3 years of release from imprisonment	Schedule 2 offence with “specified penalty” within 5 years	Any 3 offences with “substantial penalty” within 5 years
3	Same as 2	Same as 2	Any 3 offences within 5 years
4	Same as 2	Schedule 2 offence with “specified penalty” within 10 years	Any 3 offences within 10 years
5	Same as 2	Any offence within 10 years	Not applicable

See Notes 1 to 4 on page 3

	Option 1 (Status Quo)	Option 2	Option 3	Option 4	Option 5
Pros:	The present policy provides ample opportunities for the offenders to re-integrate into the society and turn over a new leaf, thereby promoting rehabilitation.	This option aligns the present policy with the standards specified in Cap. 297 for the protection of offenders (i.e. 3 years' clean record and light penalties). It also provides a clear policy on the offences and penalties that cannot be tolerated, and sets new rule on recidivism. (The improvements could also address Administrative Appeals Board's concerns over the lack of policy on recidivism, and deal with ICAC's criticism about the absence of a clear policy).	Same as Option 2, this option provides a better assurance of good character and greater protection against recidivism. Such rules are set having regard to the spirit of the Rehabilitation of Offenders Ordinance (i.e. the 3-year clean record and light penalty rules).	This option provides an assurance of good character, sets a longer period of sanitation and provides greater protection against recidivism, thereby ensuring that people with serious convictions or a tendency to commit similar offences are properly sanitized before being allowed into the security workforce.	This option represents a full-scale tightening of the present policy, thereby debarring people with any number or nature of convictions within the past 10 years from joining the security industry. The proposed rules provide strong protection against criminality in the security workforce, and enhance public safety and confidence in private security services.
Cons:	The present rules are inadequate for precluding undesirable people from joining the security workforce. The inadequacies will continue to undermine the objectives of the licensing scheme, which are to improve the quality of private security services and enhance public safety.	It will take longer for the ex-offenders to re-integrate into the society. The employment opportunities of the repeat offenders with serious past convictions would also be adversely affected.	The employment opportunities of the repeat offenders would be reduced.	This option will debar ex-offenders with serious and repeated past convictions for a long period of time, thereby reducing their employment opportunities to a great extent. The tightening from 5 to 10 years and the preclusion of the recidivists irrespective of penalties may seem too drastic.	The outright preclusion of people with any nature or number of conviction over a long period of time may seem unduly harsh. It will substantially affect ex-offenders' employment prospects and frustrate the efforts to rehabilitate them.

- Note 1 (Option 1)** — Under the **present policy**, a permit will *not* normally be granted if the applicant:
- (a) is on probation or bound over or within 2 years of release from imprisonment; or
 - (b) was criminally convicted within 5 years preceding the application. In applying this 5-year rule, the Police would consider the nature of the offence, the penalty awarded and other matters.
- Note 2 (Option 2)** — This option specifies the offences and penalties that are serious and relevant for preclusion from the performance of security work. **“Schedule 2 offence”** refers to any offence specified in column 2 of Schedule 2 to the Security and Guarding Services Ordinance. *Examples of the commonly committed Schedule 2 offences are at Annex 1 to the Consultation Paper.*
- “Specified penalty”** refers to the penalty specified in relation to that offence in column 3 of that Schedule.
- Note 3 (Option 2)** — **“Substantial penalty”** refers to more than 3 months’ imprisonment or a fine exceeding \$10,000, having regard to the ceiling of protection accorded to the rehabilitated individuals under the Rehabilitation of Offenders Ordinance, Cap. 297.
- Note 4 (Options 2 - 5)** — All **minor offences** such as those involving fixed penalties, bigamy, littering, jaywalking, article obstruction should be excluded.

Consultation Points

**Review of the Policy Governing the Issue of
Security Personnel Permit to Persons with Criminal Convictions**

Please complete and return this questionnaire to the SGSIA *by fax* 2537 5118 *or by mail* to
Room 408 Prince's Building, 10 Chater Road, Central, Hong Kong *on or before 30 September 2001*.

The Policy

1. Do you consider the existing policy governing the issue of Security Personnel Permit (SPP) to be adequate? *(Please refer to para.4 of the consultation paper for the policy.)*

- Yes, it is adequate because _____
- No, it is not adequate because _____
- Other comments *(please specify)* _____
- _____

“Good character” Criterion

2. When considering whether an applicant satisfies the “good character” requirement, the Commissioner shall have regard to his/her criminal record, among other things. Generally, a SPP will not be granted if the applicant is on probation or bound over or within 2 years of release from imprisonment. Do you consider this “2-year good character rule” to be appropriate? *(Please refer to para. 4(b) of the consultation paper for the “2-year good character rule”.)*

- Yes, it is appropriate because _____
- No, it is not appropriate because _____
- Other comments *(please specify)* _____

Sanitation Rule

3. In considering whether to grant the permit to persons with past criminal convictions, the Commissioner adopts a “5-year sanitation rule” under which any conviction that took place more than 5 years ago preceding the date of application for the permit would normally be disregarded. Do you consider this 5-year sanitation rule to be appropriate? *(Please refer to para. 4(a) of the consultation paper for the “5-year sanitation rule”.)*

- Yes, it is appropriate because _____
- No, it is not appropriate because _____
- Other comments *(please specify)* _____

Offences

4. Apart from the Schedule 2 offences set out under Annex 1 to the consultation paper, are there any other offences that you think are unacceptable for the performance of security work? *(In this regard, you may consider the offences under Annex 2. Please also refer to para.7 of the consultation paper for the Schedule 2 offences.)*

- No.
- Yes, such offences are _____

- Other comments *(please specify)* _____

5. Do you agree that the Commissioner should disregard the minor offences when considering the grant of Security Personnel Permits? Such offences include those involving fixed penalties, bigamy, littering, jaywalking, article obstruction, etc.

- Yes, I agree. Such offences should include _____
because _____
- No, minor offences should not be disregarded because _____

- Other comments *(please specify)* _____

Repeat Offenders

6. Do you agree to preclude the repeat offenders from obtaining Security Personnel Permit?

- Yes, a repeat offender should be precluded if the person has committed _____ time(s) of offences within _____ year(s) because _____

- No, they should not be precluded because _____
- Other comments (*please specify*) _____

7. Please indicate the Option you consider can most suitably improve the existing policy governing the issue of security personnel permits. (*Please refer to paras. 23-25 of the consultation paper.*)

- Option 1 because _____

- Option 2 because _____

- Option 3 because _____

- Option 4 because _____

- Option 5 because _____

- Other options (*please specify*) _____

Suggestions

8. Please give your suggestions as to how the present policy on fit and proper person and “good character” requirement may be improved.

Name of Respondent: _____

Organization (if applicable): _____

Contact Nos. (Tel) _____ (Fax) _____

Date: _____