

**Administration's Response to the Issues Raised by
the Bills Committee on the Rehabilitation Centres Bill
at its meeting on 13 February 2001**

Clause 10(3)

In response to members' concerns that due consideration should be given to the recommendations of the trial judge before the Chief Executive determines the length of an offender's imprisonment on transfer from a Rehabilitation Centre to a prison, we have recast clause 10 accordingly. Please refer to the updated list of proposed Committee Stage Amendments at **Annex**.

2. We would also like to explain the operation of the proposed provisions as follows. The progress of each and every inmate in the RC programme would be regularly reviewed by the Commissioner of Correctional Services. If he is satisfied that an inmate is found to be incorrigible or exercising bad influence on other RC inmates and the young offender could not be suitably dealt with by any disciplinary proceedings provided under the law, he would prepare and submit a report on his findings with recommendation on how to deal with the offender via the Secretary for Security to CE for consideration.

3. Before CE can make a determination of the length of a prison sentence in the case of a transfer to prison, he will consult, where practicable, the trial judge or magistrate, as the case may be, who made the original RC detention order. Specifically, the judge or magistrate would be invited to give his opinion as to the appropriate term of imprisonment. Legal advice from the Department of Justice would also be sought on the processing of the proposed transfer.

4. In his determination of the length of prison sentence under clause 10(3), CE must take into consideration, so far as possible, the recommendation made by the judge or magistrate. CE could not lightly disregard a recommendation made by the judge or magistrate, and if he

were to do so by taking irrelevant considerations into account then his determination would be susceptible to judicial review. Indeed, in his exercise of the discretionary power under clause 10, CE must not act contrary to the fundamental principles governing the administration of justice.

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REHABILITATION CENTRES BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
4(2)	<p>(a) By deleting paragraph (a) and substituting -</p> <p style="padding-left: 40px;">"(a) is, in the opinion of the court, not less than 14 but under 21 years of age on the day of his conviction;"</p> <p>(b) In paragraph (f) -</p> <p style="padding-left: 40px;">(i) by deleting "on the date of conviction,";</p> <p style="padding-left: 40px;">(ii) by adding "at the time of his conviction" after "dependent".</p>
9(4)	<p>By deleting everything from "entry to" to "correctional services" and substituting -</p> <p style="padding-left: 40px;">"a police officer or correctional services officer -</p> <p style="padding-left: 80px;">(a) cannot obtain entry to premises as a result of a request under subsection (3); or</p> <p style="padding-left: 80px;">(b) reasonably believes that a person unlawfully at large is</p>

on particular premises but no person appears to be on the premises,

the".

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- (a) By renumbering the clause as clause 10(1).
 - (b) In subclause (1), by deleting everything after "direct that the" and substituting "young offender be dealt with in the manner referred to in subsection (2) or (3).".
 - (c) By adding -
 - "(2) The young offender may be transferred to a training centre; and for the purposes of this Ordinance and the Training Centres Ordinance (Cap. 280), he shall be deemed to be a young offender who, on the day on which the detention order was made against him, had instead been sentenced to detention in a training centre.
 - (3) The young offender may be detained in prison for such term as the Chief Executive may, subject to subsection (4), determine, not exceeding -
 - (a) the unexpired part of the maximum period during which he might have been detained in a

rehabilitation centre; or

- (b) the term of imprisonment to which he was liable for the relevant offence of which he was convicted,

whichever be the less; and for the purposes of this Ordinance and the Prisons Ordinance (Cap. 234), such offender shall be treated as if he had been sentenced to imprisonment for the term so determined by the Chief Executive.

(4) The Chief Executive shall, before making a determination under subsection (3) -

- (a) consult, where practicable, with the judge or magistrate who made the detention order; and
- (b) take into consideration, so far as possible, the recommendations made by the judge or magistrate, as the case may be."

11(3) By deleting "Visiting" and substituting "Subject to section 12, visiting".

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- (a) In subclause (1), by deleting everything from "Subject to" to "144(k)," and substituting "The Prisons Ordinance (Cap. 234) (except sections 3, 4, 6, 7, 12A, 22A, 24A, 24B and 25) and the Prison Rules (Cap. 234 sub. leg.) (except rules 22, 51, 69, 144(j) and (k) and 222(1)) ("the applicable provisions")".
 - (b) By deleting subclause (2) and substituting -
 - "(2) Notwithstanding subsection (1), in the event of conflict between this Ordinance (including the regulations) and the applicable provisions, the former shall apply."

Schedule By deleting the Schedule.