

LS/B/1/00-01  
2869 9467  
2877 5029

Secretary for Security  
Security Bureau  
(Attn: Miss Stoney POON  
AS (S)B1)  
Room 649, East Wing  
CGO, Lower Albert Road  
Central  
Hong Kong

By Fax (2868 9159) and By Post

12 October 2000

Dear Miss Poon

### **Rehabilitation Centres Bill**

I am scrutinizing the above Bill with a view to advise the Members on its legal and drafting aspects. I would be grateful if you would clarify the following at your earliest convenience :-

#### Clause 4(6)

The word "progress" in clause 4(6) is not defined. Please clarify what it is intended to mean in the context.

#### Clause 9(4)

The clause permits a police officer or correctional services officer to enter and search a premises for person unlawfully at large and for that purpose to break open door or window of the premises. It seems illogical that the officer should have that power even if **no person** appears to be on the premises.

#### Clause 11(2) & (3)

- (a) Clause 11(3) imports the powers and duties conferred on visiting justices and visiting committees under the Prisons Ordinance (Cap. 234). Section 23 of the Prisons Ordinance states that those powers

and duties are to be prescribed by rules made under section 25. This in fact means rules 222 to 235 of the Prison Rules. Rule 222(1)(a) requires visiting justices to visit prisons at least once a fortnight. This conflicts with the express provision of clause 11(2). Clause 12(2) does not help because the provisions of rule 222(1) of the Prison Rules are imported pursuant to clause 11(3) and not under clause 12(1).

- (b) Since rules 222 to 235 of the Prison Rules cover both prisons and hostels, clause 11(3) leaves one in doubt as to which part of a rule should apply where the rule provides differently in respect of a prison and a hostel (e.g. rule 222(1)). Please consider whether clause 11(3) need to be further fine tuned to iron out such ambiguity.

Clause 12(2)

Please consider adding "and Prison Rules (Cap. 234 sub. leg.)" after "(Cap. 234)". The argument based on the definition of "Ordinance" in the Interpretation and General Clauses Ordinance (Cap. 1) is not applicable to "Ordinance" when it is part of the short title of an ordinance.

**Prison Rules**

Rule 99

The rule does not refer to "magistrates". Please clarify whether any amendment is required in view of the fact that juvenile courts are constituted of permanent magistrates.

Rules 256 to 264B

These rules presuppose that sections 24D, 24E and 24F of the Prisons Ordinance are applicable. However, those sections are clearly excluded by clause 12(1). Please clarify whether rules 256 to 264B are still applicable. If not, please consider whether this should be made explicit in clause 12(1).

Rules 265 to 272

These rules presuppose the applicability of section 21A of the Prisons Ordinance, which is excluded by clause 12(1) of the Bill. Please clarify whether rules 265 to 272 are still applicable. If not, please consider whether it should be made explicit in clause 12(1).

Your reply before 18 October 2000 would enable us to take the Administration's response into account in our report on the Bill to the House Committee.

Yours sincerely

(KAU Kin-wah)  
Assistant Legal Adviser

c.c. DoJ (Attn: Miss Miranda NG)

(11) in SBCR 11/2856/98 pt. 8  
LS/B/1/00-01

18 October 2000

Mr KAU Kin-wah  
Assistant Legal Adviser  
Legislative Council Secretariat  
Legal Service Division  
Legislative Council Building  
8 Jackson Road  
Hong Kong

Dear Mr Kau,

**Rehabilitation Centres Bill**

Thank you for your letter of 12 October 2000. We would like to provide clarifications as follows.

Clause 4(6)

The word “progress” in clause 4(6) will be given its ordinary dictionary meaning. In reviewing the progress of a young offender, the Commissioner of Correctional Services will consider many aspects including the young offender’s improvement in behaviour, self-care ability, response towards counselling, etc.

Clause 9(4)

When clause 9(4) is read together with clause 9(3), the words “if no person appears to be on the premises...” are intended to cover the situation in which a police officer or correctional services officer reasonably believes that a person unlawfully at large is on particular premises but the person chooses to hide on the premises and refuses to answer the door. This clause is necessary for the effective execution of the recall order.

Clause 11(2) & (3)

We will discuss with counsel and consider excluding the application of rule 222(1) of the Prison Rules altogether as necessary to achieve our intent. Apart from rule 222(1) of the Prison Rules, we have not detected any ambiguity arising from the references to “prison” and “hostel” since the remaining rules (rule 222(2) to rule 235) apply equally to both.

Clause 12(2)

A piece of subsidiary legislation, in this case, the Prison Rules, can only be confined to its subordinate relationship to its enabling principal legislation. Its inherent limitation renders it impossible to have any overriding power which its principal legislation does not have under clause 12(2). We therefore consider that the current clause 12(2) is in order.

Prison Rules

Rule 99

We can rely on clause 12(1) to cover the situation envisaged, as in applying the Prisons Ordinance and the Prison Rules, the provisions “shall be read with such alteration and modifications not affecting their substance as are necessary to render the same applicable”.

Rules 256 to 264B and Rules 265 to 272

The above rules relate to the operation of the Correctional Services Department Welfare Fund and the Prisoners Welfare Fund, which should also apply to CSD staff and inmates in the future Rehabilitation Centres. We will discuss with counsel and consider amending the Bill as necessary to achieve our purpose.

Should you have any further queries, please feel free to give me a call.

Yours sincerely,

( David Wong )  
for Secretary for Security

c.c.	C of CS	(Attn: Miss Bonnie WONG	Fax : 2802 0184)
	D of J	(Attn: Miss Miranda NG, Law Drafting Divn	Fax : 2845 2215
		Ms Diana LAM, Legal Policy Divn	Fax : 2869 0720
		Mrs A Cabrelli, Civil Divn	Fax : 2869 0670)
	S for Tsy	(Attn: Miss Fion Lee	Fax : 2801 4023)
	SCS	(Attn: Miss CHENG Wai-fung	Fax : 2523 5861)
	SHW	(Attn: Mr David YIP	Fax : 2840 0467)
	DSW	(Attn: Miss Ann HON	Fax : 2838 0757)

(11) in SBCR 11/2856/98 pt. 8  
LS/B/1/00-01  
2869 9467  
2877 5029

Secretary for Security  
Security Bureau  
(Attn: Mr David WONG  
Prin AS (S)B)  
6/F, CGO  
Lower Albert Road  
Hong Kong

By Fax (2868 3243) and By Post

19 October 2000

Dear Mr WONG

### **Rehabilitation Centres Bill**

Thank you for your letter dated 18 October 2000. I have the following observations on the clarifications provided by you :

#### Clause 4(6)

The ordinary dictionary meaning of "progress" is equivocal. The context of clause 4(6) has not dispelled the ambiguity. Please consider adding words descriptive of the "progress".

#### Clause 9(4)

Your intention is understood but it is not reflected in the drafting of clause 9(4). It would be adding words that are not there if you argue that the whole of clause 9(4) is subject to the condition stated at the beginning of clause 9(3). Please consider separate the two situations covered by clause 9(4) into (a) and (b) and repeat the condition of suspecting in respect of no person appears to be on the premises.

#### Clause 11(2) and (3)

It seems to me that the exclusion of rule 222(1) would render rule 222(2) rather odd. Perhaps it is only necessary to exclude paragraph (a) in Rule 222(1).

Clause 12(2)

It may be as you said in other circumstances. However, the provisions of Prison Rules imported by clause 12(1) would no longer be subsidiary legislation, they would be part of the Rehabilitation Centres Ordinance. There would not be any issue of inherent limitation or overriding power.

**Prison Rules**

Rule 99

Clause 12(1) has no application here because Rule 99 by itself does not require any modification or alteration in order to have effect in relation to rehabilitation centres. What is needed is the **addition** of "magistrates". It is therefore outside the ambit of clause 12(1).

There are two further matters that I would draw your attention :

***Juvenile offenders Ordinance***

Please confirm that the Administration does not intend the rehabilitation centres to be used for custody of young person pending trial. Otherwise section 7(1) of the Juvenile Offenders Ordinance may need to be amended.

***Rehabilitation Centres Regulation***

Schedule 2

There is no apparent connection between paragraph 2 and paragraph 1 although the intention is that when the situation described in paragraph 1 occurs, the officer shall serve the notice as described in paragraph 2.

I would appreciate your response to the above and reverting on the outcome of your discussion with counsel.

Yours sincerely

(KAU Kin-wah)  
Assistant Legal Adviser



SBCR 11/2856/98 Pt. 8

Our Tel: 2810 3435  
Our Fax: 2868 9159 (Open)/ 2877 0636 (Conf.)

2 November 2000

Legislative Council Secretariat  
Legal Service Division  
Legislative Council Building  
8 Jackson Road  
Hong Kong  
(Attn : Mr KAU Kin-wah)

Dear Mr Kau,

**Rehabilitation Centres Bill**

Thank you for your letter of 19 October. We would like to provide further clarification as follows.

**Rehabilitation Centres Bill**

Clause 4(6)

We have carefully considered your suggestion. We are of the view that it is not necessary to add words to qualify the term "progress". In this connection, we note the use of the term "progress" in similar legislation, such as s4(2) of the Drug Addiction Treatment Centres Ordinance. The operation of such provisions is satisfactory.

Clause 9(4)

I should perhaps clarify that clause 9(4) is subject to clause 9(5) of the Bill. In other words, the officer must obtain a court warrant to enter and search the premises unless it would give the person unlawfully at large an opportunity to evade arrest. Therefore, in most of the cases, it is unlikely that the officer could exercise the power without court warrant

when no person appears to be on the premises.

Clause 11(2) and (3)

Thank you for your suggestion. We would consider with counsel how best the drafting can reflect our policy intent.

Clause 12(2)

Our counsel has re-considered and advised that the presenting drafting of the clause is adequate to serve its intended purpose.

**Prison Rule 99**

Under current arrangements, production of remand persons for hearing in magistracies is normally a matter for police. We are referred to Form 5 of the Magistrates (Forms) Rule (Cap 227 Sub. Leg. C). Amendment to PR99 appears not necessary.

**Juvenile Offenders Ordinance (Cap.226)**

It is not our policy intention to use rehabilitation centres for custody of young persons pending trial.

**Schedule 2 of Rehabilitation Centres Regulation**

We appreciate your observation and will discuss with counsel on the drafting.

Should you have any further queries, please feel free to give me a call.

Yours sincerely,

( David Wong )  
for Secretary for Security

c.c. C of CS (Attn : Miss Bonnie Wong)  
DoJ (Attn : Miss Miranda Ng, Law Drafting Division  
Ms Mary Ho, Civil Division  
Ms Diana Lam, Legal Policy Division)