

Publishing Records of Conviction, Revocation/Refusal of Renewal of Licence and Written Warnings of Employment Agencies

Introduction

This paper sets out the proposal of the Labour Department (LD) for publishing the records of (a) conviction of the offence(s) of overcharging or unlicensed operation of employment agencies (EAs), (b) revocation/refusal of renewal of licence of EAs, and (c) written warnings issued to EAs by the Employment Agencies Administration (EAA) of LD at the one-stop portal on EAs of LD (the EA Portal: <http://www.eaa.labour.gov.hk>) with a view to enhancing transparency and better protecting the interests of the public.

Background and Justifications

2. Pursuant to Regulation 16 of the Employment Agency Regulation (EAR) (Cap. 57A), the Commissioner for Labour (the Commissioner) shall at least once a year publish in the gazette –

- (a) the name of each person to whom a licence or a certificate of exemption has been issued;
- (b) particulars of all licences which the Commissioner has revoked or has refused to renew; and
- (c) such other particulars as the Commissioner may determine.

3. At present, LD publishes a list of licensed EAs in the gazette notice annually. The list of licensed EAs is also available at the EA Portal for checking by members of the public. LD also publishes a gazette notice and/or press release when an EA is convicted of the offence(s) of overcharging of commission from job-seekers or unlicensed operation under the Employment Ordinance (EO) (Cap. 57), which are serious offences under EO, and/or when an EA's licence has been revoked or refused renewal. The gazette notices and the press releases have been uploaded onto the EA Portal to facilitate the public's easy access to such information.

4. To enhance the regulation of EAs and service standards of the industry, LD promulgated a Code of Practice for EAs (CoP) in January 2017, which set out the statutory requirements and standards for

operating EAs. Warnings may be issued to EAs contravening the requirements in the CoP. To enhance transparency, paragraph 4.1.3 of the CoP (revised version promulgated in February 2018) provides that, for the purpose of protecting public interest, the Commissioner may publish information on his/her issuance of warning or taking any disciplinary actions against an EA for contraventions of the EO, EAR and/or the CoP.

5. There have been longstanding requests from the community, including users of EA services (particularly foreign domestic helpers and their employers) and Members of the Legislative Council, for enhancing transparency and facilitating their access to EAs' track records. Moreover, there have been complaints that, although information on conviction records as well as revocation/refusal for renewal of licence are already available on the EA Portal, it is still difficult for job-seekers and employers to search for such information in gazette notices or press releases. In particular, job-seekers and employers with less experience in engaging EA services find it difficult to look for or may not even be aware of the availability of such information on the EA Portal. Some stressed the importance of publishing conviction and warning records of EAs so that job-seekers and employers could make a more informed decision and avoid falling prey to unscrupulous EAs or EAs without a valid licence when engaging EA services. From the perspective of regulation of EAs, the enhanced transparency would also help foster the adoption of good practices by EAs and raise the service standard of the EA industry.

6. Having considered the above, we have examined the feasibility of putting in place a more systematic way of publishing conviction records and revocation/refusal of renewal of licence, and publishing warning records issued to EAs. In formulating the proposal below, we have been mindful of the need to strike a balance between achieving the objective of enhancing transparency and protecting public interests on the one hand, and avoiding causing prejudice to the EAs concerned on the other hand.

The Proposal

7. After careful consideration, we propose to publish the following three lists on the EA Portal –

- (a) a list of EAs convicted of the offence(s) of overcharging or unlicensed operation in the past 24 months. Such information is currently available on the EA Portal in the form of gazette notices/press releases;

- (b) a list of EAs whose licences were revoked/refused renewal in the past 12 months. Such information is currently available on the EA Portal in the form of gazette notices/press releases; and
- (c) a list of EAs which were issued written warning(s) for non-compliance with the CoP in the past 12 months. Since the promulgation of the CoP in January 2017, EAA has issued written warnings for non-compliance with the CoP of a serious nature, such as withholding passports of job-seekers, involving in the financial affairs of job-seekers, and repeated failure to draw up service agreement with job-seekers and/or employers.

8. With regard to the duration of publication, a period of 24 months is proposed for the list of convictions of overcharging or unlicensed operation in paragraph 7(a) as the two offences are serious offences under EO, the maximum penalties for which have been raised to a fine of \$350,000 and imprisonment for three years since February 2018. For the list on revocation/refusal for renewal of licence in paragraph 7(b), the 12-month publication duration is the same as the publication interval under Regulation 16 of EAR as mentioned in paragraph 2 above, which requires the Commissioner to publish the particulars of all licences revoked or refused to renew at least once a year. As for the list of written warnings in paragraph 7(c), we also consider a 12-month publication duration reasonable having considered both the need to enhance transparency and the possibility that EAs may have rectified the irregularities within a year's time.

9. Only records that occur on or after the date of the implementation of the above proposed measure will be published. The measure will not have retrospective effect.

10. The three lists will be maintained on separate webpages at the EA Portal and updated on a monthly basis. The types of information to be published and layout of the proposed webpages are illustrated below.

**List of EAs Convicted of Offence(s) of Overcharging or
Unlicensed Operation**

Name of the EA/ Unlicensed EA	Address of the EA/Unlicensed EA	Date of Conviction	Nature of Offence	Remarks
The name of the EA/unlicensed EA will be shown here.	The registered address of the EA/address of the unlicensed EA will be shown here.	Date of conviction by the court.	Offence of overcharging or unlicensed operation will be stated here.	The status of the EA licence will be stated here.
<p>Notes:</p> <ol style="list-style-type: none"> 1. Records of conviction of overcharging or unlicensed operation offence(s) by the court on or after the implementation date will be published for a period of 24 months, counting from the date of conviction. 2. Convictions which are undergoing appeal (if any) at the court will be published upon the completion of the legal proceedings. 				

List of EAs whose Licences were Revoked/Refused Renewal

Name of the EA	Address of the EA	Date of Revocation / Refusal of Renewal of Licence	Ground(s) of Revocation / Refusal of Renewal of Licence
The name of the EA will be shown here.	The registered address of the EA will be shown here.	Date of revocation/refusal of renewal of licence will be shown here.	The ground(s) for revocation/refusal of renewal of licence will be stated here.
<p>Notes:</p> <ol style="list-style-type: none"> 1. Records of revocation/refusal of renewal of licence which occurred on or after the implementation date will be published for a period of 12 months, counting from the date on which the licence was revoked or refused renewal. 2. Decisions on revocation/refusal of renewal of licence which are undergoing appeal (if any) will be published upon the completion of the appeal. 			

**List of EAs which were issued Written Warning(s) for
Non-compliance with the CoP**

Name of the EA	Address of the EA	Date of Warning	Reasons of Warning
The name of the EA will be shown here.	The registered address of the EA will be shown here.	Date of the written warning(s) issued will be shown here.	CoP requirement(s) not complied with by the EA will be stated here.
Notes: 1. Records of written warning(s) issued on or after the implementation date will be published for a period of 12 months, counting from the date of the written warning(s). 2. Written warnings which are undergoing review by EAA (if any) will be published upon the completion of the review.			

Consultation and Invitation of Views

11. LD has consulted the EA industry as well as users of EA services on the above proposal. Views from members of the public are also invited. You may send in your views and suggestions in writing by 7 September 2018 (Friday) by mail, e-mail or fax as indicated below. Please note that views and suggestions submitted may be published for consultation purposes. Please specify in your submission if you wish to request anonymity.

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