

Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill

**Administration's Response to the Submission by
the Hong Kong Council of Social Service**

The Administration's response to the views of the Committee on Substance Abuse of the Hong Kong Council of Social Service (HKCSS) on the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill (the Bill) is set out below.

Security of Drug Dependent Persons Treatment and Rehabilitation Centres (the Centres)(paragraph 1 of the letter)

2. HKCSS proposed that the Bill should retain the powers given to a drug treatment centre under regulations 7, 8, 10 and 11 of the Drug Addicts Treatment and Rehabilitation Regulations (the Regulations), including a superintendent's power to refuse any visit to a patient, refuse/permit a patient to receive phone calls, censor a patient's letters, confiscate any unauthorized articles found in the possession of a patient and prohibit anybody without lawful authority or excuse from entering the centre. The Administration has explained to HKCSS on many occasions that such proposal is not appropriate. Firstly, the Regulations are only applicable to the drug treatment centres declared under the Declaration of Addiction Treatment Centre (Consolidation) Order. The Regulations were made on the basis that the declared centres operate on the basis of detention. However, as all of these centres are now voluntary, there is no need for them to retain such powers. In addition, a much larger number of centres which are not declared under the Regulations have been operating smoothly without these statutory powers. Furthermore, some of the provisions HKCSS proposed to retain, such as regulations 8 and 10, may contravene the Basic Law and the International Covenant on Civil and Political Rights using today's standards. We therefore consider it inappropriate to provide the centres with such powers in the Bill.

3. Nonetheless, we fully appreciate the concerns of the agencies, which were expressed during the consultation on the proposed Bill. We also agree that for effective management, a centre needs to ensure that its premises is free from drug and any undesirable external influence on the inmates. Therefore, the Social Welfare

Department will stipulate feasible guidelines in the Code of Practice to be issued under clause 25 of the Bill, to enable centres to set any practicable and reasonable rules in order to achieve the same purpose. If such rules may affect an inmate's rights, the centre should explain to the inmate and obtain his consent prior to enforcing such rules. The Code of Practice, which is being drafted, will be finalized and distributed to all agencies for reference upon enactment of the Bill.

Inconsistency with the Dangerous Drugs Ordinance (Cap 134) (paragraph 2 of the letter)

4. We have consulted the Privacy Commissioner for Personal Data and on his advice, have strengthened the protection of inmates' personal data. Clause 23(2) of the Bill now provides that no information obtained by the Administration shall be admissible in evidence in any proceedings instituted under the Dangerous Drugs Ordinance (Cap 134) against any person who is undergoing or has undergone treatment or rehabilitation at a treatment centre.

5. With regard to the Director of Social Welfare's power to require a centre to produce records and remove such records or documents, the purpose is to ensure that the centres comply with the requirements of the Bill, not for the sake of obtaining inmates' personal data. Moreover, the Director may remove such records or documents only when he suspects that a centre has violated the relevant provisions. It has to be stressed that the requirement of producing records is to enable the licensing authority to obtain information based on which it can monitor a centre's compliance with the licensing conditions. The centre must keep its records in accordance with the requirements of the Personal Data (Privacy) Ordinance (Cap 486). In fact, Cap. 486 provides adequate sanction against any unwarranted leakage of inmates' personal data, including that by drug treatment and rehabilitation centres.

Appeal mechanism (paragraph 3 of the letter)

6. Given that the main objective of the Bill is to protect the interests of the inmates, the Director of Social Welfare as the licensing authority must be able to respond promptly whenever the interests of the inmates or the public are threatened. If the Bill subjected the Director's powers to an appeal mechanism, there would be delay for the agencies concerned to carry out the directions, thus directly affecting the interests of the inmates and defeating the purpose of the Bill. As for the "inspection and other powers" and "offences under section 18", it should be noted that inspection

is an essential step of the licensing authority's efforts in monitoring a centre and assessing whether it satisfies the licensing conditions. If the centre had the right to object to such inspection, the effectiveness of the licensing system would be seriously undermined. As to the drafting and revision of the Code of Practice, we will address this issue in detail in paragraph 12 below.

Penalty provisions (paragraph 4 of the letter)

7. In Clause 4(3)(a), the proposed maximum penalty for operating a centre without a licence is a fine at level 6 and imprisonment of six months. The penalty is targeted at the head of a centre and has taken into account a number of similar ordinances and the seriousness of the offences concerned. Clause 4(4) mentioned by HKCSS is aimed at those who take part in the management of a centre, rather than those who exercise control. As the former usually are not the key persons in direct charge of a centre, the proposed penalty for them is not as heavy as that for the latter. As Clause 5(4) is targetted at the specified operator and those who exercise management control over a centre, the proposed penalty is the same as Clause 4(3)(a). As regards the recommendation to add the word "reasonable" to Clause 16(3), we consider it unnecessary because the licensing authority is already responsible for giving directions on reasonable grounds.

Resource assistance for centres to comply with requirements of the Bill

(paragraph 5 of the letter)

8. Regarding resources to assist centres in complying with requirements of the Bill, the Administration has provided both coordination and cooperation in respect of land, financial assistance and timing. As early as the consultation stage of the Bill, demands for the renovation or redevelopment of the centres affected were assessed, and support was sought from the Government Property Agency and the Lands Department in identifying sites for those centres which had such a need.

9. In respect of financial assistance, the Administration has approached the concerned charitable funds and obtained their support in giving priority consideration to proposals by centres which need reconstruction or upgrading of facilities. As the circumstances and funding requirements of the centres vary, we consider it more flexible for the centres to apply for charitable funds, such as the Lotteries Fund which is open to application all the year round, than giving these centres a fixed provision. We consider that the former is most flexible, as fixed allocation would fall short of

meeting centres' individual needs.

10. As for timing, we have pledged that the agencies receiving Government subvention may carry out improvement works within an exemption period of up to four years. For those non-subvented centres, they will be given even more than four years' exemption. We therefore consider that the centres affected should have sufficient time to seek resources and upgrade facilities to meet the licensing requirements.

Provisional exemption from licensing (paragraph 6 of the letter)

11. In order to lessen the impact on centres which do not meet the licensing requirements in terms of environment, building structure or fire safety installations, we have, ever since consultation began, promised on various occasions the granting of an exemption period as mentioned in paragraph 10 above. We therefore consider it unnecessary to provide for this exemption expressly in the Bill.

Code of Practice (paragraph 7 of the letter)

12. In February and November this year, the Social Welfare Department consulted the relevant agencies on the outline and draft of the Code of Practice. The Social Welfare Department will meet with the agencies again later this year to discuss amendments to the draft Code. Since consultation with the parties affected is an established procedure, we do not consider inclusion of this mechanism in the Bill necessary.

Other views

13. As the treatment centres managed and controlled by the Hospital Authority are already regulated, the Bill is not applicable to those centres. However, all other centres that fall within the definition of "treatment centre" of the Bill will be governed by the Bill.

14. Regarding the "fit person" criteria, we had consulted the agencies concerned using "10 years free of criminal and drug abuse record" as the standard. Although there were divided views during the consultation period, our proposal was accepted. However, in view of the latest view by HKCSS, we have further relaxed the "fit person" criteria under the Bill. Having regard to the characteristics of drug

dependent persons and the difficulty in ascertaining whether a rehabilitated drug abuser who has not abused drugs for three years will relapse into drug abuse again, we have amended Clause 7(2) so that the applicant must be a person who "has not been a drug dependent person continuously in the 7 years..." instead of "... 10 years...".

Security Bureau

15 November 2000