

**Drug Dependent Persons Treatment and
Rehabilitation Centres (Licensing) Bill
Protection of information of inmates in
drug treatment centre in overseas laws**

At the Bills Committee meeting on 18 December 2000, Members requested information on overseas practices in protecting information of inmates in drug treatment and rehabilitation centres. The Administration has researched into the legislation relevant to licensing of drug treatment and rehabilitation centres in the United Kingdom, Australia and the United States. The practices of these countries are set out below.

The United Kingdom

2. According to the UK Registered Homes Act 1984 (the 1984 Act), any establishment which provides or is intended to provide whether for reward or not, residential accommodation with both board and personal care for persons in need of personal care by reasons of, among other types, past or present dependence on drugs, needs to be registered under the Act.

3. According to section 17 of the 1984 Act, any person authorised in that behalf by the Secretary of State may at all times enter and inspect any premises which is used, or which that person has reasonable cause to believe to be used, for the purposes of a residential care home. The section also stipulates that any person authorised in that behalf by a registration authority may at all times enter and inspect any premises in area of the authority which are used, or which that person has reasonable cause to believe to be used, for those purposes. The powers of inspection conferred by the section include power to inspect any records required to be kept in accordance with regulations under the 1984 Act.

4. According to regulation 18 of the Residential Care Homes Regulations 1984 (the 1984 Regulations), the registration authority may inspect any home on such occasions and at such intervals as it may decide

but shall in any case do so not less than once in every period of 12 months. The person registered shall furnish to any authorized person such information relating to the conduct of the home as the person may reasonably require. According to Schedule 2 of the 1984 Regulations, the records kept by a home include a daily register of all residents which shall, where applicable, include in respect of each resident, particulars such as the name, address, date of birth and marital status of the resident and whether he is the subject of any court order or other persons. Other information such as name, address and telephone number of the residents' next of kin or of any person authorised to act on his behalf are also required to be kept. The Registered Homes Act 1984 and the Residential Care Homes Regulations, however, do not stipulate any provisions expressly provide for protection of confidentiality of residents' information.

5. As in the case of Hong Kong, confidentiality of personal data is generally protected under the Data Protection Act 1998. According to Principle 2 of Schedule 1 to the Data Protection Act, personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes. In determining whether any disclosure of personal data is compatible with the purpose for which the data were obtained, regard is to be had to the purpose or purposes for which the personal data are intended to be processed by any person to whom they are disclosed.

6. Further, according to Principle 3, personal data shall be adequate, relevant and not excessive in relation to the purpose for which they are processed. There are a number of exemption to these non-disclosure provisions, e.g. personal data are exempt from the non-disclosure provisions where the disclosure is required by or under any enactment, by any rule of law or by the order of a court; where the disclosure is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or for the purpose of obtaining legal advice, or is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

Australia

7. According to section 149 of the Drugs of Dependence Act 1989 (the 1989 Act), a person who proposes to conduct a treatment centre may apply to the Minister for Health and Community Care for approval.

8. Section 179 of the 1989 Act stipulates that a treatment centre inspector appointed by the Minister may at any reasonable hour of the day or night, with such assistance and by such force as is necessary and reasonable, enter the premises of an approved treatment centre, and may –

- (a) inspect the premises and any facilities provided at, or equipment used at, the premises for, or in connection with, the provision of treatment or accommodation at the centre;
- (b) inspect any prescribed book, record, or document kept on the premises relating to such treatment or accommodation, or otherwise relating to the conduct of the centre in relation to patients referred to the centre;
- (c) require the occupier of the premises to produce any prescribed book, record or document, or to give to the inspector any prescribed information in his or her possession relating to such treatment or accommodation or otherwise relating to the conduct of the centre in relation to such patients; for the purpose of ensuring that there are no grounds for cancellation of the centre's approval.

9. Section 201 of the 1989 Act provides for confidentiality of information obtained by a treatment centre inspector. According to this section, a treatment centre inspector, either directly or indirectly, except in the exercise of a power or performance of a duty under the 1989 Act, should not make a record of, or divulge or communicate to any person, any information acquired by him concerning a manufacturing or trade process or the affairs of another person; or produce to any person a document acquired by him; by reason of the exercise of those powers or the performance of those duties. The penalty of breaching this provision is a fine of AU\$5,000 or imprisonment for 2 years, or both.

10. However, there are exemptions to this section. It is stipulated in the same section that nothing in the section applies in relation to the giving of information: –

- (a) to a treatment assessment panel;
- (b) about a person where the giving of the information is necessary to remove a threat to the life or health of the person;
- (c) to a police officer in answer to a lawful request by the police officer while acting in the course of his or her duty;
- (d) to a court, by way of the production of a document or otherwise, in accordance with a subpoena; or
- (e) to a person, relating to the personal affairs of the person requesting the information.

The United States

11. In the State of Texas, the U.S.A., the Texas Commission on Alcohol and Drug Abuse (the Commission) is responsible for the licensing of treatment facilities for alcoholics and drug addicts under the Health and Safe Code (the Code). The Commission shall only license treatment facilities in a manner consistent with Texas law and federal law, and rules including the licensing standards in the Code. Measures are adopted by the Commission to protect the rights of individuals receiving service from a treatment facility and to maintain the confidentiality of client records amongst others.

12. Under the Code, the Commission may without notice enter into the premises of a treatment facility to conduct an inspection or investigation when necessary. The treatment facility is requested to establish a record-keeping system to meet local and federal laws regarding AIDS- and HIV-related information to facilitate the delivery of coordinated care. The treatment facility is requested to implement written procedures for protecting and releasing client and applicant information that conform to federal and Texas confidentiality laws and regulations, including Part 2 of Title 42 of the Code of Federal Regulations (the Regulations).

13. Title 42 of the United States Codes (U.S.C.), which forms part

of the US federal confidentiality laws, provides, amongst others, that no record should be disclosed unless with the prior written consent of the patient concerned or an appropriate court order is granted after application showing good cause therefor. It also provides that in assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship and to the treatment services. Title 42 of the U.S.C. further provides that no such record may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient except as authorized by a court order.

14. Apart from the above, the Regulations provide that a court order authorizing the disclosure or use of patient records to criminally or administratively investigate or prosecute a programme or the person holding the records may be applied. The application for such order must use a fictitious name to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny or the patient has given a written consent. There is also a mechanism under which, upon the implementation of the court order, any relevant persons may seek revocation of or amendment to the court order, limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the court order.

Security Bureau
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