

**Administration's Response to Issues Raised by
the Bills Committee on the Rehabilitation Centres Bill
at its meeting on 4 January 2001**

Clause 4(1)

The establishment of Rehabilitation Centres (RC) is for the reformation and training of offenders of or over 14 and under 21 years of age. We have considered the question of whether the date of conviction of an offender or the date of sentencing should be used as the "cut off" date to determine his or her eligibility for the proposed RC Programme or otherwise. We are of the view no significant policy or operational issues would arise from adopting either "cut-off" date. In the case of the Detention Centres and Training Centres Programmes, the "cut-off" date is set at the date of conviction (cf. section 4(1) of the Detention Centres Ordinance, Cap 239 and section 4(1) of the Training Centres Ordinance, Cap 280). For the sake of consistency, we agree that that the "cut-off" date for the proposed RC programme should desirably be set at the date of conviction also. We would like to propose Committee Stage Amendments (CSA) accordingly. Please refer to the updated list of proposed CSA at Annex A.

2. We have reviewed the reference to "in lieu of any other sentence" and confirm that the drafting is in order. For all the "relevant offences" as defined in the RC Bill, imprisonment must be a sentencing option while there may be other options. The reference to "in lieu of any other sentence" is essential to denote the "alternative" nature of the sentence of issuing a detention order under the RC Bill, but is not meant to create unreasonable burden on the court to exclude all other possible sentencing options. Similar references can also be found in other legislation such as the Detention Centres Ordinance, Cap 239, the Training Centres Ordinance, Cap 280, and the Drug Addiction Treatment Centres Ordinance, Cap. 244. We have observed no difficulties experienced by the court in justifying making an order under such legislation in lieu of imposing other sentences.

Clause 4(2)(f)

3. The policy intent of the clause is to preclude the admission of active drug dependents into a RC, as opposed to those with past drug experience only. It is therefore necessary to make reference to a certain point of time to determine the drug dependency of an offender. We have reviewed whether the reference to “on the date of conviction” might be too rigid and restrictive. To avoid creating practical difficulties to medical officers, we agree that certain flexibility could be provided without prejudice to our policy intent and propose that the reference to “on the date of conviction” be revised to “at the time of conviction”. Please refer to the updated list of proposed CSA as shown at Annex A.

Clause 4(6)

4. We have reviewed the drafting of the sub-clause and confirm that it is appropriate. Although the Commissioner cannot determine the whole period of detention at the outset when an offender is admitted to an RC, he is still bound by the minimum and maximum periods of detention as allowed under clause 4(4) as a whole whilst considering the duration of each of the two periods of detention within the confines provided under clause 4(5).

Clause 10

5. We have revisited the proposed authority for transfer of problematic RC inmates to a Training Centre or a prison. We confirm our views expressed in the Administration’s Response of 30 December 2000 and would like to provide supplementary information as follows.

6. We consider that the judicial process should come to an end after a sentence has been passed by the court (subject to appeal, if any). It appears that ordering a change of the original sentence based on post-sentence development - as opposed to determining the sentence after conviction having regard to all the circumstances - is not within the customary sentencing purview of the court. In fact, there is also substantial precedent for the Chief Executive (CE), rather than the court, to be given such authority. For example, the CE may replace

indeterminate sentences (such as life imprisonment or detention at Executive discretion) with determinate sentences on recommendation of the Long-term Prison Sentences Review Board. He may grant sentence remission upon prisoners' petitions, on grounds of poor health, assistance rendered to prosecution, etc. In particular, the CE is given the authority to transfer a detainee of a Detention Centre, Training Centre or Drug Addiction Treatment Centre to another Correctional Services Department (CSD) programme, because of the institutional (as opposed to criminal) behaviour of the detainee (cf. para. 5 of the Administration's Response of 30 December 2000). These authorities are provided for in the Basic Law (Art.48(12)) or in various ordinances.

7. We consider that an inmate should not be subject to the possible re-sentencing by the court regarding his or her original offence on account of his or her institutional behaviour. The inmate would of course be subject to prosecution and trial in court in respect of any new criminal offence he or she committed during detention. It is however not our policy intent to create new criminal offences on account that an inmate is found incorrigible under the RC programme or exercising a bad influence on other RC inmates.

8. It is also relevant to note that similar arrangement can be found in the UK law. Under sections 98 and 99 of the Powers of the Criminal Court (Sentencing) Act 2000, the Secretary of State has the power to direct that an inmate of a youth offender institution be transferred to a prison, if he has attained the age of 18 and has been reported as exercising a bad influence on the other inmates in the institution or as behaving in a disruptive manner to the detriment of those inmates. A relevant excerpt of the Act is at [Annex B](#).

9. In view of the above, we maintain that it is appropriate to vest with the CE the authority to order the transfer of problematic RC inmates to other CSD programmes, as now proposed in clause 10 of the Bill, subject to the CSA proposed in the Administration's Response of 30 December 2000 (as now appeared in the updated list at [Annex A](#)).

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 - "(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) - (i) by deleting "on the date of conviction,"; (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 - "a police officer or correctional services officer - (a) cannot obtain entry to premises as a result of a request under subsection (3); or (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 it 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, after consultation where practicable with the judge or magistrate who made the detention order, 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."

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

12 (a) In subsection (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 subsection (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.

Detention in a young offender institution: place of detention.

98. - (1) Subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc.), an offender sentenced to detention in a young offender institution shall be detained in such an institution unless a direction under subsection (2) below is in force in relation to him.

(2) The Secretary of State may from time to time direct that an offender sentenced to detention in a young offender institution shall be detained in a prison or remand centre instead of a young offender institution.

Conversion of sentence of detention or custody to sentence of imprisonment

Conversion of sentence of detention or custody to sentence of imprisonment.

99. - (1) Subject to the following provisions of this section, where an offender has been sentenced to a term of detention in a young offender institution and either-

(a) he has attained the age of 21, or

(b) he has attained the age of 18 and has been reported to the Secretary of State by the board of visitors of the institution in which he is detained as exercising a bad influence on the other inmates of the institution or as behaving in a disruptive manner to the detriment of those inmates,

the Secretary of State may direct that he shall be treated as if he had been sentenced to imprisonment for the same term.

(2) An offender who by virtue of this section falls to be treated as if he had been sentenced to imprisonment instead of detention in a young offender institution shall not be so treated for the purposes of section 65 of the Criminal Justice Act 1991 (supervision of young offenders after release).

(3) Where the Secretary of State gives a direction under subsection (1) above in relation to an offender, the portion of the term of detention in a young offender institution imposed by the sentence of detention in a young offender institution which he has already served shall be deemed to have been a portion of a term of imprisonment.

(4) Rules under section 47 of the Prison Act 1952 may provide that any award for an offence against discipline made in respect of an offender serving a sentence of detention in a young offender institution shall continue to have effect after a direction under subsection (1) above has been given in relation to him.

(5) This section applies to a person-

(a) who is detained under section 90 or 91 above, or

(b) who is serving a sentence of custody for life.

as it applies to a person serving a sentence of detention in a young offender institution.