THE LAW REFORM COMMISSION OF HONG KONG

REPORT

Sentencing and related matters in the review of sexual offences

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May 2022

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Members: ***The Hon Chief Justice Andrew Cheung, GBM***
The Hon Mr Justice Johnson Lam,
Permanent Judge of the Court of Final Appeal
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Professor Cheng Han Tan
Professor Lutz-Christian Wolff
Professor Hualing Fu
Mr Stephen Hung
Mrs Janice Choi, BBS, MH, JP
Mr C M Chan
Mrs Margaret Leung, SBS, JP

The Secretary of the Commission is **Mr Wesley Wong, SC, JP, Law Officer** and the Commission's offices are at:

4/F East Wing, Justice Place
18 Lower Albert Road
Central
Hong Kong

Telephone: ***3918 4097***
Fax: ***3918 4096***
E-mail: ***hklrc@hkreform.gov.hk***
Website: ***http://www.hkreform.gov.hk***

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Preface

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1. The overall review of substantive sexual offences is the major part of the Law Reform Commission's Review of Sexual Offences Sub-committee's ("**Sub-committee**") study under its terms of reference. Its scope is wide and it raises a number of sensitive and controversial issues which require careful consideration. The entire review has hence been broken down into a number of discrete parts with four consultation papers entitled *Rape and Other Non-consensual Sexual Offences* ("**First CP**"), *Sexual Offences involving Children and Persons with Mental Impairment* ("**Second CP**"), *Miscellaneous Sexual Offences* ("**Third CP**"), and *Sentencing and Related Matters in the Review of Sexual Offences* ("**Fourth CP**") published in September 2012, November 2016, May 2018, and November 2020 respectively. The Law Reform Commission ("**LRC**") also published a stand-alone report on *Voyeurism and Non-consensual Upskirt-photography* ("**Report on Voyeurism**") in April 2019, and a report on *Review of Substantive Sexual Offences* ("**Report on Sexual Offences**") in December 2019 which provides for the LRC's final recommendations on the proposed offences and recommendations set out in the First CP, Second CP, and Third CP.

2. This report ("**Report**") discusses the responses received to the Fourth CP in its 3-month consultation, and sets out our analysis, final recommendations ("**Final Recommendations**") and observations on our review of sentencing and related matters in the review of sexual offences.

Terms of reference

3. In April 2006, the Secretary for Justice and the Chief Justice of the Court of Final Appeal requested that the LRC to review the law relating to sexual and related offences in Hong Kong. As a result of judicial comment in various judgments in Hong Kong as well as the public's comments on the desirability of setting up a register of sex offenders, the terms of reference were expanded in October 2006 to include a study relating to such a register. The expanded terms of reference are:

> *"To review the common and statute law governing sexual and related offences under Part XII of the Crimes Ordinance (Cap 200) and the common and statute law governing incest under Part VI of the Ordinance, including the sentences applicable to those offences, to consider whether a scheme for the registration of offenders convicted of such offences should be established, and to recommend such changes in the law as may be appropriate."*

Membership of the Sub-committee

4. The Sub-committee was appointed in July 2006 to consider and advise on the present state of the law and to make proposals for reform. The current Sub-committee members are:

Mr Peter Duncan, SC *(Chairman)*	Senior Counsel
The Hon Mrs Justice Barnes	Judge of the Court of First Instance of the High Court
Mr Eric T M Cheung	Principal Lecturer Department of Law University of Hong Kong
Ms Joceline Chui *[From August 2019]*	Principal Assistant Secretary Security Bureau
Mr Paul Ho *[From May 2016]*	Principal Government Counsel Department of Justice
Professor Karen A Joe Laidler *[From September 2008]*	Director Centre for Criminology also Professor Department of Sociology University of Hong Kong
Ms Chau Fung-mui, Wendy *[From October 2021]*	Assistant Director (Family & Child Welfare) Social Welfare Department
Mr Andrew Powner	Partner Haldanes, Solicitors
Ms Lisa D'Almada Remedios	Barrister

5. Previous Sub-committee members include: Dr Alain Sham from the Department of Justice;[1] Mr Ma Siu-yip,[2] Mr Stephen Lee,[3] Mr Man Chi-hung, Alan,[4] Ms Pang Mo-yin, Betty,[5] Mr Lee Wai-man, Wyman,[6] Mr Ho Chun-tung[7] and Mr Chan Tat-ming, Neil[8] from the Hong Kong Police Force;

[1] Until May 2016.
[2] Until January 2008.
[3] From January 2008 to August 2010.
[4] From September 2010 to May 2012.
[5] From June 2012 to July 2014.
[6] From July 2014 to August 2017.
[7] From August 2017 to April 2020.
[8] From April 2020 to February 2022.

Mrs Apollonia Liu,[9] Mrs Millie Ng[10] and Mr Andrew YT Tsang[11] from the Security Bureau; Mrs Anna Mak Chow Suk Har,[12] Ms Caran Wong,[13] Mr Fung Man-chung[14] and Ms Pang Kit Iing[15] from the Social Welfare Department; Dr Chu Yiu-kong from the University of Hong Kong,[16] Mr Paul Harris, SC,[17] and Mr Philip Ross.[18]

6. Miss Sally Ng, Senior Government Counsel in the LRC Secretariat is the Secretary to the Sub-committee.[19]

Previous work of the Sub-committee

Sexual offences records checks for child-related work

7. In light of widespread public concern, the Sub-committee considered first the question of establishing a system of sexual conviction records checks for those engaged in child-related work. In July 2008, the Sub-committee issued a consultation paper on *Interim Proposals on a Sex Offender Register*.

8. In February 2010, taking into account the public views received in the consultation, the LRC published a report on *Sexual Offences Records Checks for Child-Related Work: Interim Proposals* ("**Report on Interim Proposals**"). The report recommended, among other things, the establishment of an administrative scheme to enable employers of persons undertaking child-related work and work relating to mentally incapacitated persons ("**MIPs**") to check the criminal conviction records for sexual offences of existing and prospective employees. The proposals in the report were subsequently implemented by the establishment of an administrative scheme, viz, the Sexual Conviction Record Check Scheme ("**SCRC Scheme**"), with effect from 1 December 2011.

Presumption that a boy under 14 is incapable of sexual intercourse

9. The Sub-committee conducted a study into the common law presumption that a boy under 14 is incapable of sexual intercourse and made proposals to the LRC to abolish this presumption.

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[9] Until June 2009.
[10] From June 2009 to November 2015.
[11] From November 2015 to August 2019.
[12] Until May 2011.
[13] From June 2011 to August 2012.
[14] From August 2012 to April 2018.
[15] From April 2018 to October 2021.
[16] Until December 2007.
[17] Until February 2012.
[18] From February 2012 to August 2021.
[19] As Co-Secretary from July 2016 to December 2017 (Mr Thomas Leung, Senior Government Counsel, was the Secretary to the Sub-committee until December 2017).

10. Based on these proposals, the LRC published in December 2010 a report on *The Common Law Presumption that a Boy under 14 is Incapable of Sexual Intercourse*, recommending the abolition of this outdated common law presumption. As the issue was considered straightforward and not expected to be controversial, the LRC proceeded straight to a final report without first issuing a consultation paper.

11. The Statute Law (Miscellaneous Provisions) Ordinance 2012 (No 26 of 2012) was enacted on 17 July 2012 to implement the LRC's recommendation on abolition of the presumption.

Overall review of substantive sexual offences

12. The overall review of substantive sexual offences is the major part of the Sub-committee's study under its terms of reference. It was the Sub-committee's original plan to divide the review into four parts, with separate consultation papers to be issued in respect of each of them and one global final report. The four parts being:

(1) offences based on sexual autonomy (ie rape and other non-consensual sexual offences);

(2) offences based on the protective principle (ie sexual offences involving children and persons with mental impairment ("**PMIs**")[20] and sexual offences involving abuse of a position of trust);

(3) miscellaneous sexual offences; and

(4) sentencing.

13. During the consultation exercises on the first two parts of the overall review of the substantive sexual offences, there were demands from the public as well as the Panel on Administration of Justice and Legal Services of the Legislative Council ("**AJLS Panel**") for expediting the work on the overall review. In response to these demands, the Sub-committee decided to adjust its original work plan and severed the fourth part relating to sentencing from the overall review and return to it when the overall review was completed. Severance of the fourth part (on sentencing) will not affect the integrity of the overall review as this part is intended to cover matters not having a direct bearing on the reform of the substantive sexual offences.

Part 1 – First CP

14. The First CP, published in September 2012, covers non-consensual sexual offences which concern promoting or protecting a person's

[20] "PMI" is used as a general term as opposed to the specific definition of a "MIP" defined in section 117(1) of the Crimes Ordinance. See also Final Recommendation 35 (re Second CP) for the recommended scope of an offence involving a PMI (Report on Sexual Offences, at paras 3.213–3.226).

sexual autonomy, namely, rape, sexual assault by penetration, sexual assault and causing a person to engage in sexual activity without consent.

Part 2 – Second CP

15. The Second CP, published in November 2016, covers sexual offences involving children and PMIs, and sexual offences involving abuse of a position of trust. These sexual offences are largely concerned with the protective principle, that is to say, the criminal law should give protection to certain categories of vulnerable persons against sexual abuse or exploitation. These vulnerable persons include children, PMIs, and young persons over whom others hold a position of trust.

Part 3 – Third CP

16. The Third CP, published in May 2018, covers a series of miscellaneous sexual offences including incest, sexual exposure, voyeurism, bestiality, necrophilia, acts done with intention to commit a sexual offence, together with a review of homosexual-related buggery and gross indecency offences in the Crimes Ordinance (Cap 200) ("**Crimes Ordinance**").

Report on Voyeurism

17. The Report on Voyeurism was prepared expeditiously and published by the LRC in April 2019 in light of the strong sentiments received during the consultation process of the Third CP and the imminent need for the introduction of new specific offences of voyeurism and non-consensual upskirt-photography. It covers the LRC's final recommendations for a specific offence of voyeurism to deal with an act of non-consensual observation or visual recording of another person for a sexual purpose, and a specific offence in respect of non-consensual upskirt-photography.

Report on Sexual Offences

18. The Report on Sexual Offences, published in December 2019, put forward altogether 69 final recommendations[21] for the Government's consideration. These recommendations include the creation of a range of non-consensual sexual offences such as a new offence of sexual penetration without consent; a uniform age of consent of 16 years in Hong Kong; the

[21] The Sub-committee issued a total of 71 Preliminary Recommendations in its three previous consultation papers. The Report on Sexual Offences only covered 69 Final Recommendations because Preliminary Recommendation 8 in the First CP (retaining the term "rape") and Preliminary Recommendations 9 and 10 in the Second CP (proposing new offences of penile penetration of a child under 13/16 and of penetration of a child under 13/16 respectively) were combined as we took the view after consultation that only one offence was required for penetrative sexual activity against a child under 13/16, which should cover any penetration of the anus or vagina and also penile penetration of the mouth.

creation of a range of new sexual offences involving children and PMIs which are gender neutral; and the reform of a series of miscellaneous sexual offences such as incest, sexual exposure, bestiality, necrophilia and homosexual-related offences.

Part 4 – Fourth CP

19. The Fourth CP, published in November 2020, is the fourth and final part of the overall review of substantive sexual offences. It covers a review of the penalties for offences proposed in the overall review of substantive sexual offences; examines ways to reform and improve treatment and rehabilitation of sex offenders in Hong Kong; and reviews the SCRC Scheme since it came into operation in December 2011 as an administrative scheme.

The Sub-committee's Preliminary Recommendations in the Fourth CP

20. The Sub-committee put forward three main recommendations in the Fourth CP (referred to in this Report as "**Preliminary Recommendations**"). These Preliminary Recommendations will be set out in full and discussed in Chapters 1 to 3 of this Report.

The consultation process

21. The Sub-committee's consultation period ran from 12 November 2020 to 11 February 2021. In response to a few requests for time extension, the consultation period was further extended to the end of February 2021. There were a few late submissions and the last response was received by the end of April 2021. The Chairman and two members of the Sub-committee attended the meeting of the AJLS Panel on 23 November 2020 to present the consultation paper. Members of the Sub-committee also accepted interviews from the media as well as attended a number of on-line discussion forums during the consultation period.

22. The Sub-committee received 75 submissions in total, ranging from a simple acknowledgement of the consultation paper to detailed submissions on the Sub-committee's Preliminary Recommendations and associated issues. The written responses came mainly from professional bodies (including legal professional bodies), women affairs concern groups, children and youth affairs concern groups, Government departments, social welfare concern groups, sexual orientation concern groups, non-governmental organisations ("**NGOs**") and individuals (each "**Respondent**" and collectively the "**Respondents**").

Consultation responses

23. A full list of the Respondents is set out in Annex 1 of this Report. We are most grateful to all those who commented on the consultation paper and we wish to thank them for their contribution to this Report. The written responses have provided us with valuable information and insight into this area of reform from different perspectives. These different views and perspectives have enabled us to consider additional factors and review some of the Preliminary Recommendations in the consultation paper.

24. When referring to the responses in this Report, we will follow the wording the Respondents used as much as we could so as to more accurately report what they have said. Some of the responses are summarised and addressed in Chapters 1 – 3 of this Report. We work on the presumption that the responses received still hold true at the publication of this Report, as we have not received any alteration or withdrawal from the Respondents.

Chapter 1

Final Recommendation 1 – Penalties for offences proposed in the overall review of substantive sexual offences

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The Sub-committee's Preliminary Recommendation 1 in the Fourth CP

1.1 This Chapter discusses the responses on the Sub-committee's Preliminary Recommendations in respect of the proposed maximum penalties for the offences recommended in the Report on Sexual Offences. The Sub-committee recommended that:

(a) The current penalties for the existing offences of rape and incest should continue to apply to the recommended offences of sexual penetration without consent and incest.

(b) The penalties for the new offences proposed be set by reference to the penalties for the corresponding offences in the respective overseas jurisdictions <u>with suitable adjustments</u>.

Comments from the Respondents

Current penalties for the existing offences of rape and incest continue to apply

1.2 A majority of those responded agree that the current penalties for the existing offences of rape and incest should continue to apply to the recommended offences of sexual penetration without consent and incest. They agree with the Sub-committee's view as set out in the Fourth CP that even with the recommended expansion in scope of the new offence of sexual penetration without consent to cover penetration of the anus or vagina, and penile penetration of the mouth of another person; and that of the offence of incest to be expanded to cover uncles (aunts) and nieces (nephews) who are blood relatives, and adoptive parents, the gravity of these expanded offences is no different from that of the existing offences of rape and incest respectively. Therefore, a majority of the Respondents agree that the maximum penalty for the existing offence of rape, namely, life imprisonment should continue to apply to the recommended offence of sexual penetration without consent; and the maximum penalty for the existing offence of incest, namely, imprisonment for 14 years should continue to apply to the expanded offence of incest.

1.3 A few Respondents however oppose the recommended maximum penalty of 14 years' imprisonment for the offence of incest. They suggest to follow sections 64 and 65 of the English Sexual Offences Act 2003 ("**English Act**") and opine that a maximum penalty of two years' imprisonment is sufficient. They also express concern in that, with the difference in maximum sentence between the offence of rape and that of incest, if the prosecution becomes accustomed to laying an alternative charge of incest (which carries a maximum penalty of 14 years' imprisonment as compared to life imprisonment for the offence of rape), it may create a wrong impression that sexual assault involving uncles (aunts) and nieces (nephews) who are blood relatives is less culpable than sexual assault of persons in other relationships and may render perpetrators of sexual assault more inclined to prey on their blood relatives.

Penalties for the proposed new offences set by reference to those in the corresponding overseas provisions with suitable adjustments

1.4 While a narrow majority of those responded oppose this part of Preliminary Recommendation 1, it is noted that the Respondents mainly express disagreement with the Sub-committee on the proposed maximum penalties for the following three groups of proposed offences:

(a) voyeurism and non-consensual upskirt-photography;

(b) sexual assault of a child under 13/16, causing or inciting a child under 13/16 to engage in sexual activity; and

(c) sexual activity with a PMI.

1.5 Apart from the narrow majority's opposition in respect of the proposed maximum penalties for the abovementioned groups of proposed offences, the Sub-committee has not received other opposition in relation to the proposed maximum penalties for the remaining offences. On this basis, the Sub-committee has further examined the three groups of offences as set out in the preceding paragraph.

(i) Voyeurism and non-consensual upskirt-photography

1.6 Nearly all of the Respondents who responded oppose the Sub-committee's proposal to impose a maximum penalty of two years' imprisonment for the offences of voyeurism and non-consensual upskirt-photography. In general, they suggest to increase the maximum penalty to five years' imprisonment to better reflect the seriousness and gravity of the proposed offences. Nearly all of them opine that the harm or psychological trauma caused to the victim in acts of voyeurism and non-consensual upskirt-photography will not be lower than the harm caused by acts of sexual exposure, of which the Sub-committee proposes a higher maximum penalty of five years' imprisonment. They take the view that it is unreasonable for the offences of

voyeurism and non-consensual upskirt-photography to carry a maximum sentence of below 5 years' imprisonment.

(ii) Sexual assault of a child under 13/16 and causing or inciting a child under 13/16 to engage in sexual activity

1.7 Some Respondents raise concern about the Sub-committee's proposal to impose a maximum sentence of 14 years' imprisonment for the offences of sexual assault of a child under 13/16 and the relevant offences of causing or inciting a child under 13/16 to engage in sexual activity without regard to the two different age groups. They comment that the proposed penalties are not in line with the basic principle as recommended by the Sub-committee that heavier sentences should be imposed for offences involving a child under 13 for better protection of this age group which involves younger children. The Respondents also opine that, without this differentiation in the sentencing level, it is not necessary to propose two offences for the different age groups.

1.8 On the other hand, the Respondents have different views as regards whether the proposed maximum sentence of 14 years should be lowered to 10 years for sexual offences involving a child under 16; or whether that for sexual offences involving a child under 13 should be increased to above 14 years to create the differentiation. In suggesting these options, we observe that the Respondents have not provided any concrete references or reasons to justify their views as regards what should be the appropriate maximum sentence for each of the said sexual offences involving a child under 13 and that of 16. Nonetheless, we do acknowledge that it is their general comment that a differentiation between the two age groups with a higher maximum penalty for offences involving a child under 13 is necessary for better protection of this group of potential victims.

(iii) Sexual activity with a PMI

1.9 Amongst those responded, the general comment with regard to the offence of sexual activity with a PMI (i) by people involved in his or her care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency is that a higher maximum sentence is justified for cases involving an offender abusing the victim's trust. The Respondents propose that the maximum sentence for the said offence should carry the same maximum penalty as the proposed new offence of "causing a PMI to engage in or agree to engage in sexual activity by inducement, threat or deception", ie life imprisonment in cases involving penetrative sexual activity, and 14 years' imprisonment in cases involving non-penetrative sexual activity.

Our analysis and response

Proposed penalties for the offences of sexual penetration without consent and incest

1.10 In the Report on Sexual Offences, we proposed to retain the offences of rape and incest but with their scope extended and to rename the offence of rape to sexual penetration without consent.[1] As mentioned also by the majority of the Respondents, we agree that even with the recommended expansion in scope of the proposed offence of sexual penetration without consent to cover penetration of the anus or vagina, and penile penetration of the mouth of another person, the gravity of this offence is no different from that of the existing offence of rape. Similarly, as regards the offence of incest, even with the proposed extension in the scope of the offence, we also take the view that the gravity of the recommended offence is no different from that of the existing incest offence. Therefore, we consider that the maximum penalty for the existing offence of rape, namely, life imprisonment should continue to apply to the recommended offence of sexual penetration without consent; and the maximum penalty for the existing offence of incest, namely, imprisonment for 14 years should also continue to apply to the expanded offence of incest.

1.11 In reply to some Respondents' suggestion to follow the English Act and to lower the proposed maximum penalty for the offence of incest to two years' imprisonment; and their concern on the proposed difference in maximum sentence between the offence of rape and that of incest may create a wrong impression that sexual assault involving uncles (aunts) and nieces (nephews) who are blood relatives is less culpable than sexual assault of adults in other relationships, we have the following views:

(a) The scope of the offence of incest is recommended to be expanded to cover uncles (aunts) and nieces (nephews) who are blood relatives, and adoptive parents to accord better protection to the community. We do not see any strong justification in support of significantly lowering the penalty level from the current maximum of imprisonment for 14 years to a maximum for two years only.

(b) Although the offence of incest catches both non-consensual and consensual incestuous sexual activities, if the conduct involves non-consensual sexual penetration, the prosecution can charge the offender with sexual penetration without consent instead of incest. We trust that a charge of incest will be considered by the prosecution as an alternative charge only if there is sufficient evidential basis upon which a reasonable jury could come to the alternative verdict of incest on the foundation that the sexual penetration was or might be done other than without the victim's consent.

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1 Report on Sexual Offences, at paras 2.48–2.61.

1.12 In light of the majority's support, we are inclined to retain the Preliminary Recommendation that the current penalties for the existing offences of rape and incest should continue to apply to the recommended offences of sexual penetration without consent and incest.

Proposed penalties for the three groups of offences identified by the Respondents

1.13 The new offences proposed in this overall review are largely modelled on sexual offences in a number of overseas jurisdictions. In particular, a vast majority of these offences are modelled on the English Act and the Sexual Offences (Scotland) Act 2009 ("**Scottish Act**"). We notice some Respondents express the view that while the maximum penalties of the new offences (especially those without corresponding offences in Hong Kong) mentioned in the Fourth CP are proposed with reference to the corresponding legislation in England and Wales, it appears that the Sub-committee has not explained in detail the rationale behind recommending these penalties for the proposed offences, in particular, why references are mainly drawn from England and Wales.

1.14 We wish to point out that the Sub-committee has mentioned in Preliminary Recommendation 1(b) that the proposed penalties for the new offences are recommended to be set by reference to the penalties for the corresponding offences in the respective overseas jurisdictions with suitable adjustments. As many of our proposed new sexual offences are drawn from the legislation in England and Wales (with appropriate modifications) and that many of our existing local provisions were drafted with direct references to similar or corresponding English provisions, it is therefore natural for us to use the corresponding penalties in the relevant sexual offences in the English Act as a starting point and to review them while taking into consideration the circumstances in Hong Kong to make suitable adjustments. We agree with the Sub-committee in that regard.

1.15 By recommending a maximum penalty for a specific offence, we wish to clarify that the proposed penalty is the highest that the court may impose and the court can always choose to impose a lower penalty as appropriate if the circumstances of the case so warrant. We acknowledge that the court needs the flexibility to impose a sentence that best reflects the seriousness and nature of the crime as well as the circumstances of the offenders.

(i) Voyeurism and non-consensual upskirt-photography

1.16 In the Fourth CP, the Sub-committee recommends a maximum sentence of two years' imprisonment for both the proposed new offence of voyeurism and the proposed new offence of non-consensual upskirt-photography, modelled on section 67 and section 67A of the English Act respectively. This proposed penalty level is the same as the maximum penalty for the existing offence of loitering (section 160 of the Crimes Ordinance).

1.17 We note from a majority of those responded that a higher maximum sentence of five years' imprisonment is considered more suitable, due to the seriousness of the offence, the harm caused to the victim is no less than an offence of sexual exposure, and to enable better protection of the community.

1.18 We were aware that prior to the publication of the Fourth CP, the Government, namely the Security Bureau ("**SB**"), published its *Consultation Paper on Proposed Introduction of Offences of Voyeurism, Intimate Prying, Non-consensual Photography of Intimate Parts, and Related Offences* ("**SB's CP**") on 8 July 2020 and commenced public consultation from that date until 7 October 2020. As noted from SB's CP, the Government accepted in full the LRC's recommendations in the Report on Voyeurism, and proposed to introduce, among other things, new criminal offences of (a) voyeurism; and (b) non-consensual photography of intimate parts, both for the purpose of obtaining sexual gratification and irrespective of the purpose (the latter being a statutory alternative to the former), with a proposed maximum penalty of five years' imprisonment. When issuing the Fourth CP, the Sub-committee decided that, notwithstanding SB's public consultation, it would nevertheless be useful for the Sub-committee to study all the responses received as a whole before forming any view on the final recommendations as the Fourth CP included proposed penalties for other sexual offences. As such, the Sub-committee has proceeded with its own three-month consultation in November 2020 for the public's views on its proposed penalties for the offences, among others, of voyeurism and non-consensual upskirt-photography.

1.19 At the time of preparing this Report, we were aware that the Government had already published the Crimes (Amendment) Bill 2021 ("**Bill**") in the Gazette on 19 March 2021 seeking to introduce, amongst others, specific offences against voyeurism, non-consensual recording of intimate parts and publication of intimate images without consent. The Bill was passed on 30 September 2021 by the Legislative Council and the new law came into operation on 8 October 2021. Given this latest development, we believe the most appropriate course to take is to make no final recommendation on the proposed maximum penalties for the proposed new offences of voyeurism and non-consensual upskirt-photography. We shall defer to the Government on the matter, noting they should have already duly considered the views received from the community.

(ii) Sexual assault of a child under 13/16, and causing or inciting a child under 13/16 to engage in sexual activity

1.20 The Sub-committee's rationale behind recommending a maximum of 14 years' imprisonment for both the offences of sexual assault of a child under 13/16, and causing or inciting a child under 13/16 to engage in sexual activity has already been set out in the Fourth CP.[2] We note that in

[2] Fourth CP, at paras 1.22–1.32.

arriving at its decision in making the recommended penalty level, the Sub-committee has fully acknowledged and taken into account the principle that a child under 13 should be given better protection through the imposition of a heavier penalty.

1.21 However, while we agree with the protective principle that heavier sentences should be imposed for offences involving a child under 13, we have some difficulty in setting a formula in differentiating the proposed offences for those under 13 years and those under 16 years (for instance, whether the proposed penalties for offences involving a child under 13 should be set above 14 years, or the proposed penalties for offences involving a child under 16 should be set below 14 years). It is also difficult for us to set a benchmark on the appropriate number of years of imprisonment to be increased or lowered. Furthermore, while we also share the community's sentiments to impose higher penalties for offences involving a child under 13, we notice that in a practical sense the sentencing court would rarely impose a sentence close to 10 years for these types of sexual offences.

1.22 Our view is that the proposed maximum sentence of 14 years' imprisonment for the said offences involving a child under 16 is already a harsh penalty, considering the current maximum penalty for unlawful sexual intercourse with a girl under the age of 16 is imprisonment for five years[3] whereas the recommended maximum penalty for the proposed new offence of sexual assault (where the victim is not under 16) is imprisonment for 10 years.[4] In practice, notwithstanding the maximum sentence provided for in the legislation, the sentencing court would consider all the facts and circumstances of the case (eg the age of the victim and the seriousness of the offence) before imposing a suitable sentence.

1.23 Having taken into account the abovementioned factors, we would maintain our Preliminary Recommendation, considering that the proposed maximum penalties for the offences of sexual assault of a child under 13/16, and causing or inciting a child under 13/16 to engage in sexual activity are sufficient even in a case when a child under 13 is involved. We wish to stress that the proposed maximum penalties are reserved for the most extreme situations. Notwithstanding that our proposed maximum sentence of 14 years' imprisonment applies to offences involving victims under 13/16, the sentencing court, having considered all the facts and circumstances of each individual case, would undoubtedly take into account the differentiation in the age of the victims and impose a suitable sentence.

1.24 As a final note, in the event that our recommendation to set the same statutory maximum (ie 14 years' imprisonment) for those committing the offending acts against a child under 13 and those against a child under 16 is accepted by the Government, consideration may be given as to whether or not the implementing legislation should only create one single offence to cover both

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[3] Crimes Ordinance (Cap 200), s 124.

[4] One may also note that the maximum sentence of the existing offence of indecent assault is 10 years' imprisonment (Crimes Ordinance (Cap 200), s 122), which is the same as our proposed maximum penalty for the new offence of sexual assault which will replace it.

groups of underage victims to avoid creating unnecessary complications at trial (eg for sexual assault which happened many years ago when the complainant was young, the evidence might be unclear as to whether the relevant incident occurred before or after the complainant reached 13, or there might be a series of sexual assaults one or more of which happened before with another or others after the complainant's 13th birthday).

(iii) Sexual activity with a PMI (i) by people involved in his or her care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency

1.25 We take the view that the existing legislation in Hong Kong gives inadequate protection against exploitation that might arise from the care of PMIs inside or outside specified institutions, and abuse of a position of trust or authority, or a relationship of dependency, in respect of a PMI. The new offence of sexual activity with a PMI (i) by people involved in his or her care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency is hence proposed to address this type of possible exploitation[5] and to strengthen the protection of victims who are PMIs. With reference to its corresponding provision under the English Act,[6] the proposed maximum penalty is suggested to increase significantly from five years' imprisonment to 14 years' imprisonment for penetrative sexual activity, and 10 years' imprisonment for non-penetrative sexual activity to penalise conduct of different levels of seriousness. In the absence of a sound justification to increase the penalty from five years to life imprisonment as suggested by some Respondents, we would not hastily recommend such a significant increase in the level of maximum sentence.

1.26 In response to the comment suggesting to increase the penalty if the perpetrator abuses the trust the victim places in him or her, we note that the Sub-committee has considered section 153.1(1) of the Canadian Criminal Code which provides for the offence of sexual exploitation of a person with mental or physical disability arising from a position of trust or authority, or a relationship of dependency with regard to such person. A person guilty of an indictable offence contrary to the Canadian section is liable to imprisonment for a term not exceeding five years. In recommending the new offence of sexual activity with a PMI to cover both situations where (i) the perpetrator is a person involved in the victim's care, and (ii) abuse of a position of trust or authority, or a relationship of dependency is otherwise involved, the Sub-committee took the view that the corresponding English provision (ie section 38(1) of the English Act) which only covers situation (i) should be extended to embrace the Canadian approach to cover also situation (ii). Unlike the English legislation which only covers a care relationship (where a position of trust or authority, or a relationship of dependency may exist),[7] the Canadian offence is wider in the sense that it

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5 Second CP, at para 11.15.

6 English Act, s 38(1).

7 Discussed in Fourth CP, at paras 1.33–1.36. See also Second CP, Chapter 10 (paras 10.4, 10.38–10.59, and 10.70–10.77 for the relevant sections of the Canadian Criminal Code), and paras 11.15–11.18.

extends generally to any position of trust or authority, or any relationship of dependency. Hence, the reason for extending the English provision is for the protection of PMIs also from those who are not their carers, not because we consider the maximum penalty for the offence under the English provision insufficient to address the situation where a position of trust or authority, or a relationship of dependency exists. On this basis, it appears that there is no strong basis for differentiating the penalty level.

1.27 As regards some comments suggesting that the maximum penalties for the offence of sexual activity with a PMI (i) by people involved in his or her care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency should be aligned with the other new offences such as causing a person with mental impairment to engage in or agree to engage in sexual activity by inducement, threat or deception (ie life imprisonment for penetrative sexual activity and 14 years' imprisonment for non-penetrative sexual activity[8]), our view is that the latter offences are ones which involve two aggravating elements, namely, (i) using inducement, threat or deception (which would likely result in lack of genuine consent by the PMI) and (ii) for the purpose of obtaining sexual gratification, humiliating, distressing or alarming the PMI (which would likely cause more harm to the PMI). Hence, it is the Sub-committee's view that the new offence of sexual activity with a PMI (i) by people involved in his or her care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency is less serious than those proposed offences. We agree with the view of the Sub-committee and opine that there is no good justification to recommend the same level of penalties for the new offence.

1.28 Our view therefore is that the maximum sentence proposed by the Sub-committee would be sufficient in catering for situation involving an abuse of trust, and what the suitable sentence should be imposed for the offence of sexual activity with a PMI involving an abuse of trust in an individual case should be a matter for the sentencing court, having regard to the facts and circumstances of the case.

Our Final Recommendation 1

1.29 In view of the responses received and their concern being addressed as set out above, apart from making no final recommendation on the proposed maximum penalties for the proposed new offences of voyeurism and non-consensual upskirt-photography, we recommend to retain Preliminary Recommendation 1. A table showing the recommended penalties is at Annex 2 of this Report.

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8 Second CP, at paras 10.35–10.37.

Final Recommendation 1

For the offences recommended in the Report on Review of Substantive Sexual Offences:

(a) We recommend that the current penalties for the existing offences of rape and incest should continue to apply to the recommended offences of sexual penetration without consent and incest.

(b) We further recommend that the penalties for the new offences proposed be set by reference to the penalties for the corresponding offences in the respective overseas jurisdictions with suitable adjustments.

(c) We make no final recommendation on the proposed penalties for the proposed new offences of voyeurism and non-consensual upskirt-photography.

Chapter 2

Final Recommendation 2 – Treatment and rehabilitation of sex offenders

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The Sub-committee's Preliminary Recommendation 2 in the Fourth CP

2.1 This Chapter discusses the responses on the Sub-committee's Preliminary Recommendation 2 in respect of the treatment and rehabilitation of sex offenders. The Sub-committee recommended that:

(a) The current specialised treatment and rehabilitation programmes for sex offenders available on a voluntary basis at the Correctional Services Department ("**CSD**") be maintained.

(b) The general practice for judges to exercise discretion to obtain psychological and psychiatric assessment reports of sex offenders for sentencing should continue to apply.

(c) The Government reviews and considers the introduction of an incentive scheme in the prison institutions.

(d) The provision of specialised post-release supervision to discharged sex offenders under the existing statutory schemes be maintained.

(e) The Government considers strengthening the rehabilitation services for discharged sex offenders.

Comments from the Respondents

The current specialised treatment and rehabilitation programmes for sex offenders available on a voluntary basis at the Correctional Services Department be maintained

2.2 A majority of those who responded agree that the current specialised treatment and rehabilitation programmes for sex offenders available on a voluntary basis at the CSD should be maintained. However, a large number of the Respondents suggest that the treatment and rehabilitation programmes should also be made available to all sex offenders, in particular those who are sentenced to less than two years' imprisonment or given a non-custodial sentence (eg Probation Order ("**PO**") or Community Service Order ("**CSO**")). Their views are that through the provision of enhanced community treatment and rehabilitation services (including community rehabilitation

services) for addressing specific problems to sex offenders who are given non-custodial sentence or sentenced to a shorter term of imprisonment, these offenders can have a thorough understanding of the causes of sex crimes which in turn may help them to identify their problems and to rehabilitate. They also suggest that these treatment services may encourage early discovery and treatment so as to prevent offenders of minor sexual offences from committing more serious offences or committing sex crimes repeatedly.

2.3 Amongst those who oppose this Preliminary Recommendation, one women and children concern group suggests that more resources should be allocated to the CSD for the purpose of engaging additional manpower in order to establish a proper treatment and rehabilitation system. The concern group comments that in the long run, with the additional resources, judges should be given the power to impose mandatory treatment as a sentencing option, especially in relation to prisoners who have committed more serious sexual offences.

Our analysis and response

The current specialised treatment and rehabilitation programmes for sex offenders available on a voluntary basis be maintained

2.4 There is no statutory provision in Hong Kong which empowers a sentencing court to require a sex offender to undertake a course of therapy or treatment, or to accept appropriate counselling. Currently, treatment and rehabilitation programmes for incarcerated sex offenders are operated and provided by the CSD. The Sex Offenders Evaluation and Treatment Unit ("**ETU**") which operates from the Siu Lam Psychiatric Centre was set up in 1998 to help persons in custody who have committed sexual offences. The ETU aims to provide participants with comprehensive and systematic psychological assessment and treatment programmes in a therapeutic environment, so as to help prevent them from reoffending and to help them develop a positive lifestyle. Programme participation is entirely voluntary.[1]

2.5 As the Sub-committee has pointed out in the Fourth CP, to be effective, there should be legislation providing incentives for sex offenders to receive treatment and to demonstrate positive change. Simply mandating a sex offender to attend treatment is unlikely to serve any useful purpose.[2] Besides, we are also aware that if it becomes mandatory for sex offenders to attend treatment and rehabilitation programmes, the CSD will need to engage additional manpower and to implement a proper system or scheme designed for that particular purpose.

2.6 Apart from the very significant resources implications, there is also insufficient information available to demonstrate accurately the extent to

[1] CSD, *"Sex Offenders Evaluation and Treatment Unit - The first residential treatment unit in East Asia for persons in custody who have committed sex offences"*, available at https://www.csd.gov.hk/psy_gym/InDesign/en/sex/sex.htm (last accessed in February 2022).
[2] Fourth CP, at para 2.22.

which sex offenders could benefit from the specialised treatment programmes available at the ETU. We agree that the statistics available as mentioned in the Fourth CP[3] (and as updated[4] in the table under the next paragraph) do not make a strong case for judges to be given the power to make mandatory treatment orders.

2.7 The table below shows the updated reoffending[5] percentage of sex offenders who committed sexual offences with regard to their respective year of discharge:[6]

Year of Discharge	Reoffending Sexual Offence
2013	5.2%
2014	6.1%
2015	4.7%
2016	6.9%
2017	6.1%
2018	3.1%
2019	3.7%

2.8 Latest statistics provided by the CSD show that out of 87 sex offenders who, having been assessed other than to be of low reoffending risk and completed the intensive treatment programme, were discharged between 2013 and 2019, two were re-admitted to the correctional institution within two years of their release. The reoffending percentage is just 2.3.[7]

2.9 In view of the above-mentioned figures which show the current treatment programmes have been operating effectively, and noting the support from the majority of the Respondents that the current specialised treatment and rehabilitation programmes for sex offenders available on a voluntary basis at the CSD should be maintained, we recommend the retention of this part of Preliminary Recommendation 2.

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3 Fourth CP, at paras 2.3, 2.16 and 2.17.

4 Updated information provided by Dr Judy Hui, Senior Clinic Psychologist of the CSD.

5 For this purpose, "reoffending" is defined as readmission of sex offenders to the correctional institution within two years after discharge from prison.

6 These are general figures which reflect the reoffending rates of sex offenders. One cannot tell from these figures whether the sex offender had received or completed any sex treatment programme.

7 2.3% is the reoffending rate of 2 out of 87 sex offenders (i.e. [2/87] x 100%).

Comments from the Respondents

Treatment and rehabilitation programmes available to sex offenders who are sentenced to less than two years' imprisonment or given a non-custodial sentence

2.10 We note the comments from some Respondents that treatment and rehabilitation programmes should also be provided to sex offenders who are subject to a non-custodial sentence or a sentence term of less than two years. In fact, the current treatment and rehabilitation programmes available at the CSD are available to all sex offenders who are imprisoned. As such, sex offenders serving a term of less than two years can also participate in these programmes voluntarily.

2.11 Regarding sex offenders who are serving a non-custodial sentence (eg under a PO or CSO), the Social Welfare Department ("**SWD**") and a number of NGOs are already providing them with various kinds of treatment and rehabilitation programmes as set out in the ensuing paragraphs.[8]

Support to sex offenders under PO[9] or CSO[10]

2.12 If the offence is not serious to the extent that warrants imprisonment, the court may, after conviction, make a PO or a CSO requiring the sex offender to be put under the supervision of a probation officer for a specified period. Sex offenders being put under a PO or a CSO have usually been convicted of offences such as committing an act outraging public decency, indecent assault, unlawful sexual intercourse with a girl under 16, and loitering.

2.13 Under a PO, the duration of which is specified by the court lasting from 12 months to 36 months:[11]

(a) At least once a month the sex offender needs to report to the probation officer (a social worker) from whom counselling on such offender's sex drives, stress management, self-image, interpersonal relationship, etc will be received.

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8 Information obtained from the SWD.

9 Probation service is a community-based programme whereby, in accordance with the Probation of Offenders Ordinance (Cap 298), an offender is placed under statutory supervision of a probation officer for a period of one to three years. The ultimate goal of probation service is to assist offenders to re-integrate into the community as law-abiding citizens. See link at https://www.swd.gov.hk/en/index/site_pubsvc/page_offdr/sub_communityb/id_PO/# (last accessed in February 2022).

10 Community Service Orders is a community-based sentencing option pursuant to the Community Service Orders Ordinance (Cap 378). A court may make an order requiring a person of or over 14 years of age and convicted of an offence(s) punishable with imprisonment to perform unpaid work for a number of hours not exceeding 240 hours within a period of 12 months under the supervision of a probation officer who shall also provide counselling and guidance to the offender. See link at https://www.swd.gov.hk/en/index/site_pubsvc/page_offdr/sub_communityb/id_csoscheme/ (last accessed in February 2022).

11 Probation of Offenders Ordinance (Cap 298), s 3(1).

(b) The probation officer may refer the sex offender to receive individual psychological treatment from clinical psychologists of the SWD, or advise the sex offender to join the therapeutic groups jointly run by probation officers and clinical psychologists of the SWD.

(c) The probation officer may also refer the sex offender to receive treatment services provided by NGOs, such as Integrated Centre on Addiction Prevention and Treatment run by Tung Wah Group of Hospitals, and Caritas Specialised Treatment and Prevention Project against Sexual Violence.

2.14 For a sex offender put under a CSO:

(a) The court which makes the CSO may specify in the order conditions to be complied with by the sex offender during the period that the order is in force.[12]

(b) The probation officer will arrange unpaid work placement for the sex offender while site supervisors will provide on-the-spot guidance on various types of work at work sites.

(c) The probation officer will also provide statutory supervision, personal guidance and group work service to the sex offender.[13]

2.15 Sex offenders put under a PO or a CSO are usually required to receive individual psychological treatment provided either by the SWD or the Hospital Authority (if psychiatric service is needed). For those receiving psychological treatment in the SWD, individual psychotherapy will be provided to work on their deviant sexual interest, cognitive distortions underlying their deviant sexual behaviour, and their lack of victim empathy. Means for them to avoid high risk situations will be introduced with a view to reducing the relapse rate. To enhance their adjustment in the community and to support them to lead a law-abiding life, their functioning in terms of keeping a gainful job, maintaining rewarding relationships, and developing normal hobbies will also be worked on.

Support to sex offenders who are fined for their conviction

2.16 For sex offenders who are fined and not required to be put under any orders, they may seek supporting service from the Integrated Family Service Centres.[14] If the case social workers think necessary, they will refer

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12 Community Service Orders Ordinance (Cap 378), s 5(1)(a).

13 Community Service Orders Ordinance (Cap 378), s 6(1)(d).

14 Integrated Family Service Centres (IFSCs), operated by the SWD and subvented non-governmental organisations, provide a spectrum of services to address the multifarious needs of individuals and families of specific localities. With the guiding principles of accessibility, early identification, integration and partnership, the IFSCs are set up to support and strengthen individuals and families through delivering of services under the direction of 'child-centred, family-focused and community-based. See link at https://www.swd.gov.hk/en/index/site_pubsvc/page_family/sub_listofserv/id_ifs/ (last accessed in February 2022).

the sex offenders to clinical psychology service provided by either the SWD or the NGOs. The individual psychological treatment mentioned in paragraph 2.15 above will also be provided.

Support to young sex offenders aged 10 to under 18

2.17 Depending on a number of factors, including the nature, seriousness and prevalence of the offence, the Hong Kong Police Force ("**Police**") may refer suitable young sex offenders (aged 10 to under 18)[15] cautioned under the Police Superintendent's Discretion Scheme ("**PSDS**") to Community Support Service Scheme ("**CSSS**"), a service subvented by the SWD and run by NGOs.[16] Through social work intervention, the CSSS aims at providing support services for young people who are cautioned under the PSDS, arrested youth and their peers with delinquent behaviour so as to assist them to be re-integrated into the community, eliminate their deviant and unlawful behaviour and to reduce their likelihood of law infringement.

2.18 Approximately 10% of the PSDS referrals involve sexual offences (eg unlawful sexual intercourse with a girl under 16 years of age, under skirt photo-taking and indecent assault). Apart from individual counselling and group work intervention, some CSSS operators have developed specific assessment tools, treatment protocol as well as card games to facilitate the assessment and intervention on young sex offenders.[17]

Support to discharged sex offenders[18]

2.19 For those discharged sex offenders who are not put under the Post-Release Supervision of Prisoners Scheme, but considered by clinical psychologists of the CSD of having high risk of relapse, CSD may exercise discretion with regard to their receiving direct referral. If the discharged sex offenders agree, the individual psychological treatment mentioned in paragraph 2.15 will also be provided.

2.20 For discharged sex offenders who are placed under the Post-Release Supervision of Prisoners Scheme, individual psychological treatment

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[15] Leaflet of Community Support Service Scheme, the Hong Kong Police Force, available at https://www.police.gov.hk/info/doc/child/CSSS_Leaflet_English.pdf (last accessed in February 2022).

[16] The service content includes individual and family counselling, therapeutic groups, skill training/educational groups, community services, crime prevention programmes, etc. See link at https://www.swd.gov.hk/en/index/site_pubsvc/page_young/sub_seryouthrisk/id_cssscheme/ (last accessed in February 2022).

[17] For instance, Juvenile Sex Offender Assessment Protocol-II / 性字咭 (provided by the Evangelical Lutheran Church of Hong Kong); and Love SIM 「愛・體驗」模擬遊戲 (provided by the Hong Kong Federation of Youth Groups). See link at https://ycpc.hkfyg.org.hk/%e6%80%a7%e5%8d%b1%e6%a9%9f2019-2/ (last accessed in February 2022).

[18] See link at https://www.swd.gov.hk/en/index/site_pubsvc/page_offdr/sub_communityb/id_SRACP/ (last accessed in February 2022).

will be provided if the treatment is so stipulated in the post release supervision order.

Our analysis and response

2.21 Having considered the existing treatment and rehabilitation support available to sex offenders who are facing different terms and forms of penalties both at the prison institutions and in the community, our view is that provided that the sex offenders are willing to participate in these programmes to receive treatment in order to demonstrate a positive change, the necessary support is already readily available to them at different levels.

2.22 As we have mentioned earlier in this Chapter, we wish to stress that, to be effective, there should be legislation providing incentives for sex offenders to receive treatment and to demonstrate positive change. Simply mandating a sex offender to attend treatment is unlikely to serve any useful purpose.

Comments from the Respondents

The general practice for judges to exercise discretion to obtain psychological and psychiatric assessment reports of sex offenders for sentencing should continue to apply

2.23 The result of the consultation of this Preliminary Recommendation is a tie. For those Respondents who support, they generally agree with the Sub-committee that solely asking judges to obtain pre-sentencing assessment reports for consideration of sentencing options in lack of adequate specialised treatment, reintegration support and supervision available to the sex offenders is unlikely to provide effective management of and assistance to sex offenders.

2.24 As regards those Respondents who oppose, some of their comments include:

(a) More resources should be allocated by the Government to the CSD for the purpose of engaging additional manpower and establishing a proper system, and that judges should be given the power to introduce mandatory treatment attendance as a sentencing option, especially in relation to prisoners who have committed more serious sexual offences.

(b) Psychological and psychiatric assessment reports of sex offenders are necessary as these assessments can provide references to the court for sentencing. These reports should be collated and analysed regularly to provide recommendations for the prevention of sexual offences.

(c) Administrative challenges or resource limitations cannot be accepted as reasons to retain the status quo as these practices have been repeatedly criticised by society, sexual offences concern groups and many other advocates. The authorities need to take a proactive approach by allocating adequate funds, training appropriate professionals, leveraging support from the private sector and society, and to achieve this within an acceptable timeframe for the protection of the community and the rehabilitation of the offenders.

Our analysis and response

2.25 Judges in Hong Kong are not required by law to obtain psychological or psychiatric assessment reports of sex offenders before sentencing. The decision to obtain assessment reports is made on the sentencing judge's own initiative or upon request of the defence counsel. While we acknowledge that the assessments provided in psychological and psychiatric reports may, in some cases, assist judges in considering the appropriate sentence by taking into account the sex offenders' likelihood of reoffending, solely obtaining pre-sentencing assessment reports without specialised treatment, reintegration support and supervision is unlikely to provide effective management of sex offenders. As a result, we agree that if sex offenders are not required to undergo mandatory treatment, there would be little benefit in mandating judges (as opposed to the current discretionary power) to request psychological or psychiatric reports.

2.26 At the moment, it is usually in cases involving relatively minor sexual offences in which the sentencing judge may consider imposing a penalty by way of a PO or a CSO that a psychological or psychiatric assessment report is requested by the sentencing judge. We note from the information provided by the SWD that a sex offender who is required to attend the group treatment under a PO or a CSO would have already agreed with the proposed conditions in the orders before this kind of treatment is recommended by the probation officer. Hence, in practice, without the sex offender's consent to attend the treatment programme, the probation officer will not recommend to the sentencing judge that attendance of treatment programme can be one of the conditions of the PO or CSO. This shows that the sex offender's agreement to attend the treatment programme plays a significant part in the consideration of whether treatment order could be made under a PO or a CSO.

2.27 From the information provided by the SWD, we also notice that sex offenders serving a PO or a CSO are very different from those who have committed more serious sexual offences (eg child molestation or rape), with the latter likely to have been given treatment on a voluntary basis during their prison term.

2.28 In the absence of any statistics or clear evidence to the contrary, we agree that as (i) the sentencing judge already has discretionary power to obtain psychological or psychiatric assessment report; (ii) the current treatment

programmes provided by SWD and the NGOs are available to all sex offenders; (iii) it is not advisable to force sex offenders to attend treatment programmes against their will; and (iv) the CSD is already facing resources problems, the current practice for judges to exercise discretion to obtain the assessment reports of sex offenders for sentencing should continue to apply.

Comments from the Respondents

The Government reviews and considers the introduction of an incentive scheme in the prison institutions

2.29 We received overwhelming support for this Preliminary Recommendation. The overwhelming majority of those responded support our recommendation to introduce an incentive scheme for the sexual offenders in the prison institutions in order to increase the motivation of prisoners to participate in treatment and rehabilitation programmes.

2.30 Some Respondents further suggest the extension of the incentive scheme to enhance community counselling services, with a view to stepping up the efforts on strengthening the sex offenders' motivation to participate in the treatment programmes. One Government department suggests that the incentive scheme should be extended to motivate sex offenders under post-release supervision, PO or CSO, to actively participate in the treatment and rehabilitation programmes.

Our analysis and response

2.31 We agree that the provision of incentives is important for increasing motivation for treatment and behavioural change from a rehabilitation point of view. We also agree that the Incentives and Earned Privileges Scheme in England and Wales[19] provides a good reference and starting point for Hong Kong. As we are aware of the necessity for the Government to consider different issues from the policy perspective before a view can be formed on this matter, we would maintain our recommendation that the Government reviews and considers whether it would be to the benefit of the sex offenders in Hong Kong for the CSD to introduce a similar incentive scheme in Hong Kong for sex offenders.[20]

2.32 As regards whether the incentive scheme should be extended to cover sex offenders under post-release supervision, PO and CSO, we would recommend that the Government takes those suggestions into full consideration when it formulates its policy in this respect in the design of the actual incentive scheme.

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[19] Fourth CP, paras 2.35–2.37.

[20] We are aware that the England and Wales incentive system applies generally to cover all offenders. This notwithstanding, we consider that there is merit for a similar scheme to be introduced in Hong Kong as far as sex offenders are concerned.

2.33 In view of the overwhelming support received, we recommend the retention of this part of Preliminary Recommendation 2.

Comments from the Respondents

The provision of specialised post-release supervision to discharged sex offenders under the existing statutory schemes be maintained; and the Government considers strengthening the rehabilitation services for discharged sex offenders

2.34 We received unanimous support for these parts of Preliminary Recommendation 2. The Respondents generally agree that through provision of specialised post-release supervision to discharged sex offenders under the statutory schemes and strengthening the aftercare and rehabilitation services, it can help such sex offenders to reintegrate into society with a view to securing employment to support themselves and eventually reduce the likelihood of reoffending.

Our analysis and response

2.35 Provision of adequate specialised post-release supervision and rehabilitation to discharged sex offenders is very important for prevention of reoffending. Sex offenders may encounter unique problems after release. Such problems may increase their risk of reoffending. For instance, frequent contact with children and exposure to child pornography may increase a child molester's risk of reoffending. Specialised supervision and rehabilitation with regard to these unique problems are therefore important.

2.36 Post-release supervision is a matter which falls under the purview of the relevant statutory supervision boards,[21] and it is best for the provision of specialised post-release supervision to discharged sex offenders that the existing schemes continue their operations.

2.37 That said, we note the following limitations of the existing practice:[22]

(a) The Post-Release Supervision of Prisoners Scheme covers only sex offenders with sentence lengths of two years or above.

(b) The duration of community support and supervision required by some complicated high risk cases may at times be much longer than their actual supervision period.

(c) Some sex offenders are not under any supervision or, following the expiry of the supervision period, may continue to have

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21 Post-Release Supervision Board and Long-term Prison Sentences Review Board.

22 Fourth CP, at paras 2.46–2.49.

unresolved or reintegration problems that need further professional support.

2.38 We take the view that efforts to ensure the availability of specialised rehabilitation and treatment in the community to enhance continuity of care by improving the interface between CSD and community service providers, and the engagement of needy ex-offenders after release are important for lowering the reoffending rate. As such, we opine that the Government should consider strengthening the existing specialised rehabilitation services, including psychological and psychiatric treatment for discharged sex offenders.

Our Final Recommendation 2

2.39 In view of the responses received and their concern being addressed as set out above, we recommend the retention of Preliminary Recommendation 2.

Final Recommendation 2

We recommend that the current specialised treatment and rehabilitation programs for sex offenders available on a voluntary basis at the Correctional Services Department be maintained.

We recommend that the general practice for judges to exercise discretion to obtain psychological and psychiatric assessment reports of sex offenders for sentencing should continue to apply.

We recommend that the Government reviews and considers the introduction of an incentive scheme in the prison institutions.

We recommend that the provision of specialised post-release supervision to discharged sex offenders under the existing statutory schemes be maintained.

We recommend that the Government considers strengthening the rehabilitation services for discharged sex offenders.

Chapter 3

Final Recommendation 3 – Review of Sexual Conviction Record Check Scheme

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The Sub-committee's Preliminary Recommendation 3 in the Fourth CP

3.1 This Chapter discusses the responses on the Sub-committee's recommendations in Preliminary Recommendation 3 in respect of the SCRC Scheme. The Sub-committee recommended that:

(a) The SCRC Scheme should not become mandatory for the time being.

(b) The Government extends the SCRC Scheme to its fullest and evaluate the need to make it a mandatory scheme at an appropriate time.

(c) The current SCRC Scheme be extended to cover all existing employees, self-employed persons, and volunteers.

(d) The issue as to whether the SCRC Scheme should be extended to include spent convictions should be considered by the Hong Kong community.

Comments from the Respondents

The SCRC Scheme should not become mandatory for the time being; and the Government extends the SCRC Scheme to its fullest and evaluate the need to make it a mandatory scheme at an appropriate time

3.2 A narrow majority of those who responded oppose these parts of the Preliminary Recommendation. The Respondents generally express disappointment that the SCRC Scheme is recommended to remain a voluntary scheme despite it having been in operation for nearly a decade. Some of their comments include:

(a) The intention is that the SCRC Scheme introduced in December 2011 will only be an interim measure until a legislative scheme is introduced. There has already been ample time for a legislative scheme to be introduced in the nine years since its commencement.

(b) A mandatory legislative scheme is necessary to provide sufficient protection for children and MIPs[1] from sexual abuse as it can ensure that penalties are imposed for non-compliance by employers.

(c) The current SCRC Scheme is of limited usage mainly because it is merely a voluntary, fee-based administrative scheme which requires payment of initial checking and rechecking fees.

(d) Not all employers are aware of the seriousness and prevalence of sex crimes in Hong Kong, and hence they may not acknowledge the necessity for them to be proactive in conducting the SCRC check with their current and prospective employees. It is necessary for the SCRC Scheme to become a mandatory legislative scheme for better protection of children and vulnerable persons.

3.3 For those who support the Sub-committee's Preliminary Recommendations (ie the SCRC Scheme should not become mandatory for the time being, and that the Government should extend the SCRC Scheme to its fullest and evaluate the need to make it a mandatory scheme at an appropriate time), they generally agree that the Government should speed up the process of optimising the existing scheme by extending it to cover all existing employees, self-employed persons and volunteers. While they agree that the Government should then evaluate the need to turn the administrative scheme into a legislative scheme at an appropriate time, they raise the concern that as the scheme has been operated for nearly a decade, the Government needs to give a clear timeframe as to when it will introduce a mandatory checking scheme. They also opine that this timeframe should not be too long as the Government should have already accumulated the experience in the past decade.

The SCRC Scheme be extended to cover all existing employees, self-employed persons, and volunteers

3.4 A majority of those who responded agree that the current checking scheme should be extended to cover all existing employees, self-employed persons and volunteers. Most of them take the view that the checking scheme should cover persons undertaking work relating to children and MIPs, and hence persons like volunteers and private tutors should be covered for better protection of these groups of persons. They believe that the checking scheme can deter people with a sexual conviction record to apply as volunteers if they are aware that the check will be performed as a routine part of the application process.

[1] The Government is reminded to take into account the LRC's Final Recommendations 35 and 36 (re Second CP) in the Report on Sexual Offences for the proper term to be used to describe a PMI. In this Chapter, "MIPs" is used if it is quoted from previous publication or the current SCRC Scheme.

3.5 Amongst those who support this part of the Preliminary Recommendation, some suggest that the checking scheme should also be made available to parents and child sponsors (助養者) who may have physical contact with their sponsored child. A local charity group also suggests to extend the checking scheme to cover other adults living in foster homes as currently, only the primary caregiver of each foster family must undergo the no criminal conviction record check. It takes the view that there remains a significant risk if other family members who have access to vulnerable children residing in their private homes are not required to receive any background screening.

3.6 Among those who oppose this part of the Preliminary Recommendation, only one social service organisation has provided elaborated views and suggestions. It opposes the inclusion of all existing employees in the checking scheme because there is insufficient data showing that these employees are more prone to commit sexual offences. Instead, it takes the view that the good conduct of the existing employees would have already served as the best testimony of their character. Furthermore, it worries that possible huge administrative and financial burden will be added to the social welfare and educational institutions if all existing employees are required to undergo the check. Lastly, some other Respondents oppose the extension of the checking scheme to cover volunteers because they have concern that requiring volunteers to conduct the check will discourage them from volunteering.

Our analysis and response

The SCRC Scheme should not become mandatory for the time being

3.7 In February 2010, we published the Report on Interim Proposals and recommended, as an interim measure, the establishment of an administrative scheme to enable employers of persons undertaking child-related work and work relating to MIPs to check the criminal conviction records for sexual offences of employees.[2] While we recommended a voluntary administrative scheme as an interim measure, we did not rule out the possibility of a mandatory scheme in the long run if there was legislative backup.[3] Since the SCRC Scheme came into operation in 2011, the arguments for and against a comprehensive legislative scheme making it mandatory have already been identified in the Fourth CP.[4]

3.8 In considering whether the SCRC Scheme should continue to be an administrative scheme (under which checks are voluntary) or be changed to a comprehensive legislative scheme (under which checks are mandatory), our view is that we should first consider whether the scheme has already been fully operated in accordance with our previous recommendations. If that has not been done, it seems that we do not have the foundation to form a view as to

2 Report on Interim Proposals, Recommendation 2.
3 Report on Interim Proposals, at para 4.48.
4 Fourth CP, at paras 3.8–3.9.

whether the SCRC Scheme should become mandatory. As we have learnt from the Government, notwithstanding our recommendations made in the Report on Interim Proposals, the SCRC Scheme currently in operation does not yet cover all existing employees, self-employed persons, and volunteers. The scheme does not include the disclosure of spent convictions either.

3.9 In preparing this Report, we have had the benefit of considering useful information provided by the SB on the effectiveness of the SCRC Scheme. While there is no statistical data showing whether the number of sexual offences involving children and MIPs have reduced since the implementation of the SCRC Scheme, we note that in each of the years from 2016 to 2021, the Police received 42,909, 51,024, 57,551, 57,661, 44,686 and 63,068 new applications; and 7,094, 8,187, 6,737, 10,834, 12,830, and 15,053 renewal applications respectively. These stable figures reflect that the SCRC Scheme does provide employers with an effective channel to ascertain whether an applicant for relevant work related to children or MIPs has any previous sexual offences convictions.

3.10 Having considered the statistical information provided by the SB, we maintain our view that as far as prospective employees are concerned, given that the current administrative scheme is being extensively utilised and is very effective, we do not see an immediate demand for the SCRC Scheme to become a comprehensive legislative scheme. Having said that, we note the responses received which show that there is indeed a demand from the community that the Government should give due consideration to optimising the current administrative scheme (ie extending it to cover all existing employees, self-employed persons, and volunteers by implementing all of our recommendations made in the Report on Interim Proposals) and proactively evaluate the need to make it a mandatory scheme as soon as possible. We hence would urge the Government to expedite the optimising exercise and seriously consider turning the SCRC Scheme into a legislative scheme in the long run.

3.11 Once the Government (after extending the current SCRC Scheme to its fullest) decides to make it a mandatory checking scheme, this would also have addressed the view expressed in the consultation (paragraph 3.4 above) in that parents or guardians of children or MIPs would be able to mandate existing and prospective employees, self-employed persons, and volunteers to conduct the necessary record check. As to whether the SCRC Scheme should impose criminal liability on a person for failure to comply, we take the view that it is a matter for the Government to decide from a policy perspective.

The SCRC Scheme be extended to cover all existing employees, self-employed persons, and volunteers

3.12 We recommended in the Report on Interim Proposals that the SCRC Scheme should apply to both existing and prospective employees, self-employed persons (such as private tutors and coaches), and volunteers. The

various arguments for and against the proposals have already been set out in the Fourth CP.[5] In view of the majority support of this part of the Preliminary Recommendation, we maintain our view that the SCRC Scheme should be extended to its fullest by covering all existing employees, self-employed persons, and volunteers. In the following paragraphs, we will address some of the Respondents' concerns raised in the consultation with regard to specified groups of persons.

Volunteers

3.13 In respect of some responses received from the NGOs which mentioned that if the checking scheme was to cover volunteers, it might deter people from volunteering, the Sub-committee had already considered and taken into account the said concerns before recommending that the SCRC Scheme should cover volunteers.[6] We agree that volunteers, like employees, would have opportunities to come into contact with children and MIPs. To afford adequate protection under the SCRC Scheme, it is advisable for volunteers to be included.

3.14 We also note some Respondents suggesting that certain groups of volunteers, for example, volunteers who participate in work organised by NGOs that is subvented and regulated by the SWD; or the duration of the volunteer work is below certain number of hours, can be exempted from the checking scheme. Our view is that in the event that a particular association or organisation is confident that their volunteers will be subject to its appropriate supervision, or that the duration of the volunteering session is short, the association or organisation may well decide to dispense with the check. However, they should be reminded that if volunteers are excluded completely from the checking scheme, they will not have any effective means to find out the conviction records of a particular volunteer even when they see the need to be informed in some occasions of a person's sexual conviction record.

Child sponsors

3.15 Turning to the comment which proposes that volunteers should include child sponsors who might have physical contact with their sponsored children, we do not find it necessary to extend the definition of "volunteer" to include expressly this category of child sponsors. Our view is that the relationship between the child sponsor and the sponsored child may differ considerably among different NGOs providing child sponsorship services, and not all child sponsors may have the opportunity to be in physical contact with their sponsored children alone in the absence of staff of the NGOs. Hence, the focus should be on whether the child sponsors' arrangement would usually involve, or are likely to involve, contact with the sponsored children, and so it is more appropriate to use the existing definition (ie "child-related work" be defined as work where the usual duties involve, or are likely to involve, contact

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[5] Fourth CP, at paras 3.15–3.16, 3.19–3.20, and 3.25–3.26.
[6] Fourth CP, at para 3.27; and Report on Interim Proposals, at para 4.35.

with a child) to identify this group of persons who are to be covered by the checking scheme.

Parents

3.16 In reply to some comments suggesting that parents should be allowed to require their children's private tutor to conduct the check, we reiterate that under the proposed extension in scope of the checking scheme (ie the SCRC Scheme is extended to cover self-employed persons such as private tutors or other self-employed person who provide services to children), parents in their capacity as employer of the private tutor would be able to ask the private tutor to conduct a check under the SCRC Scheme.

Adults living with foster children

3.17 We wish to remind the community that the SCRC Scheme is an administrative scheme for sexual conviction record check to enable the criminal conviction records for sexual offences of persons who undertake child and MIPs related work to be checked. The checking scheme is not intended to cover persons living with children in a family setting, be it blood family or foster family. Hence, the current checking scheme is not the appropriate forum for consideration of including foster parents and adults who live with the foster child. Furthermore, we believe the relevant Government department or other organisations (eg SWD or NGOs) have established procedures for conducting due diligence to ensure the foster child is sufficiently protected in the foster home.

Spent convictions

3.18 We are aware of some opposing views which express that disclosure of spent convictions may affect rehabilitation of offenders and may be in breach of the spirit of the Rehabilitation of Offenders Ordinance (Cap 297) ("**ROO**"). Nonetheless, we have also reminded ourselves of the need to give better protection to children and PMIs.

3.19 Noting that there are compelling arguments for and against covering spent convictions in the SCRC Scheme, and given that there are divergent views within the Sub-committee on this matter, the Sub-committee invited the Hong Kong community to express their views.

Comments from the Respondents

3.20 The consultation results show that the majority opposes the checking scheme to be extended to include spent convictions. In gist, the majority opines that as spent convictions mainly concerned relatively minor offences, this record should not be included in the SCRC Scheme as it goes

against the spirit under the ROO, and that offenders of minor sexual offences should be given a chance to turn over a new leaf. As for those who support including spent convictions, their general comment is that they believe the inclusion is necessary for better protection of children and vulnerable persons.

Our analysis and response

3.21 We are aware of the sizeable demand opposing disclosure of spent convictions under the SCRC Scheme. We can also see the force of the argument that offenders of minor sexual offences should be given a chance to rehabilitate, which is consistent with the provisions or the spirit of the ROO. On the other hand, we note that, for example, the Child Care Services Ordinance (Cap 243) provides that (notwithstanding section 2 of the ROO) a person who has been convicted of certain specified offences shall not act as a childminder.[7] As another example, a person is required to apply for registration as a school manager or a teacher pursuant to the Education Ordinance (Cap 279).[8] The grounds for refusal to register include (i) the applicant is not a fit and proper person to be a school manager or a teacher; and (ii) the applicant has been convicted of an offence punishable with imprisonment.[9] Hence, the exclusion of spent convictions in the SCRC Scheme does not mean that children are not otherwise protected by relevant legislation when the context so warrants.

3.22 After balancing the arguments from both sides, and in light of the majority view, our decision is that we should respect the majority who voiced their opinion against including spent convictions under the checking scheme. We agree with the majority that it is important to give offenders of minor sexual offences the chance to rehabilitate and hence do not recommend that the SCRC Scheme includes spent convictions.

Our Final Recommendation 3

3.23 In view of the responses received and their concerns being addressed as set out above, we recommend retaining Preliminary Recommendation 3 and confirm our final recommendation that the SCRC Scheme should not be expanded to include spent convictions.

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7 Child Care Services Ordinance (Cap 243), s 15A(3).
8 Education Ordinance (Cap 279), ss 27 and 44.
9 Education Ordinance (Cap 279), ss 30 and 46.

Final Recommendation 3

We do not recommend that the Sexual Conviction Record Check Scheme ("the SCRC Scheme") become mandatory for the time being.

We recommend the Government extends the SCRC Scheme to its fullest and evaluates the need to make it a mandatory scheme at an appropriate time.

We recommend that the current SCRC Scheme be extended to cover all existing employees, self-employed persons, and volunteers.

We do not recommend that the SCRC Scheme be extended to include spent convictions.

Chapter 4

Summary of Final Recommendations

Final Recommendation 1

For the offences recommended in the Report on Review of Substantive Sexual Offences:

(a) We recommend that the current penalties for the existing offences of rape and incest should continue to apply to the recommended offences of sexual penetration without consent and incest.

(b) We further recommend that the penalties for the new offences proposed be set by reference to the penalties for the corresponding offences in the respective overseas jurisdictions with suitable adjustments.

(c) We make no final recommendation on the proposed penalties for the proposed new offences of voyeurism and non-consensual upskirt-photography.

Final Recommendation 2

We recommend that the current specialised treatment and rehabilitation programs for sex offenders available on a voluntary basis at the Correctional Services Department be maintained.

We recommend that the general practice for judges to exercise discretion to obtain psychological and psychiatric assessment reports of sex offenders for sentencing should continue to apply.

We recommend that the Government reviews and considers the introduction of an incentive scheme in the prison institutions.

We recommend that the provision of specialised post-release supervision to discharged sex offenders under the existing statutory schemes be maintained.

We recommend that the Government considers strengthening the rehabilitation services for discharged sex offenders.

Final Recommendation 3

We do not recommend that the Sexual Conviction Record Check Scheme ("the SCRC Scheme") become mandatory for the time being.

We recommend the Government extends the SCRC Scheme to its fullest and evaluates the need to make it a mandatory scheme at an appropriate time.

We recommend that the current SCRC Scheme be extended to cover all existing employees, self-employed persons, and volunteers.

We do not recommend that the SCRC Scheme be extended to include spent convictions.

Annex 1

List of Respondents to the Consultation Paper

Responses were received from the following Respondents, arranged in alphabetical order:

1. Against Child Abuse
2. Agency for Volunteer Service
3. Arce Natasha
4. Association Concerning Sexual Violence Against Women
5. Association for Transgender Rights
6. Bates Giselle
7. Caritas Specialised Treatment and Preventive Project Against Sexual Violence
8. Caritas Specialised Treatment and Preventive Project Against Sexual Violence – Concern Group for Amendment of Laws on Sexual Offences
9. Caritas Youth and Community Service
10. Catholic Diocese of Hong Kong Chancery Office
11. Chan wc
12. Chong Yiu Kwong
13. Correctional Services Department
14. Customs & Excise Department - Head of the Office of Prosecution and Management Support
15. Democratic Alliance for the Betterment and Progress of Hong Kong
16. Department of Health
17. Department of Justice - Constitutional and Policy Affairs Division
18. End Child Sexual Abuse Foundation
19. Equal Opportunities Commission
20. Evangelical Lutheran Church Social Service Hong Kong
21. Fong Jennifer
22. Gay Harmony
23. Harmony House Limited
24. Hayes Phil
25. Home Affairs Department
26. Hong Kong Family Welfare Society

27. Hong Kong Police Force
28. Hong Kong Professional Teachers' Union
29. Hong Kong Sex Education Association
30. Hong Kong Society for the Protection of Children
31. Hong Kong Young Women's Christian Association
32. Hospital Authority
33. Immigration Department
34. IღTzuyu
35. Kreusch Gregor
36. Kwok Donna
37. Legal Aid Department
38. Les Corner Empowerment Association
39. Made in Gender
40. Mother's Choice
41. Muggerud Pia Prana
42. Office of the Privacy Commissioner for Personal Data
43. Pang F.Y.
44. Plan International Hong Kong
45. PrideLab
46. Qiu
47. Rainbow Action
48. Social Welfare Department
49. Social Welfare Department - Committee on Child Abuse
50. Society for Community Organization
51. Talk Hong Kong
52. The Democratic Party
53. The Federation of Medical Societies of Hong Kong
54. The Hong Kong Committee on Children's Rights
55. The Hong Kong Council of Social Service
56. The Hong Kong Federation of Youth Groups - Youth Crime Prevention Centre
57. The Law Society of Hong Kong
58. The Society for Truth and Light
59. The Society of Rehabilitation and Crime Prevention, Hong Kong
60. The Women's Foundation Limited

61. VOICES
62. Wong Judy
63. Wyk Megan van
64. Yuen Kin-chung, Kenny
65. Yuen Yuen
66. Zonta Club of Kowloon
67. 升斗小民
68. 方富潤
69. 何先生
70. 吳小姐
71. 倫智偉
72. 陳生
73. 馮澤謙
74. 衛小姐
75. Anonymous

Annex 2

Table of Recommended Penalties

- **Proposed new offences without corresponding Hong Kong legislation**

Proposed new offence	Corresponding overseas offence	Recommended maximum penalty (corresponding overseas offence)
Engaging in sexual activity in the presence of a child under 13	Causing a young child to be present during a sexual activity (Scottish Act, section 22)	10 years' imprisonment (Scottish Act, section 48 and Schedule 2)
Engaging in sexual activity in the presence of a child under 16	Causing an older child to be present during a sexual activity (Scottish Act, section 32)	5 years' imprisonment (Scottish Act, section 48 and Schedule 2)
Causing a child under 13 to look at a sexual image (including texts and audio messages)	Causing a young child to look at a sexual image (Scottish Act, section 23) and Causing a young child to see or hear a sexual written communication or sexual verbal communication (Scottish Act, section 24(2))	10 years' imprisonment (Scottish Act, section 48 and Schedule 2)
Causing a child under 16 to look at a sexual image (including texts and audio messages)	Causing an older child to look at a sexual image (Scottish Act, section 33) and Causing an older child to see or hear a sexual	5 years' imprisonment (Scottish Act, section 48 and Schedule 2)

	written communication or sexual verbal communication (Scottish Act, section 34(2))	
Arranging or facilitating the commission of a child sex offence	Arranging or facilitating the commission of a child sex offence (English Act, section 14)	14 years' imprisonment (English Act, section 14(4)(b))
Sexual grooming	Sexual grooming (English Act, section 15)	10 years' imprisonment (English Act, section 15(4)(b))
Inducement, threat or deception to procure sexual activity with a PMI	Inducement, threat or deception to procure sexual activity with a person with a mental disorder (English Act, section 34(1))	*Penetrative sexual activity*: Life imprisonment (English Act, section 34(2)) *Non-penetrative sexual activity*: 14 years' imprisonment (English Act, section 34(3))
Causing a PMI to engage in or agree to engage in sexual activity by inducement, threat or deception	Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception (English Act, section 35(1))	*Penetrative sexual activity*: Life imprisonment (English Act, section 35(2)) *Non-penetrative sexual activity*: 14 years' imprisonment (English Act, section 35(3)(b))
Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a PMI	Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder (English Act, section 36(1))	10 years' imprisonment (English Act, section 36(2)(b))

Causing a PMI to watch a sexual act by inducement, threat or deception	Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception (English Act, section 37(1))	10 years' imprisonment (English Act, section 37(2)(b))
Causing or inciting sexual activity of a PMI (i) by people involved in his or her care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency	Causing or inciting sexual activity of a person with a mental disorder by care workers (English Act, section 39(1))	*Penetrative sexual activity*: 14 years' imprisonment (English Act, section 39(3)) *Non-penetrative sexual activity*: 10 years' imprisonment (English Act, section 39(4)(b))
Sexual activity in the presence of a PMI (i) by people involved in his or her care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency	Sexual activity in the presence of a person with a mental disorder by care workers (English Act, section 40(1))	7 years' imprisonment (English Act, section 40(3)(b))
Causing a PMI to watch a sexual act (i) by people involved in his or her care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency	Causing a person with a mental disorder to watch a sexual act by care workers (English Act, section 41(1))	7 years' imprisonment (English Act, section 41(3)(b))
Sexual activity with a dead person	Sexual penetration of a corpse (English Act, section 70)	2 years' imprisonment (English Act, section 70(2)(b))

- **Proposed new offences with corresponding Hong Kong legislation**

Proposed new offence	Recommended maximum penalty
Sexual assault	10 years' imprisonment
Causing a person to engage in sexual activity without consent	*Penetrative sexual activity:* Life imprisonment *Non-penetrative sexual activity:* 10 years' imprisonment
Penetration of a child under 13	Life imprisonment
Penetration of a child under 16	14 years' imprisonment
Sexual assault of a child under 13	14 years' imprisonment
Sexual assault of a child under 16	14 years' imprisonment
Causing or inciting a child under 13 to engage in sexual activity	*If the activity caused or incited involved penetration of the anus or vagina; or penile penetration of the mouth:* Life imprisonment *If no penetration*: 14 years' imprisonment
Causing or inciting a child under 16 to engage in sexual activity	14 years' imprisonment
Sexual activity with a PMI (i) by people involved in his or her care, or (ii) involving abuse of a position of trust or authority, or a relationship of dependency	*Penetrative sexual activity*: 14 years' imprisonment *Non-penetrative sexual activity:* 10 years' imprisonment
Sexual exposure	5 years' imprisonment
Voyeurism	No Final Recommendation
Non-consensual upskirt-photography	No Final Recommendation
Sexual intercourse with an animal	10 years' imprisonment
Administering a substance for sexual purposes	14 years' imprisonment

Committing an offence with intent to commit a sexual offence	14 years' imprisonment
Trespass with intent to commit a sexual offence	14 years' imprisonment

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