

立法會
Legislative Council

LC Paper No. CB(2)1485/00-01
(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 Monday, 15 January 2001 at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members Present** : Hon Cyd HO Sau-lan (Chairman)
Hon James TO Kun-sun
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 Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
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
- Ms Brenda LAU

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Social Work Officer

Ms Fanny IP

Senior Assistant Law Draftsman

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 16 November 2000 and matters arising

(LC Paper No. CB(2)661/00-01)

The minutes of the meeting held on 16 November 2000 were confirmed.

2. The Chairman invited members to note the views of the Hong Kong Bar Association and the Law Society of Hong Kong on the questions raised by the Bills Committee concerning the human rights of a person undergoing drug treatment or rehabilitation in a treatment centre. Both organisations held the view that the enforcement of rules set by a treatment centre would not pose any problem in practice provided the person's prior agreement to the rules had been sought.

II. Meeting with the Administration

(LC Paper Nos. CB(2)662/00-01(01) to (04))

Protection of residents' information kept by drug treatment centres

(LC Paper No. CB(2)662/00-01(01))

3. Principal Assistant Secretary for Security (Narcotics) (PAS(N)) briefed members on the main points of the Administration's paper.

4. Senior Assistant Legal Adviser (SALA) pointed out that although the use of residents' personal data was subject to the Personal Data (Privacy) Ordinance (Cap.

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486), there were a number of exemptions to the protection afforded to such information, e.g. the Police was authorised to have access to it for the purposes of crime investigation or prosecution. Clause 18(5) of the Bill required the licensing authority, the Social Welfare Department (SWD), to pass books and documents removed from a centre as evidence during an inspection to the Police as soon as possible. The Police would have access to personal data of residents. He pointed out that there were different prosecution arrangements within the Government. The prosecutions of offences relating to municipal and labour matters were handled by departments concerned.

5. The Chairman considered that the Police's involvement might only be necessary when resistance was anticipated during an inspection of a centre. She asked whether SWD could assume the prosecution role so that it would have custody of the information removed from a centre instead of the Police. Such an arrangement would rule out the possibility of the Police using the residents' information for investigation of other offences. The Chairman opined that as the primary objective of the Bill was to regulate the fire and building safety of centres and not to facilitate crime investigation, it was inappropriate if residents' information obtained by SWD during an inspection would provide a means for the Police to investigate drug-related or other offences. She suggested deleting clause 18(5) of the Bill. Mr Michael MAK shared the view of the Chairman.

6. PAS(N) said that in considering the matter, it was necessary to strike a right balance between protection of residents' information and maintaining public safety. She explained that the passing of residents' information to the Police was necessary strictly on a "need" basis, i.e. only when a centre was suspected to have committed an offence under the Bill. Senior Assistant Law Draftsman (SALD) added that information, after having been removed by SWD during an inspection but found not related to the offences under the Bill, was not required to be passed to the Police under the Bill. As regards the requirement for centres to keep a simple register of residents' information, PAS(N) said that many existing centres were already keeping such information. The intention of this requirement was to enable SWD to understand more about the operation of centres to facilitate the discharge of its role as the licensing authority. The information was not intended to be used against residents who were undergoing or had undergone treatment.

7. In reply to Dr LO Wing-lok, PAS(N) said that basically only basic information such as the name, address, date of admission to the centre and contact details of a next-of-kin of an inmate would be kept by centres. Some centres might also obtain background information of residents, which might include their past criminal activities, with a view to better understanding the resident and being able to provide him with a suitable treatment programme. In response to the Chairman's request in paragraph 5 above, PAS(N) said that the Administration would take account of various factors like manpower resources when considering the feasibility of appointing SWD as the

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prosecution authority.

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8. The Chairman commented that the current practice of exchanging information within Government departments was in contradiction of the Personal Data (Privacy) Ordinance. However, Dr LO Wing-lok was of the view that it was sometimes difficult to fully protect the personal information of an inmate when public interest was involved.

9. Mr LAW Chi-kwong expressed his reservation about the Chairman's proposal to delete clause 18(5). He pointed out that the Bill itself already delimited the licensing authority to only remove records or articles which were relevant to the licensing scheme under the Bill. In his view, the possibility of obtaining excessive information by SWD could be eliminated if records of basic personal data of residents were kept separately from records of other background information of residents. The person in charge of a centre would therefore be able to pass to SWD only the records of basic personal data of residents during an inspection. SALA pointed out that even basic information such as the address of a resident might help the Police investigate crimes.

10. On prosecution arrangements, SALD explained that in some circumstances departments might be authorized to prosecute for certain offences, for example, where a lot of prosecutions were expected and the offences were of a technical nature which would involve little or no investigation. Otherwise, prosecution would normally be handled by the Department of Justice and usually the Police would undertake the investigation relating to the prosecution.

11. Mr James TO declared that he was a member of the Action Committee Against Narcotics. He pointed out that the information of residents kept by centres was sensitive as it might contain information of drug-related activities or other crimes. In his view, the confidentiality of such information could not be compromised or else drug dependent persons would not seek treatment. He considered that the arrangements proposed under the Bill would cause distrust between centres and residents and would create an adverse impact on the willingness of drug dependent persons to undergo voluntary drug rehabilitation treatment at these centres. He envisaged that the manpower required by SWD to take up the prosecution role should not be a problem as only several additional staff would need to be trained up to perform investigation and prosecution work in respect of non-compliance with the licensing requirements.

12. SALD reiterated that any records or articles removed by SWD or any authorised person during an inspection would be required to be delivered to the Police only if they are relevant to prosecution of offences under the Bill. Protection was provided to residents in clause 23 of the Bill. Pursuant to that clause, any information obtained by the Police would be inadmissible as evidence in any proceedings against residents or rehabilitated persons for offences under the

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Dangerous Drugs Ordinance (Cap. 134). PAS(N) added that in addition to the protection provided under clause 23, protection was also given in the Personal Data (Privacy) Ordinance. If a centre considered that the information sought was in excess of the Bill, it could always resort to this Ordinance for remedy. Mr James TO pointed out that it was difficult in practice to ensure that only records or articles which were relevant to prosecution would be removed during an inspection.

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13. The Chairman asked the Administration to seriously consider whether prosecution authority for offences under the Bill could be taken up by SWD instead of the Police, and to advise members on the additional staff required for the purpose.

Protection of residents' information in drug treatment centres in overseas laws
(LC Paper No. CB(2)662/00-01(02))

14. PAS(N) briefed members on the practices of the United Kingdom, Australia and the United States in protecting information of residents in drug treatment and rehabilitation centres. She said that the protection of such information in Hong Kong was slightly better than that in the United Kingdom whereas the protection in the State of Texas, the United States was better than Hong Kong. The protection of residents' information in Hong Kong was similar to that in Australia, where its 1989 Act provided for confidentiality of information obtained by a treatment centre inspector. However, there would also be exemptions when the giving of the information was necessary to remove a threat to the life and health of a person or in response to a lawful request made by the Police, etc.

15. Since it was unlikely that a consensus on how to ensure the protection of residents' information could be reached at the meeting, the Chairman suggested and members agreed to further discuss the issue after the Administration had made a decision on whether prosecution of offences under the Bill could be taken up by SWD.

Building and fire safety requirements under the Code of Practice (the Code) for drug dependent persons treatment and rehabilitation centres
(LC Paper No. CB(2)662/00-01(03))

16. In reply to the Chairman, PAS(N) said that there had been consultations with concerned agencies since 1998. Mr Michael MAK pointed out that some agencies were still worried about having difficulties in complying with the licensing requirements. The Chairman said that members would focus discussion on those areas where objections had been raised by agencies and on which no consensus was reached.

17. PAS(N) reported that the latest consultation with agencies concerning building and fire safety of centres was on 22 November 2000. The main concerns of agencies

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were the funding arrangement and professional advice required to fulfil the statutory requirements. The Administration had been working closely with the Buildings Department (BD), the Fire Services Department (FSD) and SWD to provide various assistance to agencies in these areas. In fact, BD and FSD had agreed to relax certain standard requirements for existing centres after taking into account the environmental and financial constraints of some centres. With the relaxed requirements and the grace period of up to a maximum of four and eight years for subvented and non-subvented agencies respectively, the Administration considered the arrangements proposed under the Bill feasible.

Commencement date of the Ordinance

18. Mr James TO suggested to defer the commencement of the licensing scheme after the passage of the Bill so that centres would be given more time to obtain financial resources to carry out the necessary upgrading works during the eight years. The Legislative Council would be able to monitor the progress and the effective date could be further deferred if majority of the centres were still not up to the statutory requirements after eight years. Mr IP Kwok-him supported the views of Mr James TO.

19. Mr LAW Chi-kwong suggested grouping the offence and penal provisions under a schedule in the Bill so that the commencement of such provisions could be deferred to a date later than that of the main ordinance. He considered that such an arrangement would allow more flexibility as the proposed exemption period of four years for subvented centres and eight years for non-subvented centres might not be realistic.

20. PAS(N) said that there was as yet no definite plan on the commencement date of the Bill. The Administration would take account of the readiness of centres before finalising its proposal on the commencement date. PAS(N) added that some agencies were keen to improve their centres and they had already put in applications for financial resources to conduct improvement works in preparation for licensing. As regards the question of exemption, the proposed system of certificate of exemption provided agencies with the necessary lead time to prepare for licensing. Such certificates were subject to annual renewal with conditions specified for improvement. Through such a mechanism, the Administration would also be able to monitor the progress made by centres in moving towards fulfilment of the licensing requirements.

21. In view of the worries expressed by some centres, Mr James TO maintained the view that deferring the commencement of the licensing scheme would be more desirable than relying on the certificate of exemption mechanism. As regards Mr LAW Chi-kwong's suggestion to delay the commencement of penal provisions after the passage of the Bill, Mr TO pointed out that there might be legal implications.

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22. PAS(N) pointed out that there were only a few penal provisions in the Bill and they were mainly related to the operation of a centre without a licence or a certificate of exemption. Delaying the commencement of penal provisions would mean there would be no sanction against non-compliance with the Ordinance and would make commencement of the Ordinance meaningless. She further pointed out that the Bill would not only govern existing centres, but also new centres coming into operation in the future. If the commencement of the licensing scheme was unduly delayed, new centres would not be required by law to meet the licensing requirements during the period of time before the Ordinance came into operation.

23. The Chairman suggested and members agreed to further examine the matter at the next meeting.

Estimated cost for upgrading works by drug treatment and rehabilitation centres
(LC Paper No. CB(2)662/00-01(04))

24. Members agreed that this item be dealt with together with the discussion on the commencement date of the licensing scheme at the next meeting.

III. Date of next meeting

25. Members agreed that the next meeting would be held on Monday, 22 January 2001 at 10:45 am. Two more meetings were scheduled for Monday, 5 February 2001 at 4:30 pm and Tuesday, 13 February 2001 at 4:30 pm.

26. The meeting ended at 10:30 am.

Legislative Council Secretariat
8 May 2001