

**Comments by the Privacy Commissioner and Response from the Administration on
the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill**

Clause of the Bill	Privacy Commissioner's Comments	Administration's Response
<p>Clause 18 and clause 23 of the current Bill (Clause 18 and clause 22 of the Bill introduced in February 2000)</p>	<p>It is conceivable that the books or documents removed and transferred to the Police pursuant to clause 18 may contain personal data relating to previous or even current drug-related activities of those individuals. If so, this may give rise to apprehension on the part of those individuals about their personal data falling into the hands of the Police, resulting in prosecution against them.</p> <p>Clause 22 provides for some sort of safeguard but may not be sufficient. Suggest the Administration to consider whether it will be necessary to extend the scope of clause 22 to render inadmissible as evidence in proceedings under the Dangerous Drugs Ordinance all information relating to an individual acquired in the exercise by the Director of Social Welfare (the Director) of his power under clause 18.</p>	<p>Comments taken on board. Clause 23 of the current Bill provides that a statement or admission made by a person for the purpose of being admitted to a treatment centre for treatment and rehabilitation, or while he is undergoing treatment or rehabilitation at a treatment centre is inadmissible as evidence under any proceedings against him under the Dangerous Drugs Ordinance (Cap. 134). It also provides that any information obtained in the course of or as a result of the production or removal of any book, document or other article by the Director of Social Welfare (the Director) or any public officer authorized by him in relation to the licence or certificate of exemption of a drug treatment and rehabilitation centre is inadmissible as evidence against a rehabilitating or rehabilitated addict under Cap. 134.</p>
<p>Clause 6 and clause 8 of the current Bill</p>	<p>In clauses 6(6) and 8(5) of the current Bill, the Director is given power to require an applicant for a licence to operate a treatment centre or applicant for</p>	<p>These clauses specifically provide that the Director may require only such particulars as he considers relevant for determining whether or not to issue a</p>

	<p>a certificate of exemption to furnish him with such information relevant for his consideration whether to make the grant. Such information includes, inter alia, “particulars relating to the applicant”. It is not, however, specified what kind of particulars may be required. The required particulars may include “personal data” within the meaning of the Personal Data (Privacy) Ordinance (Cap. 486) in the event of the applicant being an individual. If that is the case, there would likely to be a collection of personal data on the part of the Director making him a “data users”, thereby subject to the requirements of the Ordinance.</p> <p>Data Protection Principle in Schedule 1 of the Personal Data (Privacy) Ordinance is directly relevant :</p> <p>“(1) Personal data shall be collected unless-</p> <p style="padding-left: 40px;">(c) the data are adequate but not excessive in relation to that purpose.”</p> <p>We suggest the particulars that may be required under clauses 6(6) and 8(5) should be expressly stated.</p>	<p>licence or a certificate of exemption. These provisions, as they are presently drafted have already delimited the scope of information to be sought by the Director and the purpose of seeking such information, and have already echoed Data Protection Principle 1 in Schedule 1 of the Personal Data (Privacy) Ordinance (Cap. 486). In case a person considered that the information sought by the Director was in excess of the purpose of the Bill, he could always resort to Cap. 486 for remedy. In addition, we are prepared to specify the “particulars relating to the applicant” in a Code of Practice to be issued under clause 25 of the Bill. The purpose of the Code is to give, among others, detailed guidelines on licensing procedures. In promulgating the Code, the Director will consult all parties concerned including drug treatment and rehabilitation centres to be affected by the Bill, and take their views into account. The proposal of building in the Bill an express provision to specify the particulars to be sought may not be necessary.</p>
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A Summary of the Drug Addiction Treatment Centres Ordinance (Cap. 244);
Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165);
Drug Addicts Treatment and Rehabilitation Ordinance (Cap. 326) and
Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill

	Drug Addiction Treatment Centres Ordinance Cap. 244	Hospitals, Nursing Homes and Maternity Homes Registration Ordinance Cap. 165	Drug Addicts Treatment and Rehabilitation Ordinance Cap 326	Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill
Year of enactment	1968	1936. Major amendments in 1966 to bring the private hospitals under regulation.	1960	N/A
Objective	To provide for the cure and rehabilitation of persons found guilty of criminal offences who are suffering from addiction to a dangerous drug.	To provide for the registration and inspection of hospitals, nursing homes and maternity homes and for purposes connected therewith.	To establish centres for the treatment and rehabilitation of addicts of drugs and of intoxicants and for purposes connected therewith.	To provide for the licensing, control and inspection of drug dependence treatment centres which provide residential accommodation for persons voluntarily undergoing the treatment or rehabilitation after the treatment; and provide for connected and incidental matters.

Enforcement	Commissioner of Correctional Services	Director of Health	Superintendent of an Addiction Treatment Centre	Director of Social Welfare
Target of control	<p>Person who is found guilty of a relevant offence and the court is satisfied that in the circumstances of the case and having regard to his character and previous conduct it is in his interest and the public interest that he should undergo a period of cure and rehabilitation in an addiction treatment centre.</p>	<ul style="list-style-type: none"> • Establishments for the care of the sick, injured or infirm who require medical treatment, including a nursing home, and premises used or intended to be used for the reception of pregnant women or of women immediately after childbirth. • Does not include any hospital or maternity home maintained by the Government or any public hospital within the meaning of the Hospital Authority Ordinance (Cap. 113). 	<p>A person who, by reason of his addiction to drugs or to intoxicants, is dangerous either to himself or to others or is incapable of managing himself or his affairs or of ordinary proper conduct or is in serious danger of physical or mental disorder.</p>	<p>Drug treatment and rehabilitation centres providing residential accommodation and treatment to drug dependent persons.</p>
Span/scope of control	<ul style="list-style-type: none"> • Detain in an addiction treatment centre for such period of not less than 2 months and not more than 12 months from the date of the detention 	<ul style="list-style-type: none"> • The Director of Health may refuse registration if the applicant or any person employed is not a fit person to carry on or to be employed at such 	<ul style="list-style-type: none"> • Any person being admitted to treatment centres shall sign an undertaking and submit to the following rules: - if required by the 	<ul style="list-style-type: none"> • Any place used or intended to be used for the treatment for drug dependence or rehabilitation of 4 or more drug dependent

	<p>order.</p> <ul style="list-style-type: none"> • A person released from an addiction treatment centre may, for a period of 12 months from the date of his release, be subject to a supervision order as imposed by the Commissioner of Correctional Services. • A person who fails to comply with any requirement of a supervision order may be subject to a recall order requiring him to return to an addiction treatment centre. 	<p>premises; that for reasons connected with situation, construction, accommodation, equipment or staffing, the hospital or maternity home is not fit, proper or desirable to be used for a hospital or maternity home; or that the premises is not under the charge or superintendence of duly qualified medical personnel e.g. doctor, nurse or midwife.</p> <ul style="list-style-type: none"> • The Director of Health may cancel the registration of a person in respect of any hospital or maternity home on any ground which would entitle her to refuse an application for registration, or if such or any other person has been convicted of an offence against the Ordinance in respect of 	<p>superintendent shall remain and may be detained in the centre for a period not exceeding 6 months or, in the case of a young person, 12 months from the date of his first admission, in case of escape, he may be retaken within 90 days of such escape by the superintendent or by any police officer and conveyed to and received and detained in the centre from which he escaped;</p> <ul style="list-style-type: none"> - submit himself to such treatment as may be prescribed by the superintendent; and - obey all lawful orders given to him by the superintendent or by any person authorized by the superintendent. 	<p>persons undergoing such treatment or rehabilitation on a voluntary basis and for providing residential accommodation for such persons while they undergo the treatment or rehabilitation but does not include treatment centres managed and controlled by the Hospital Authority.</p> <ul style="list-style-type: none"> • The Director of Social Welfare may issue a licence to an applicant or refuse to issue a licence if it appears to him or her that the applicant is not a fit person; or that for reasons connected with the size, staffing or equipment, the place to be used for the treatment centre is not fit to be used as a treatment centre; or that the place to be used as a treatment
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		the hospital or maternity home.		<p>centre does not comply with fire and building safety requirements.</p> <ul style="list-style-type: none"> the Director may impose conditions which may relate to, in particular, the accommodation, staffing and equipment of the treatment centre in issuing the licence.
Penalty	<p><u>While in custody</u> An inmate who commits any of the offences enumerated in rule 61 of the Prison Rules (Cap. 234 sub. leg.) shall be guilty of a disciplinary offence.</p> <p><u>After Release</u> A person who fails to comply with any requirement specified in a supervision order made against him commits an offence and is liable to a fine of \$5,000 and to imprisonment for 12 months OR subject to recall by an order made by the</p>	Generally speaking, any person who is guilty of an offence against this Ordinance shall in respect of each offence be liable on summary conviction to a fine of \$1,000, and, in the case of a continuing offence, to a further fine of \$50 in respect of each day on which the offence continues after conviction.	<ul style="list-style-type: none"> Any person who, without permission, sends to or brings or throws into a centre any dangerous drugs to which the Dangerous Drugs Ordinance (Cap. 134) applies or any alcoholic liquor, tobacco or tool shall be liable to a fine of \$10,000 and to imprisonment for 2 years. Any person who, 	<ul style="list-style-type: none"> Any person who operates or exercises control over the management of a treatment centre without licence; fails to comply with any requirement of an order of cessation of use of any place as a treatment centre; or commits offence in relation to section 18 (generally referred to as obstruction in the exercise of inspection power) is liable to

	<p>Commissioner of Correctional Services.</p>		<p>without the permission of the superintendent, sends or delivers to any patient any money, clothing, food, drink, paper, book, letter or other thing shall be guilty of an offence and liable to a fine of \$5,000.</p> <ul style="list-style-type: none"> Any attendant, nurse, servant or other person employed in a centre who ill-treats or wilfully neglects any patient in the centre shall be guilty of an offence and shall be liable on summary conviction to a fine of \$10,000 and to imprisonment for 2 years. 	<p>conviction to a fine of \$100,000 and imprisonment for 6 months and to a fine of \$5,000 for each day during which the offence continues</p> <ul style="list-style-type: none"> Any person who makes false statement in or in connection with application under this Ordinance or fails to comply with requirements of a direction given by the Director of Social Welfare is liable to a fine of \$100,000 and 6 months imprisonment. Any person who takes part in the management of a treatment centre without a licence or a certificate of exemption is liable to a fine of \$10,000.
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Regulation/schedule	<p>Drug Addiction Treatment Centres Regulations, Addiction Treatment Centre (Consolidation) Order, Drug Addiction Treatment Centre (Hei Ling Chau Addiction Treatment Centre) Order, Drug Addiction Treatment Centre (Chi Ma Wan Drug Addiction Treatment Centre).</p> <p>In accordance with Section 10 of the DATC Ordinance, the Chief Executive in Council may make regulations generally for the better carrying out of the purposes of the DATC Ordinance.</p>	<p>Schedule on fees are prescribed.</p> <p>First registration \$6,815 Subsequent registration \$ 900</p>	<p>Drug Addicts Treatment and Rehabilitation Regulations</p> <p>The Chief Executive in Council may make regulations generally for the carrying into effect of the provisions of the Ordinance.</p>	<p>The Chief Executive in Council may make regulation generally for carrying into effect the provisions of the Bill.</p>
Appeal	<p>A convicted person may appeal to the Court of Appeal against his conviction and sentence in accordance with Criminal Procedure Ordinance.</p>	<p>Any person aggrieved by an order refusing an application for registration or canceling any registration may appeal against it by way of a petition to the Chief Executive in Council.</p>	<p>A person aggrieved by his detention, he may appeal in writing to the Addiction Treatment Centre Appeal Board</p>	<p>A person aggrieved by a decision of the Director of Social Welfare in respect of refusal to issue or renew a licence or certificate of exemption or to cancel a licence or certificate of exemption may appeal to the Administrative Appeals</p>

				Board within 21 days after he/she has received notice of the decision.
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**Process to be gone through by an Offender
before and after a Probation Order is issued by the Court**

Statutory provision

According to section 3(1) of the Probation of Offenders Ordinance (Cap. 298), where a court by or before which a person* is tried for an offence (not being an offence the sentence for which is fixed by law) considers that having regard to the circumstances, usually based on the social enquiry report on the offender, the court may, after conviction, make a probation order. A probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court considers necessary for securing the good conduct of the offender or for preventing a repetition by him of the same offence or the commission of other offences (s.3(2) of Cap. 298).

Before a probation order is issued

2. A probation officer shall make such preliminary inquiries, including inquiries into the home surroundings, as a court may direct in respect of any offender in whose case the question of the making of a probation order may arise. (r.16 of Probation of Offenders Rules, Cap.298 sub.leg., (the Rules)). In the course of such inquiries, the probation officer will assess the circumstances, including the nature of the offence, the character and attitude of the offender, the support network, as well as a feasible rehabilitation plan for the offender.

3. In working with an offender with drug dependence problem, the probation officer will discuss with him/her the drug withdrawal treatment alternatives, and if necessary, provide information on voluntary drug withdrawal treatment programmes in the community which are relevant to his/her rehabilitation. If the offender agrees to receive such voluntary drug withdrawal treatment and the probation officer also considers this the best option, the programme will become part of the rehabilitation plan. For young offender aged under 16, the parent or guardian has to be

* As a person under the age of 7 does not have criminal liability, a probation order can only apply to a person of age 7 or above.

involved in formulating the rehabilitation plan and his/her agreement to the plan will be sought. The completed social inquiry report of the offender, including the recommended rehabilitation plan, will then be submitted to the court for consideration.

4. If the court considers that it will be in the offender's best interest to place him on probation supervision, before making a probation order, the court shall explain to the offender in a language understood by him/her the effect of the order, including any additional requirements proposed to be inserted and the consequences of breaching the order. If the offender is 14 years or above, the court shall make the order only if the offender expresses his/her willingness to comply with the requirements thereof (s.3(4) of Cap. 298). For cases with drug dependence problem, if the offender agrees to undergo a voluntary drug withdrawal treatment programme, a condition along the line that "he/she shall receive and complete a drug withdrawal treatment programme and abstain from drug" will normally be inserted in the probation order.

After a probation order is issued

5. After an offender is placed on probation, the responsible probation officer shall, if so requested by the supervising court, from time to time report to such court upon the probationer's mode of life and generally upon his progress (r.20(1) of Probation of Offenders Rules, Cap. 298). Where a probationer fails to comply with any of the requirements of a probation order, the probation officer shall report the fact to the supervising court (r.20(3) of Probation of Offenders Rules, Cap. 298).

6. If at any time during the probation period it appears on information to a magistrate that the probationer has failed to comply with any of the requirements of the order, the magistrate may issue a summon requiring the probationer to appear at the place and time specified therein, or may, if the information is in writing and on oath, issue a warrant for his arrest. (s. 5(1) of the Probation of Offenders Ordinance, Cap. 298).

7. In the course of probation supervision, should a probationer exhibit re-offending behaviour or fail to comply with the requirements

stipulated in the probation order, the probation officer will assess the circumstances and the prognosis of the case including the probationer's motivation for rehabilitation before taking court action. The probation officer may discuss with the probationer on any alternative plan as appropriate if it is found that the originally agreed plan is no longer suitable for the offender's rehabilitation.

8. If it is proved to the satisfaction of the magistrate's court before which the concerned probationer has failed to comply with any of the requirements of the probation order, the court may, without prejudice to the continuance of the probation order, caution him/her or impose on him/her a fine not exceeding \$500, or may deal with the probationer for the original offence (s.5 (2) of the Probation of Offenders Ordinance, Cap. 298).