

立法會
Legislative Council

LC Paper No. CB(2)661/00-01
(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 Thursday, 16 November 2000 at 10:45 am
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 Andrew WONG Wang-fat, JP
Hon LAW Chi-kwong, JP
Hon Michael MAK Kwok-fung
Dr Hon LO Wing-lok
Hon IP Kwok-him, JP

Members Absent : Hon James TO Kun-sun
Dr Hon TANG Siu-tong, JP

Public Officers Attending : Mrs Clarie LO, JP
Commissioner for Narcotics

Ms Mimi LEE
Principal Assistant Secretary for Security (Narcotics)

Miss Christina CHONG
Assistant Secretary for Security (Narcotics)

Mr FUNG Pak-yan
Acting Assistant Director of Social Welfare

Mrs Lily NG

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Senior Social Work Officer

Dr S P MAK, JP

Assistant Director of Health (Special Health Services)

Ms Fanny IP

Senior Assistant Law Draftsman

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

Staff in Attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Mrs Queenie YU

Senior Assistant Secretary (2) 4

I. Election of Chairman

Nominated by Mr LAW Chi-kwong and seconded by Mrs Sophie LEUNG and Mr Michael MAK Kwok-fung, Ms Cyd HO Sau-lan was elected Chairman of the Bills Committee.

II. Meeting with the Administration

(LC Paper Nos. CB(2)246/00-01 and CB(2)246/00-01(04))

Briefing by the Administration

2. At the invitation of the Chairman, Commissioner for Narcotics (C for N) briefed members on the background of the Bill. She said that apart from combating illegal drug activities, the Administration considered it important to provide comprehensive drug treatment and rehabilitation services for drug dependent persons, which aimed at enabling these persons to integrate into the community. She also pointed out that after reviewing the existing treatment and rehabilitation policy and services, the Administration considered that the existing Drug Addicts Treatment and Rehabilitation Ordinance, Cap. 326 and all subsidiary legislation made under it should be repealed and a new ordinance to provide for a licensing scheme for voluntary residential drug treatment and rehabilitation centres should be introduced to ensure

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that drug dependent persons undergoing treatment and rehabilitation would receive services in a properly managed and physically secured environment.

3. C for N also highlighted the following salient points -

- (a) The Administration had consulted the public for six months in 1998 on the proposed licensing scheme and met with the affected agencies, Provisional District Boards and the previous Legislative Council Panel on Security. The scheme was supported by all these bodies.
- (b) The licensing scheme would require a person/organization to apply to the Director of Social Welfare (the Director) for a licence to operate any drug treatment and rehabilitation centre (treatment centre) which provided voluntary residential care for four or more persons. Subject to the applicant being able to satisfy the stipulated fit person criteria, fire services and building safety requirements, and other service conditions as stipulated by the Director, a licence would be granted to the applicant.
- (c) New treatment centres would have to comply with the licensing requirements from the first day of operation. There would be a grace period of four years for existing subvented treatment centres to prepare themselves for licensing whilst continuing with their operation. As for non-subvented treatment centres, the grace period would be more than four years.
- (d) Any person aggrieved by any decision made by the Director in respect of the issue or renewal of, and the cancellation of a licence or certificate of exemption might appeal to the Administrative Appeals Board.
- (e) The Bill empowered the Director to issue Code of Practice setting out principles, procedures and guidelines for the operation or management of treatment centres.
- (f) In respect of financial assistance, the Administration had approached the concerned charitable funds and obtained their support in giving priority consideration to proposals submitted by treatment centres which needed reconstruction or upgrading facilities. The Lands Department and the Government Property Agency had also agreed to provide the necessary support for the proposal.

Discussions

4. Referring to paragraph (10) of the Administration's response to the submission by the Hong Kong Council of Social Service (HKCSS), Mr LAW Chi-kwong asked

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the Administration to clarify how long the exemption period for obtaining the required licence for non-subsented treatment centres would be. C for N responded that the Administration had considered the issue at length. Since subsented treatment centres would be given an exemption period of up to four years to carry out improvement works, the Administration held the view that it should not take more than eight years for non-subsented treatment centres to comply with the licensing requirements. She pointed out that the Administration had started to discuss with non-subsented treatment centres on their plans to bid for funds. With the support from charitable organizations and government departments, it was expected that these treatment centres would complete their improvement works within an exemption period of eight years.

5. Mr LAW Chi-kwong said that whilst an exemption period of four years was reasonable for subsented treatment centres, six years instead of eight years would be sufficient for non-subsented treatment centres to comply with the licensing requirements. He said that if the exemption period was too long, it would create practical problems for the Administration in implementing the policy on treatment and rehabilitation services in the future.

6. In reply to the Chairman's question on the number of treatment centres in Hong Kong, C for N said that there were about 13 organizations providing voluntary drug treatment and rehabilitation services in Hong Kong, of which 11 were adopting non-medical approach and two were adopting medical approach. With the inclusion of half-way houses for rehabilitated drug addicts, there were a total of 40 organizations providing drug treatment and rehabilitation services, half of which were non-subsented organizations.

7. Referring to paragraph (14) of the Administration's response to the submission by HKCSS, Mr LAW Chi-kwong asked the Administration to clarify whether the criteria of 'fit person' had been redefined in the current proposal as compared with the proposal put forward in the last legislative session. C for N confirmed that clause 7(2) had been amended to reflect that the applicant must be a person who "has not been a drug dependent person continuously in the 7 years immediately prior to the day on which the Director considers the matter" in the present proposal as opposed to 10 years in the previous proposal.

8. Mr Michael MAK Kwok-fung said that the Superintendent of a treatment centre was empowered under the Drug Addicts Treatment and Rehabilitation Regulations (the Regulations), Cap. 326A. The powers to restrict freedom and rights of drug dependent persons in his treatment centre, for examples, to confiscate any unauthorized articles found in possession of a patient, refuse any visit to a patient, refuse a patient to receive phone calls, censor a patient's letter etc.. He was concerned whether similar powers were given to the person responsible for a treatment centre in the Bill. In his opinion, the restrictions contravened the human rights of the

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drug dependent persons undergoing treatment in the centres.

9. C for N clarified that Cap. 326 was made on the basis that the declared treatment centres operated on the basis of detention. As all of these treatment centres now provided voluntary drug treatment and rehabilitation services, the Administration considered it inappropriate to provide the treatment centres with such powers in the Bill, especially when using today's standards, some of these powers might contravene the Basic Law and the International Covenant on Civil and Political Rights. Principal Assistant Secretary for Security (Narcotics) (PAS/S(N)) explained that the Bill, which replaced Cap. 326, proposed a licensing scheme to regulate and bring these treatment centres under uniform control. The focus of control would shift to the power of granting a licence by the Director. In response to the question about the role of the person responsible for a treatment centre, Acting Assistant Director of Social Welfare (Acting ADSW) added that the most important role would be to ensure a properly managed and physically secured environment for the drug dependent persons.

10. Referring to paragraphs (2) and (3) of the Administration's response to the submission by HKCSS, Mrs Sophie LEUNG LAU Yau-fun pointed out the concern of HKCSS that the Bill should retain the powers given to a treatment centre under the Regulations to ensure the centre was free from drug and any undesirable external influence on the inmates. She questioned how the Administration could ensure the treatment centres would be able to operate effectively. C for N said that the Social Welfare Department would stipulate feasible guidelines in the Code of Practice to be issued under clause 25 of the Bill to allow flexibility for the treatment centres to set rules to achieve the purpose of effective management. If such rules might affect an inmate's freedom and rights, the treatment centre should explain to the inmate and obtain his consent prior to enforcing such rules. In this regard, drug dependent persons would be asked to sign an agreement to comply with the rules before their admission to the treatment centre.

11. Mrs Sophie LEUNG further asked whether the Administration had made reference to the major problems encountered so far by the existing treatment centres in their operation and the measures adopted by the treatment centres in tackling the problems. Acting ADSW said that for those treatment centres which were not governed by Cap. 326, the practice of obtaining prior consent from the residents to comply with the rules of the treatment centres had been working well and without any serious problems. Assistant Director of Health (Special Health Services) (ADH(SHS)) pointed out that even those treatment centres which were governed by Cap. 326 were now operated on a voluntary basis through signification of an agreement. She also stated that if a patient was found to have brought drug into a treatment centre, the Police could arrest him in accordance with the provisions under the Dangerous Drugs Ordinance (Cap. 134) regardless of whether Cap. 326 was repealed or not.

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12. Mr Andrew WONG Wang-fat asked the Administration which ordinance would cover treatment centres operated on a 'detention' basis after Cap. 326 was repealed. PAS/S(N) replied that the Drug Addiction Treatment Centres Ordinance (Cap. 244) authorized the Commissioner of Correctional Services to operate detention centres providing cure and rehabilitation services for persons found guilty of criminal offences. These centres were exempted from the licensing requirements of the Bill.

13. In reply to the Chairman's question on other types of treatment and rehabilitation services available for drug dependent persons, C for N said that the Government adopted a multi-modality approach to drug treatment and rehabilitation services in order to cater for the different needs of drug dependent persons. At present, about 10 000 drug addicts had registered in voluntary out-patient methadone programmes under the Department of Health. On average, 6 500 - 7 500 drug dependent persons received treatment under these programmes every day. There were also different types of residential drug treatment and rehabilitation services available for drug dependent persons. Treatment centres providing medical treatment were required to comply with the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) whilst treatment centres providing non-medical treatment were required to comply with the proposed new legislation. C for N pointed out that voluntary residential treatment centres using medical treatment would be required to comply with both Cap. 165 and the proposed new legislation in the future. She also clarified that treatment centres for criminal offenders operated by the Correctional Services Department (CSD) under Cap. 244 were exempt from the licensing requirements of the Bill.

14. Mr Andrew WONG questioned why treatment centres operated by CSD under Cap. 244 were not required to comply with Cap. 165 despite the fact these treatment centres also used medical treatment. ADH(SHS) responded that under Cap. 165, establishments maintained by Government were not required to register. She also said that to her knowledge, many disciplined staff in CSD had also received formal nursing training. There were also registered doctors in these centres providing medical treatment for the inmates. Mr Andrew WONG held the view that there might still be differences in service standard provided by different treatment centres using medical drug treatment. He also found it confusing that a treatment centre using medical treatment would have to register under both the proposed new legislation and Cap.165. He asked why all the requirements could not be incorporated under a single ordinance.

15. C for N responded that the Administration had considered amending Cap. 165 to include the licensing requirements for voluntary residential treatment centres using non-medical drug treatment methods. Nevertheless, the affected agencies considered it inappropriate to do so because Cap. 165 dealt with hospitals, nursing homes and maternity homes which operated very differently from voluntary residential treatment

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centres.

Adm
Clerk

16. The Chairman requested the Administration to provide an information paper on the different types of treatment centres providing treatment and rehabilitation services under Cap. 165, Cap. 244, Cap. 326 and the Bill. The Chairman also requested the Secretariat to circulate copies of Cap. 165 and Cap. 244 for members' reference. Mr LAW Chi-kwong commented that whilst members might obtain information on the provisions under Cap. 165 and Cap. 244, it was outside the jurisdiction of the Bills Committee to examine the operation of the treatment centres governed by these Ordinances. The Chairman held the view that it was appropriate for members to have the relevant information in order to assess the need for introducing the Bill.

17. Mr LAW Chi-kwong further pointed out that there might be grey areas in implementing the proposed new legislation. He was concerned about cases in which drug dependent persons were directed to voluntary residential treatment centres by the court on probation order. In his opinion, these persons had not sought treatment from the treatment centres on a voluntary basis and had no real choice as otherwise they might have to undergo treatment in centres operated by CSD. In this regard, he wished to know whether these persons could refuse to sign an agreement to give his consent to enforcement of the rules set by a treatment centre. Moreover, whether the rules restricting a drug dependent person's freedom and rights in the treatment centre might contravene the human rights provision of the Basic Law.

18. C for N said that apart from those who underwent treatment pursuant to a condition of a probation order, there were others who sought treatment on a voluntary basis. In drawing up the new legislation, the Administration aimed to look after the interests of the majority of clients seeking treatment and rehabilitation services in these treatment centres. As regards human rights, C for N said that the provisions in the Bill would not contravene the Basic Law and the International Covenant on Civil and Political Rights.

19. Mr LAW Chi-kwong disagreed and said that the interpretation might be open to legal challenge. Firstly, drug dependent persons directed to a treatment centre might argue that they had not signed the agreement entirely on a voluntary basis, therefore, enforcement of the rules set by the treatment centre under clause 25 of the Bill was not applicable to them. Secondly, the person responsible for the treatment centre might refuse to admit a drug dependent person since his treatment centre would only provide services for drug dependent persons seeking treatment on a voluntary basis.

20. Senior Assistant Law Draftsman pointed out that the Bill was to establish a licensing scheme for voluntary drug treatment and rehabilitation centres providing for residential accommodation to facilitate the treatment or rehabilitation. The main objective of the licensing scheme was to ensure that drug dependent persons

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undergoing treatment or rehabilitation would receive services in a properly managed and physically secured environment. Hence, while the Bill laid down certain criteria to be satisfied before a licence to operate a treatment centre could be granted, it did not contain provisions regulating dealings between such centres and recipients of the services. It would not constitute any legal case for drug dependent persons receiving treatment in those treatment centres to challenge the licensing scheme under the proposed new legislation on the grounds that their admission to the treatment centre was not on a voluntary basis.

21. C for N clarified that a Magistrate would normally consider a probation officer's report and recommendation before considering a voluntary drug withdrawal treatment programme for an offender. Acting ADSW added that in the course of the probation officer and the offender discussing the treatment alternatives, prior consent from the offender would be obtained if admission to a voluntary drug withdrawal treatment programme was preferred. Since these treatment centres were voluntary in nature, the court would not sentence an offender to these centres but would probably make a probation order with a special condition along the line that 'the offender shall receive and complete a drug withdrawal treatment programme'. An offender was free to terminate his treatment later, but this might constitute a breach of probation order and he/she would be subject to be brought back to court for further decision. An offender who subsequently refused to undergo treatment in a treatment centre was in breach of the Probation of Offenders Ordinance (Cap. 298) and the case would be referred back to the court for further decision.

22. Dr LO Wing-lok held the view that it was a lenient penalty for an offender if the judge directed him to undergo treatment in a voluntary treatment centre rather than a detention centre operated by CSD. In the circumstance, even if the offender had to sign an agreement and comply with the rules set by the treatment centre, it should not constitute a case in which the offender's freedom and rights were unduly restricted. Senior Assistant Law Draftsman pointed out that an offender undergoing voluntary drug dependent treatment in compliance with a condition of his probation order might, at any point of time, express his wish to terminate treatment in the treatment centre. The case would then be referred back to the court for further decision.

23. Members held the view that the grey areas in the proposed new legislation concerning drug dependent persons directed to voluntary treatment centres should be clarified. The Chairman asked the Secretariat to seek the views of the Hong Kong Bar Association and the Law Society of Hong Kong on the matter.

Clerk

24. Members noted that the Administration had extended the scope of clause 23 of the Bill to render all information relating to an individual acquired by the Director in the exercise of his power under clause 18 inadmissible as evidence in proceedings under the Dangerous Drug Ordinance (Cap. 134). The Chairman asked the Secretariat to seek the views of the Office of the Privacy Commissioner for Personal

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Adm Data whether there was now sufficient protection in the Bill for the personal data of inmates as well as applicants for a licence. PAS/S(N) informed members that in drawing up the Bill, the Administration had consulted the Office of the Privacy Commissioner for Personal Data. She agreed to provide a summary of points discussed for members' reference.

Clerk 25. Responding to HKCSS's request that public hearings on the Bill be arranged, the Chairman suggested and members agreed to invite agencies providing treatment and rehabilitation services to present their views on the Bill at the next meeting. C for N pointed out that there were at present 13 non-government voluntary organizations providing drug treatment and rehabilitation services. Different management approaches were adopted by these treatment centres and drug dependent persons could choose a treatment centre which suited them best. She said that to her knowledge, drug dependent persons were not required to sign any agreement in some of these treatment centres. She also stressed that the Bill was introduced to improve the overall quality of services provided for drug dependent persons and not merely to improve the physical environment of treatment centres in respect of fire services and building safety requirements.

III. Date of next two meetings

26. Members agreed that the next two meetings of the Bills Committee would be held at 8:30 am on Wednesday, 29 November 2000 and Wednesday, 13 December 2000.

27. The meeting ended at 12:20 pm.

(Post-meeting note : At the request of the Administration, the meeting on 13 December 2000 was rescheduled to 18 December 2000 at 10:45 am.)

Legislative Council Secretariat

10 January 2001