

Sexual Conviction Record Check Scheme Protocol

**Security Bureau
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Sexual Conviction Record Check Scheme

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CHAPTER 1 PURPOSES AND GUIDING PRINCIPLES

- 1.1 In February 2010, the Law Reform Commission (LRC) published a report on “Sexual Offences Records Checks for Child-related Work: Interim Proposals” after thorough discussion and extensive public consultation, recommending the Administration to establish an administrative mechanism for sexual conviction record check to enable the criminal conviction records for sexual offences of persons who undertake child-related work and work relating to mentally incapacitated persons (MIPs) to be checked (the full text of the report can be downloaded at LRC website. The link is <http://www.hkreform.gov.hk/>). The Administration has accepted the LRC’s recommendation and established the Sexual Conviction Record Check (SCRC) scheme through the Hong Kong Police Force (the Police).
- 1.2 The SCRC scheme is an administrative scheme operated by the Police to enable employers of persons undertaking child-related work and work relating to MIPs to check whether eligible applicants have any criminal conviction records against a specified list of sexual offences at Appendix 1. The scheme does not cover conviction records of sexual offences that are regarded as “spent” under section 2 of the Rehabilitation of Offenders Ordinance (Cap. 297, Laws of Hong Kong) and overseas conviction records.
- 1.3 The purposes of the scheme are –
 - (a) to prevent previous sexual offenders from obtaining the trust of employers by deliberately withholding their past sexual conviction records and molesting children or MIPs again through contact with them in the course of their work. The scheme provides employers with a reliable channel whereby they may ascertain whether applicants of child or MIP-related work or employment have any previous convictions against a specified list of sexual offences; and
 - (b) to help reduce the risk of sexual abuse to children or MIPs and give them better protection while considering the need of rehabilitation of offenders.
- 1.4 The scheme is guided by the following operating principles –
 - (a) enhance protection of children or MIPs from sexual abuse;
 - (b) applicable only to work related to children or MIPs;
 - (c) voluntary in nature;
 - (d) simple application and checking procedures;
 - (e) “clean” record check result will not be recorded in writing;
 - (f) operation and use of the scheme is subject to the Personal Data (Privacy) Ordinance (Cap. 486, Laws of Hong Kong) and provisions in relation to data protection; and
 - (g) applicants are charged for the service under the “user pays” principle.
- 1.5 The scheme is only applicable to eligible applicants undertaking child or MIP-related work in an organization or enterprise. It is not applicable to private tutors and volunteers.

- 1.6 Employers of organisations or enterprises, when engaging persons to undertake work that requires frequent contact with children or MIPs, may request the eligible applicants to undergo SCRC. Applications for the check should be submitted by the eligible applicants on a voluntary basis. The applicants must produce documentary proof of possible employment related to children or MIPs from relevant employer to avoid abuses.
- 1.7 The checking itself cannot take the place of prudent employment practice and proper parental supervision. The purpose of the scheme is not to assess or vet the professional qualifications of those who provide services to children or MIPs (such as teachers, childminders, etc). The monitoring or registering organisations of the relevant professional qualifications will continue to carry out their respective monitoring or registration functions independently for such professionals as required by respective legislation.
- 1.8 The scheme has been implemented since 1 December 2011.

CHAPTER 2 DEFINITIONS¹

2.1 Child

A “child” is defined as a person under 18 years of age.

2.2 Mentally Incapacitated Persons

A “Mentally Incapacitated Person” is defined in section 117 of the Crimes Ordinance (Cap. 200, Laws of Hong Kong), as a “mentally disordered person or a mentally handicapped person (within the meaning of the Mental Health Ordinance (Cap. 136, Laws of Hong Kong)) whose mental disorder or mental handicap, as the case may be, is of such a nature or degree that the person is incapable of living an independent life or guarding himself against serious exploitation, or will be so incapable when of an age to do so.”

2.3 Work

“Work” covers services provided to an organisation or enterprise under a contract of employment, apprenticeship or on a self-employed basis.

2.4 Child or MIP-related Work

“Child or MIP-related work” is defined as work where the usual duties involve, or are likely to involve, frequent or regular contact with children or MIPs. In general, the usual duties of the relevant work may conform to one of the following criteria:

- (a) providing services mainly for children or MIPs (such as, teachers, tutors working in tutorial centres, tutors of interest classes, social workers looking after children, paediatricians and nursing staff, tutors working in special schools, etc);
- (b) working in premises that provide services for children or MIPs (such as, general staff or assistants, librarians and cleaners in schools or tutorial centres, etc); or
- (c) involving frequent or regular contact, in particular unmonitored contact, with children or MIPs (such as, permanently-hired school bus drivers, assistants of children activities, etc).

2.5 Employers

An “employer” under the scheme means employer of organisations or enterprises whose work involves children or MIPs.

2.6 Eligible Applicants

An “eligible applicant” under the scheme means one of the following persons, to whom the scheme is applicable:

- (a) prospective employees seeking child or MIP-related work in an organisation or enterprise;

¹ In this Protocol, unless expressly stated otherwise or the context otherwise suggests, “he” refers both genders.

- (b) staff assigned by outsourced service providers to work in an organisation or enterprise providing services mainly for children or MIPs; and
- (c) existing employees of child or MIP-related work in private tutorial centres and private interest/activity institutions (e.g. children activities centres, interest classes, swimming clubs, ball games clubs or piano/music centres) seeking renewal of contract of employment.

The scheme is not applicable to private tutors and volunteers.

2.7 Prospective Employees

A “prospective employee” under the scheme is a candidate for a particular position in an organisation or enterprise, likely for hiring, or expected to obtain the job.

2.8 Sexual Conviction Record

The check will only cover conviction record(s) of a specified list of sexual offences at Appendix 1.

2.9 Auto-Telephone Answering System

The Auto-Telephone Answering System (ATAS) is an automatic telephone system developed by the Police. An applicant may make advance appointment to submit application for the check in person. An applicant and an employer authorized by the applicant may access the check result through the ATAS.

2.10 Checking code

A checking code is a 14-digit number randomly generated by computer for checking result through the ATAS. The enquirer (applicant and employer(s) authorised by the applicant) must enter the checking code, along with the first four digits of the Hong Kong Identity (HKID) card number of the applicant in order to access the check result.

2.11 Validity Period

The “validity period” of a checking code is the period during which the check result can be accessed through the ATAS for unlimited times. During the validity period, the applicant’s check result on the ATAS will be updated daily. An applicant may submit a renewal application for extension of the validity period of the checking code within the last three months of the validity period.

2.12 Transaction number

A transaction number is a 10-digit number automatically generated by the ATAS in respect of each access to the check result made by an enquirer. The enquirer, and in particular the employer concerned is encouraged to note down the transaction number for record purpose.

CHAPTER 3 NOTES TO APPLICANTS

Eligibility

- 3.1 The following persons are eligible for applying for SCRC check (i.e. eligible applicants):
- (a) prospective employees seeking child or MIP-related work in an organisation or enterprise;
 - (b) staff assigned by outsourced service providers to work in an organisation or enterprise providing services mainly for children or MIPs; and
 - (c) existing employees of child or MIP-related work in private tutorial centres and private interest/activity institutions (e.g. children activities centres, interest classes, swimming clubs, ball games clubs or piano/music centres) seeking renewal of contract of employment.

Definition of “child or MIP-related work” can be found in Chapter 2 of this Protocol.

- 3.2 Applicants under the age of 18 should always be accompanied by their parent or guardian when submitting their applications or for any further procedures (such as those denoted in paragraphs 3.10, 3.11, 3.16 and 3.18 below). The parent or guardian should sign on the application form or other required documents to confirm that such procedures are processed with their consent on a fully informed basis.

Voluntary application

- 3.3 Employers of organisations or enterprises, when engaging persons to undertake work that requires frequent contact with children or MIPs, may request the eligible applicants to undergo SCRC. Applications for the check should be submitted by the eligible applicants on a voluntary basis to the SCRC Office of the Police.

Application procedures and documentation requirements

- 3.4 All applicants should attend in person at the SCRC Office located at 14/F, Arsenal House, Police Headquarters (PHQs), 1 Arsenal Street, Wan Chai, Hong Kong. Its operating hours for receiving applications are:

Monday – Friday	9:00 am – 5:15 pm*
	*Payment at Police Shroff on 11/F, PHQs closes between 1:00 pm and 2:00 pm, and at 5:00 pm
Saturday and Sunday / Public Holiday	Closed

- 3.5 The applicant should bring along the following documents:

- a) His HKID card;
- b) Documentary proof of possible employment related to children or MIPs from relevant employer, with the employer’s acknowledgement that he has read the Notes to Employers and fully understood the terms and conditions of the service including his responsibilities contained therein. A template of the documentary proof is at Appendix 2 and can be downloaded from the Police homepage - <http://www.police.gov.hk/scrc>;

- c) A completed application form (a copy of the application form is at Appendix 3). A blank application form can be downloaded from the Police homepage - <http://www.police.gov.hk/scrc> or obtained from the SCRC Office; and
- d) A fee of HK\$115 per person. Payment can be made by Octopus cards or EPS at the SCRC Office, or in cash or crossed cheques payable to "The Government of the Hong Kong Special Administrative Region" at the Police Shroff on 11/F, PHQs. Add-value service for Octopus cards will not be provided by the SCRC Office.

3.6 Fingerprints of the applicant will be taken by an officer of the SCRC Office in connection with his application to ensure accuracy of the check result.

Telephone appointment and release of result

3.7 Applicants should make advance appointment through the ATAS at 3660 7499 no less than one working day in advance of the intended appointment. Walk-in application will not be entertained.

3.8 Applicants or employers authorised by the applicants will be able to access the check result through the ATAS by entering the first four digits of the applicant's HKID card number together with the random 14-digit computer generated unique checking code provided by the SCRC Office upon acceptance of the application. A transaction number will be provided for reference whenever the result is checked. The checking code has a validity period of 18 months dated from the first uploading of the check result onto the ATAS. Applicants can pass the checking code to multiple employers whom they authorise when applying for child or MIP-related work during the validity period. The check result, which will be updated daily, will be available for unlimited times of access during the validity period. At the conclusion of this validity period, the check result will be deleted from the ATAS and the checking code will be invalidated. The ATAS cannot be accessed by a telephone with the caller display function disabled.

3.9 If an applicant **does not have** a conviction record against the specified list of sexual offences, the check result will be uploaded onto the ATAS within seven working days after the application. No written confirmation will be issued.

3.10 If an applicant **has** a conviction record against the specified list of sexual offences, the applicant will be contacted by phone followed by a letter for an interview by a SCRC officer within seven working days after the submission of the application. The applicant will be provided with his sexual conviction record in writing during the interview and be requested to sign on a prescribed proforma to consent to the Police revealing the existence of sexual conviction record in the ATAS check result. In all events, the message in the ATAS will only reveal that the applicant (with no name mentioned) has a conviction record against the specified list of sexual offences. Details of the record(s) will not be disclosed. If the applicant fails to attend the interview, the application will be suspended. As such, the check result will not be uploaded in the ATAS. No refund to the applicant will be made.

3.11 If an applicant has been arrested or charged with any of the specified list of sexual offences, but not yet convicted or acquitted, his application will not be further processed until the conclusion of the matter. The applicant will be contacted by phone followed by a letter informing that his application is withheld pending conclusion of the matter. Once there is no outstanding matter, the applicant should contact the SCRC Office for

resumption of his application. Alternatively, the applicant may choose to submit an application to the SCRC Office in person, authorising the Police to disclose the fact of his involvement in an outstanding case. Upon receipt of the authorisation, such fact will be disclosed, upon enquiry, to the enquirer who is able to provide the first four digits of the applicant's HKID card number and the unique checking code.

- 3.12 If an applicant is a wanted person, the application will not be accepted, albeit the applicant may submit a fresh application when he is no longer a wanted person.
- 3.13 Criminal conviction record(s) outwith the specified list of sexual offences or record(s) of conviction for sexual offence(s) that is regarded as "spent" under section 2 of the Rehabilitation of Offenders Ordinance (Cap 297, Laws of Hong Kong) will not be disclosed in the check result. Overseas conviction records will not be covered.
- 3.14 After the uploading of the check result onto the ATAS and throughout the validity period of the checking code, an applicant's check result will be updated on a daily basis to see whether the applicant has become a wanted person, or been newly arrested or charged with any of the specified list of sexual offences. Once confirmed, the SCRC Office will contact the applicant for arrangements to complete the necessary formalities, and the ATAS will no longer reveal a "clean" record for these applicants. In any case, an applicant who has become a wanted person, or been newly arrested or charged with any of the specified list of sexual offences should contact the SCRC Office as soon as practicable to confirm the status. Applicants are also encouraged to check their results through the ATAS at times so as to ensure the accuracy of the result, and contact the SCRC Office immediately for rectification in case of any dispute to over the result.

Refusal of application

- 3.15 If an applicant is not eligible for the check or refuses to accept the terms and conditions as specified in the Notes to Applicants while submitting an application, the SCRC Office will reject the application without charging any fee.

Withdrawal of checking account

- 3.16 If an applicant wishes to withdraw his checking account, he should submit written request in person at the SCRC Office. After the checking account is withdrawn, no refund or reactivation of withdrawn checking account will be allowed. Applicants may submit a fresh application following the procedures as set out in paragraphs 3.4 to 3.6 above for a new valid checking account.
- 3.17 For the purpose of personal data privacy protection, applicants are encouraged to withdraw their checking account once they no longer require the check result for applying for child or MIP-related work.

Renewal application

- 3.18 An applicant may submit a renewal application for extending the validity period of his checking code within the last three months of the validity period. He has to make advance booking through the ATAS and attend the SCRC Office in person with his HKID card. The applicant will be required to complete a form and pay a prescribed fee of HK\$76 for the renewal application.
- 3.19 The validity period of the checking code will be extended for another 12 months counting from the expiry date of the preceding validity period. The applicant or his

authorised employers will be able to access the check result using the original checking code for another 12 months. There is no limit on the number of renewal applications for each applicant.

- 3.20 Once the checking code has expired, the check result will be deleted from the ATAS and the checking code will be invalidated. Applicants may submit fresh application for SCRC following the procedures as set out in paragraphs 3.4 to 3.6 above.

Handling of personal data

- 3.21 The personal data provided by the applicants will only be used for the purpose of processing their SCRC applications. An applicant has the right to request for access and correction of his personal data by sending a written request to the Chief Inspector (Support) of Identification Bureau (address:10/F, Arsenal House West Wing, Police Headquarters, 1 Arsenal Street, Wanchai, Hong Kong). In order to recover the administrative cost of acceding to such request, the applicant may be charged for any copy of the data requested, and in most cases, the prevailing government rate for photocopies will apply. Fingerprints and other personal data collected shall be destroyed within a reasonable period of time upon conclusion of the checking process.
- 3.22 An applicant is neither obliged to apply for the check nor to provide his HKID card number and checking code to anyone unless he wishes to do so. If he wishes to do so, he should remind the employer or person concerned to familiarise himself with the content of the Notes to Employers. In the event that leakage of checking code beyond his control is suspected, the applicant should inform the SCRC Office at 3660 7497 at the earliest convenience. The original checking code will be invalidated and a new one will be provided upon completion of the required procedures to reconfirm the applicant's identity. Any forced application or abuse of checking should be reported to the Privacy Commissioner for Personal Data. Further information is available at <http://www.pcpd.org.hk/>. A brief on Personal Data (Privacy) Ordinance is at Appendix 4.
- 3.23 A flow chart showing the application procedure for applicants is at Appendix 5.

CHAPTER 4 NOTES TO EMPLOYERS

- 4.1 Employers of organisations or enterprises, when engaging persons to undertake work that requires frequent contact with children or MIPs, may request the eligible applicants to undergo SCRC. Applications for SCRC should be submitted by the eligible applicants on a voluntary basis to the SCRC Office of the Police. Consent of the eligible applicants to allow the check result to be disclosed through ATAS will be required.
- 4.2 In order to facilitate the application for SCRC, employers are required to provide the eligible applicants with a documentary proof of possible employment related to children or MIPs for submission to the SCRC Office, with the employer's acknowledgement that he has read the Notes to Employers and fully understood the terms and conditions of the service including his responsibilities contained therein. The template of the documentary proof is at Appendix 2 and can be downloaded from the Police homepage - <http://www.police.gov.hk/scrc>. Employers should only issue such documentary proof to the eligible applicants at the advanced stage of the employment or contract renewal process. In all events, SCRC should not be used to screen candidates at an early stage of employment process.
- 4.3 An employer should not demand his employee to apply for the SCRC if the usual duties of the applicant do not involve child or MIP-related work. Any person who seeks to abuse the scheme may be liable under Personal Data (Privacy) Ordinance (Cap 486, Laws of Hong Kong).

Release of result

- 4.4 Employer(s) authorised by an applicant will be able to access the check result through the ATAS at 3660 7499 by entering the first four digits of the applicant's HKID card number together with a random 14-digit computer generated unique checking code provided by the SCRC Office to the applicant upon acceptance of the application. A transaction number will be provided for reference whenever the result is checked. The ATAS cannot be accessed by a telephone with the caller display function disabled.
- 4.5 One of the following messages will be given in the ATAS as the check result:
- (a) The applicant (with no name mentioned) "**has**" a conviction record against the specified list of sexual offences as at a particular date;
 - (b) The applicant (with no name mentioned) "**does not have**" a conviction record against the specified list of sexual offences as at a particular date; or
 - (c) Result of the check is withdrawn upon the applicant's request. Please contact the applicant for the details.
- 4.6 To cater for special cases, the callers may be directed by an ATAS message to contact a SCRC officer for the status of an applicant.
- 4.7 If an applicant **does not have** a conviction record against the specified list of sexual offences, no written confirmation will be issued by the Police. If the applicant **has** conviction record(s) against the specified list of sexual offences, the Police will provide the applicant with the concerned sexual conviction record(s) in writing, but the message in the ATAS will not disclose details of conviction record(s). Employers should enquire about such record(s) from the applicant direct.

- 4.8 Criminal conviction record(s) outwith the specified list of sexual offences or record(s) of conviction for sexual offence(s) that is regarded as “spent” under section 2 of the Rehabilitation of Offenders Ordinance (Cap 297, Laws of Hong Kong) will not be disclosed in the check result. Overseas conviction records will not be covered.
- 4.9 After the uploading of check result onto the ATAS and throughout the validity period of the checking code, an applicant’s check result will be updated on a daily basis to see whether he has become a wanted person, or been newly arrested or charged with any of the specified list of sexual offences. Once confirmed, the SCRC Office will contact the applicant for arrangements to complete the necessary formalities, and the ATAS will no longer reveal a “clean” record for these applicants.

Handling of personal data

- 4.10 The purpose of the SCRC is to enable employers of persons undertaking child or MIP-related work to check whether eligible applicant(s) has any sexual conviction record(s). Employers should neither pass the checking code, the check result or other personal data of the applicant to any unrelated person, nor use the personal data for any purpose other than the intended recruitment or employment purpose. All access to the check result will be audit logged by the ATAS. Any person who uses the sexual conviction record or other personal data obtained for any purpose other than the intended purpose when the data is first collected may be liable under the Personal Data (Privacy) Ordinance (Cap 486, Laws of Hong Kong). A brief on Personal Data (Privacy) Ordinance is at Appendix 4.
- 4.11 A flow chart showing the checking procedure for employers is at Appendix 6.

CHAPTER 5 ENQUIRIES

- 5.1 Details of the SCRC scheme including application form, Notes to Applicants and Notes to Employers are available at the Police homepage – <http://www.police.gov.hk/scrc>. For enquiries on our services, please write to the SCRC Office or call at the telephone line 3660 7497 or fax at 2200 4479. The e-mail address is eo-scrc-ib@police.gov.hk.

A specified list of sexual offences covered under the SCRC scheme

Crime Ordinance (Cap. 200, Laws of Hong Kong)

section 47	Incest by men
section 48	Incest by women of or over 16
section 118	Rape
section 118A	Non-consensual buggery
section 118B	Assault with intent to commit buggery
section 118C	Homosexual buggery with or by a man under 21 (only if the victim was under 16)
section 118D	Buggery with a girl under 21 (only if the victim was under 16)
section 118E	Buggery with a mentally incapacitated person
section 118G	Procuring others to commit homosexual buggery (only if to procure a victim under 16)
section 118H	Gross indecency with or by a man under 21 (only if the victim was under 16)
section 118I	Gross indecency by a man with a male mentally incapacitated person
section 119	Procurement of an unlawful sexual act by threats or intimidation
section 120	Procurement of an unlawful sexual act by false pretences
section 121	Administering drugs to obtain or facilitate an unlawful sexual act
section 122	Indecent assault
section 123	Sexual intercourse with a girl under 13 (only if the offender was 18 or above)
section 124	Sexual intercourse with a girl under 16 (only if the offender was 18 or above)
section 125	Sexual intercourse with a mentally incapacitated person
section 126	Abduction of an unmarried girl under 16
section 127	Abduction of an unmarried girl under 18 for sexual intercourse
section 128	Abduction of a mentally incapacitated person from parent or guardian for sexual act
section 129	Trafficking in persons to or from Hong Kong for the purpose of prostitution
section 130	Control over persons for the purpose of unlawful sexual intercourse or prostitution
section 132	Procurement of girl under 21
section 133	Procurement of a mentally incapacitated person to have unlawful sexual intercourse
section 134	Detention for intercourse or in a vice establishment
section 135	Causing or encouraging prostitution of, intercourse with, or indecent assault on, a girl or boy under 16
section 136	Causing or encouraging prostitution of a mentally incapacitated person
section 138A	Use, procurement or offer of persons under 18 for making pornography or for live pornographic performances
section 140	Permitting a girl or boy under 13 to resort to or be on premises or vessel for intercourse
section 141	Permitting a young person to resort to or be on premises or vessel for intercourse, prostitution, buggery or homosexual act (only if the victim was under 16 and the offender was 18 or above)
section 142	Permitting a mentally incapacitated person to resort to or be on premises or vessel for intercourse, prostitution or homosexual act
section 146	Indecent conduct towards a child under 16

Prevention of Child Pornography Ordinance (Cap 579, Laws of Hong Kong)

section 3 Offences relating to child pornography

Related inchoate offences

- Inciting another to commit any of the above offences
- Aiding, abetting, counselling or procuring the commission of any of the above offences
- Conspiracy to commit any of the above offences
- Attempting to commit any of the above offences

Brief on Personal Data (Privacy) Ordinance

Objectives

The purpose of the Ordinance is to protect the privacy interests of living individuals in relation to personal data. It also contributes to Hong Kong's continued economic well being by safeguarding the free flow of personal data to Hong Kong from restrictions by countries that already have data protection laws.

Scope of Coverage

The Ordinance covers any data relating directly or indirectly to a living individual (data subject), from which it is practicable to ascertain the identity of the individual and which are in a form in which access or processing is practicable. It applies to any person (data user) that controls the collection, holding, processing or use of personal data.

Data Protection Principles (DPP)

Principle 1 (DPP 1) – **Purpose and manner of collection.** This provides for the lawful and fair collection of personal data and sets out the information a data user must give to a data subject when collecting personal data from that subject.

Principle 2 (DPP 2) – **Accuracy and duration of retention.** This provides that personal data should be accurate, up-to-date and kept no longer than necessary.

Principle 3 (DPP 3) – **Use of personal data.** This provides that unless the data subject gives consent otherwise personal data should be used for the purposes for which they were collected or a directly related purpose.

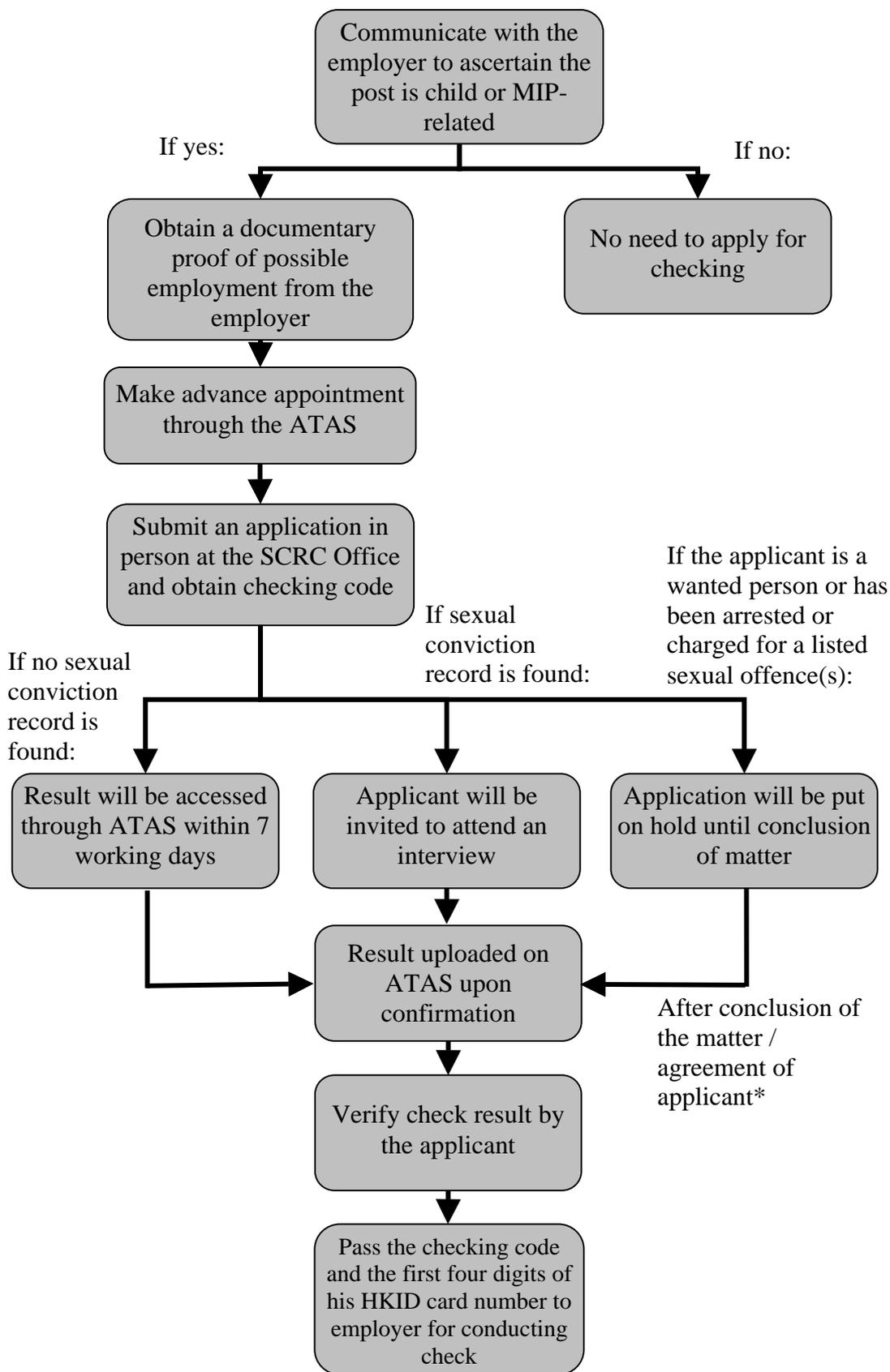
Principle 4 (DPP 4) – **Security of personal data.** This requires appropriate security measures to be applied to personal data (including data in a form in which access to or processing of the data is not practicable).

Principle 5 (DPP 5) – **Information to be generally available.** This provides for openness by data users about the kinds of personal data they hold and the main purposes for which personal data are used.

Principle 6 (DPP 6) – **Access to personal data.** This provides for data subjects to have rights of access to and correction of their personal data.

The Ordinance (full text) can be downloaded from the website of “The Office of the Privacy Commissioner for Personal Data” at <http://www.pcpd.org.hk/english/ordinance/ordfull.html>.

**Flow chart of application procedures
(for applicants)**



* Agreement to disclose involvement in an outstanding case is only applicable to an applicant who has been arrested / charged with any of the specified list of sexual offences.

Flow chart of checking procedures (for employers)

