

立法會
Legislative Council

LC Paper No. CB(2)2171/00-01

(These minutes have been
seen by the Administration)

Ref : CB2/BC/4/00

**Bills Committee on Drug Dependent Persons Treatment
and Rehabilitation Centres (Licensing) Bill**

**Minutes of meeting
held on Tuesday, 13 February 2001 at 4:30 pm
in Conference Room A of the Legislative Council Building**

- Members Present** : Hon Cyd HO Sau-lan (Chairman)
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LAW Chi-kwong, JP
Dr Hon TANG Siu-tong, JP
Hon Michael MAK Kwok-fung
Dr Hon LO Wing-lok
Hon IP Kwok-him, JP
- Members Absent** : Hon James TO Kun-sun
Hon Andrew WONG Wang-fat, JP
- Public Officers Attending** : Ms Mimi LEE
Principal Assistant Secretary for Security (Narcotics)
- Miss Christina CHONG
Assistant Secretary for Security (Narcotics)
- Miss Ann HON
Assistant Director of Social Welfare
- Mrs Lily NG
Senior Social Work Officer

Action

Ms Brenda LAU
Social Work Officer

Ms Francoise LAM
Government Counsel

Clerk in Attendance : Ms Doris CHAN
Chief Assistant Secretary (2) 4

Staff in Attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Ms Dora WAI
Senior Assistant Secretary (2) 4

I. Confirmation of minutes of meeting held on 29 November 2000
(LC Paper No. CB(2)844/00-01)

The minutes of the meeting held on 29 November 2000 were confirmed.

II. Meeting with the Administration

2. Principal Assistant Secretary for Security (Narcotics) (PAS(N)) said that as two further submissions from the Hong Kong Council of Social Service and the Drug Addict Counselling and Rehabilitation Services were only received shortly before the meeting, the Administration would prepare a response to the submissions for discussion by members at the next meeting.

Proposed Committee Stage amendment (CSA) to clause 18 and consequential amendment

(LC Paper No. CB(2)845/00-01(01))

3. PAS(N) briefed members on the proposed amendments as detailed in the Administration's paper. As the Administration had taken on members' proposal for the Director of Social Welfare (DSW) to assume the investigation and prosecution roles (latter subject to approval from the Secretary for Justice) for offences under the Bill, the requirement for DSW to deliver the information removed from a drug

Action

treatment and rehabilitation centre (centre) to the Police as currently stipulated under clauses 18(5) and 18(6) was no longer needed. The CSA in Annex I to the paper proposed to delete these two clauses. In addition, a new consequential amendment was proposed because the Bill conflicted with section 49D of the Dangerous Drugs Ordinance (Cap. 134). The latter made disclosure of information of a centre illegal whereas the Bill made the refusal to disclose such information illegal. The CSA in Annex III sought to make the provision of relevant information to DSW for complying with the requirements of the Bill legal. The Administration also proposed a few textual amendments to the Chinese version of the Bill, which were set out in Annex IV to the paper. She said that such amendments would not affect the substance of the Bill as they were purely textual in nature to make the wordings in the Bill more consistent.

4. Senior Assistant Legal Adviser (SALA) pointed out that the effect of the CSA to delete clause 18(6) would mean that there was no requirement for the prosecution authority to return any book, document or other article to the centre concerned if no prosecution was instituted within six months.

5. PAS(N) explained that DSW might not necessarily remove the original book or document of a centre for the purposes of the Bill. He might obtain copies in order not to affect the operation of the centre. Therefore, there seemed to be no strong reason for the requirement to return such book or document to be expressly stated in the Bill. Assistant Secretary for Security (Narcotics) said that as DSW might remove any book, document or other article of a centre for purposes other than prosecution, it might be difficult to identify which kind of information should be returned within six months. Government Counsel (GC) pointed out that the roles of the Police and DSW under the Bill were different. The Administration considered it necessary to impose such requirement in the Bill if prosecution was handled by the Police as there was no reason for the Police to retain such information if prosecution was not instituted within six months. Assistant Director of Social Welfare (ADSW) said that under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459), DSW would remove original book or document for investigation with copies given to the elderly home to maintain their operation. She added that whether the prosecution would be able to commence within six months would depend on the court.

6. SALA pointed out that the original might be necessary since any book, document or other article removed under clauses 18(1)(d) and 18(3)(b) for further examination by DSW might be produced as evidence in court in respect of an offence. In that case, copies were normally not accepted by the court. Also, a copy would not be feasible when the evidence was an article. In response to Mr IP Kwok-him, SALA said that if clause 18(6) was deleted, the protection originally provided to centres for the return of information by the prosecution authority within a period of time would be taken away.

Action

7. In reply to the Chairman and Dr LO Wing-lok, PAS(N) said that clause 22 stipulated that prosecution should be commenced within six months of the commission of an offence or within six months of the offence being discovered by or coming to the notice of DSW, whichever was the later.

8. As members agreed that the protection originally provided to centres under clause 18(6) should be retained, PAS(N) undertook to introduce an amendment to that effect.

Continuation of clause-by-clause examination of the Bill

Clause 24 - Appeals against decisions of Director
(LC Paper No. CB(2)861/00-01(01))

9. PAS(N) presented the Administration's views on the concerns raised by members at the last meeting regarding the appeal mechanism, the definition of public interest and the issue of an injunction as set out in the paper.

10. Mr LAW Chi-kwong remained unconvinced of the Administration's viewpoint. He considered that DSW should not be given unfettered power under clause 24(3) to override the suspension of his decision under the appeal procedure. In his view, seeking an injunction would be a fairer means if public interest was involved. He said that although such application would require more time and cost, it was still worth considering as, according to the Administration, the need to invoke this clause was expected to be rare.

11. PAS(N) said that the exercise of such power by DSW was not without constraint. If a centre found that the invocation of clause 24(3) had been made on wrong premises, or if there were other procedural irregularities, the centre could seek a judicial review of DSW's decision. Moreover, the invocation of this clause would not affect the on-going process of the appeal by a centre. She added that the Administrative Appeals Board (AAB), which would handle appeals under the Bill, had made a performance pledge that cases would be processed within four months.

12. Mr LAW Chi-kwong considered it unreasonable to expect centres to seek a judicial review as the resources available to centres were far less than that of the Administration. He expressed dissatisfaction that the reason for the Administration refusing to consider the use of an injunction seemed to be the high cost and complicated procedures.

13. PAS(N) clarified that the cost and procedures were not the prime consideration in proposing clause 24(3). Instead, the Administration aimed at enabling DSW to react promptly to urgent scenarios where objective circumstances so truly justified. As such, the right balance to protect the interests of the residents of centres and the

Action

society at large could be struck.

14. As the appeals under the Bill would be handled by AAB, GC referred members to clause 32 of the Bill which stipulated that the Bill, once passed, would be added to the Schedule to the Administrative Appeals Board Ordinance (Cap. 442). She invited members to note that under that Ordinance, the Chief Executive in Council might amend the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance when it was enacted by adding to it a provision similar to clause 24(3) of the Bill.

15. The Chairman opined that the provisions in new ordinances should not necessarily follow those provided under the ordinances enacted in the past. She shared the view of Mr LAW Chi-kwong in respect of the appeal mechanism under the Bill. She held the view that there must be some other ordinances, such as those relating to fire or building safety, which could be invoked to override the suspension of DSW's decision under the appeal procedure when public interest was involved.

16. Dr LO Wing-lok said that discussion should be focussed on whether DSW should be given the power under clause 24(3) for coping with most critical and exceptional circumstances which might occur.

17. Mrs Sophie LEUNG said that a balance should be struck in this regard. She considered clause 24(3) appropriate and she believed that DSW would only exercise such power when circumstances so justified. She opined that each piece of legislation should be able to stand on its own in order to avoid a domino effect.

18. Dr TANG Siu-tong expressed concern whether other ordinances might be invoked to override the suspension of DSW's decision under the appeal procedure.

19. The Chairman asked about the difficulties in seeking an injunction on an ex-parte basis to immediately stop a centre from operating. PAS(N) replied that an ex-parte application could only be made in most urgent cases where there was no time to give notice to the other side, or if notice was given, it would have the effect of giving the other side advance warning thus enabling them to take the necessary action before the order could be obtained. Ex-parte injunction would not be a desirable means to cease the operation of a centre as the arrangement to transfer residents out of the centre and staff settlement matters needed to be handled prior to the cessation of the operation.

20. PAS(N) agreed to the remark made by Mrs Sophie LEUNG that clause 24(3) should be read in conjunction with other clauses of the Bill. She referred members to the example set out in paragraph 7 of the paper that if a centre was so poorly managed that it had been used as a vice den causing nuisance and risk to the public and residents in the neighbourhood, it might serve the public interest better if the licence of

Action

the centre was cancelled as soon as practicable. In her view, DSW would ascertain that there was strong justification before he would exercise the power under clause 24(3) because it was open to the court to strike down his decision. Besides, the centre might seek a judicial review of his decision and he was also subject to the pressure from the public if he had made a wrong decision.

21. Mr LAW Chi-kwong clarified that he was not proposing to delete clauses 24(3)(a) and 24(3)(b). Instead, he proposed to add a clause 24(3)(c) to introduce a monitoring mechanism over the power of DSW under clauses 24(3)(a) and 24(3)(b).

22. PAS(N) said that the Administration had carefully considered the matter and had also sought the views of the Department of Justice as to whether the seeking of an injunction would be an effective way to achieve the objective of protecting public interest in the rare circumstances under which DSW had to invoke clause 24(3). The legal advice was as set out below -

- (a) the decision to grant an injunction was on the court and was discretionary;
- (b) only interim injunction was applicable as in the case of the Bill, however, in considering the granting of such injunction, the court would consider whether -
 - (i) there was a reasonable prospect of success in granting a permanent injunction; and
 - (ii) any harm to a party by the granting of an injunction could be compensated by an award of damages.
- (c) the chance of granting an injunction would be rare as the Bill provided an automatic mechanism to suspend DSW's decision during the appeal period.

PAS(N) pointed out that both (b)(i) and (b)(ii) above were not applicable to the Bill as the Administration had no intention to cease the operation of centres permanently and the centres were operated on a non-profit making basis. Based on the above advice, she said that the seeking of an injunction might not be an effective way to achieve the purpose proposed by Mr LAW Chi-kwong. She pointed out that if members wished to pursue in this direction, the operation of the automatic mechanism provided under clause 24(3) might be affected. She expressed worry that centres might have other views on the new proposal where as the automatic mechanism had already been accepted by them. Furthermore, as the Child Care Services Ordinance (Cap. 243) and the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) were also provided with such automatic mechanism, she saw no reason why it should be

Action

excluded from the Bill.

23. Mr LAW Chi-kwong expressed the view that it was unlikely that the court would refuse to grant an injunction if DSW had sufficient grounds to stop the operation of a centre immediately under most critical and exceptional circumstances. He stressed that he was most concerned that there should be due process before DSW could exercise his power under clause 24(3).

Adm

24. The Chairman requested the Administration to advise members in writing of an example which would constitute the most exceptional circumstances envisaged under the Bill for which the invocation of clause 24(3) was needed. Other critical circumstances which could be dealt with by other ordinances should be excluded.

25. Mrs Sophie LEUNG opined that an ordinance should be sustainable and comprehensive, but should not be case specific. Dr LO Wing-lok shared the view of Mrs LEUNG. He said that the law should be based on principles instead of assumptions.

26. PAS(N) expressed agreement to the comments made by Mrs LEUNG and Dr LO.

III. Date of next meeting

27. Members agreed that two more meetings be scheduled for 2 March 2001 and 9 March 2001, both at 8:30 am. Members also agreed that clause 24 should be further discussed at the next meeting.

28. The meeting ended at 6:20 pm.

Legislative Council Secretariat

2 August 2001