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**Report of the Bills Committee on Drug Dependent Persons
Treatment and Rehabilitation Centres (Licensing) Bill**

Purpose

This paper reports on the deliberations of the Bill Committee on Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill.

Background

2. In 1997, an inter-departmental working group was established to review the existing drug treatment and rehabilitation policy and the Drug Addicts Treatment and Rehabilitation Ordinance (Cap. 326). Only two treatment centres operated by the Society for the Aid and Rehabilitation of Drug Abusers are declared Addiction Treatment Centres to which the provisions of the Ordinance apply. At present these two centres no longer operate on a detention basis and instead, provide voluntary residential drug treatment and rehabilitation services which are essentially the same as those provided by other drug treatment and rehabilitation agencies not covered by the Ordinance.

3. As there is no control mechanism governing the operation of the other existing voluntary drug treatment and rehabilitation centres, their service standard and environment vary. At present there are about 13 agencies operating facilities in some 40 different locations, some of which are highly susceptible to structural, fire and environmental health hazards. In view of this, Government considers that the Ordinance should be repealed and a new ordinance enacted to provide for a licensing scheme for voluntary residential drug treatment and rehabilitation centres in order to protect the well-being of persons undergoing treatment in these centres.

The Bill

4. The Bill seeks to establish a licensing scheme for treatment centres providing residential accommodation for the treatment and rehabilitation of drug dependent persons who undergo such treatment and rehabilitation voluntarily.

The Bills Committee

5. The House Committee agreed at its meeting on 3 November 2000 to form a Bills Committee to study the Bill. The membership of the Bills Committee is in **Appendix I**.

6. Under the chairmanship of Hon Cyd HO, the Bills Committee held nine meetings with the Administration and made a visit to two drug treatment and rehabilitation centres (centres). The Bills Committee met representatives of the Hong Kong Council of Social Service and 12 agencies operating such centres at its second meeting. A list of the organisations represented at the meeting is in **Appendix II**.

Deliberations of the Bills Committee

7. The main deliberations of the Bills Committee are summarised in the following paragraphs.

Security of centres

8. Some agencies share the view that the retention of certain existing powers given to a drug treatment centre under regulations 7, 8, 10 and 11 of the Drug Addicts Treatment and Rehabilitation Regulations is necessary to ensure that centres are free from drug and any undesirable external influence. The Administration has pointed out that the Regulations are only applicable to two Addiction Treatment Centres declared under the Declaration of Addiction Treatment Centre (Consolidation) Order. The Regulations were made on the basis that the declared centres are operated on a detention basis. Since all of these centres are now operating on a voluntary basis, there is no need for them to retain such powers. Furthermore, regulations 8 and 10 may contravene the Basic Law and the International Covenant on Civil and Political Rights using today's standards.

9. To address the concern of the agencies, the Social Welfare Department (SWD) 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 to achieve the same purpose. If such rules may affect a resident's rights, the centre should explain to him and obtain his consent prior to enforcing such rules.

10. Members are concerned whether a drug dependent person who is directed to undergo treatment as a term of his probation order has any real choice in the matter. In response to members' request, the Administration has provided information on the process that an offender has to go through before and after a probation order is issued. Members note that under the Probation of Offenders

Ordinance (Cap. 298), the Court is required to explain to the offender the content of the proposed probation order and obtain his agreement before making the order. If an offender refuses to be placed on probation, the Court has other sentencing options which are not necessarily worse alternatives for the offender. Therefore the offender cannot be considered as having no choice but to accept a probation order. If an offender is required to undergo a drug treatment programme under a probation order but refuses to signify agreement to the rules of the centre upon admission or finds it not suitable after admission, he can discuss with the probation officer to work out other alternatives.

11. The Bills Committee has sought the views of the Hong Kong Bar Association and the Law Society of Hong Kong on the proposed arrangement in paragraph 9 above and is satisfied that it is in order.

Commencement date of the Bill

12. Under clause 1(2) of the Bill, the commencement date of the Ordinance will be on a day to be appointed by the Secretary for Security by notice published in the Gazette. Members have asked the Administration to consider a suitable commencement date which will allow sufficient time for centres to conduct the upgrading works and not to declare the commencement of the Ordinance until the centres are ready.

13. The Administration has explained that in considering a commencement date, it will take into account the readiness of the centres to be affected, the certificate of exemption mechanism as outlined in paragraphs 15 to 17 below and the staffing of the Licensing Office of the SWD. The Administration does not consider it desirable that the Ordinance should commence only after all existing centres have complied with the licensing requirements. Should this be the case, during the period of time before the Ordinance comes into operation, centres are not required to co-operate with the SWD and improve their safety and environmental standards. Some centres may lack motivation to improve their premises, which would in turn undermine the objectives of the Ordinance. As centres will not be obliged to come forward to the SWD for a certificate of exemption, the Government may lack the necessary information for providing advice and assistance to these centres in complying with the licensing requirements. Moreover, some new centres may be established before the Ordinance comes into operation and the Administration considers it most desirable and more cost-effective to require these new centres to comply with the licensing conditions on the date they commence operation.

14. A member has proposed to defer the commencement of the offence/penalty provisions to a date later than the commencement date of the Ordinance. The Administration has pointed out that since there would be no sanction against non-compliance with the Ordinance, the proposal would have the same effect as delaying the commencement of the entire Ordinance, which is undesirable for the reasons given in paragraph 13 above.

Certificate of exemption

15. Under clause 8(1) of the Bill, a person who operates a treatment centre before the commencement of the Bill may apply for a certificate of exemption in respect of the centre. The certificate will last for a year and can be renewed on application.

16. The Administration proposes an exemption period of four years for centres subvented by Government, and a further four years for centres which are not subvented by Government. Members note that prior to the introduction of the Bill, the Administration has consulted existing drug treatment organisations on the proposed arrangements and they have generally accepted the proposals.

17. The Administration has pointed out that the exemption period is not expressly stated in the Bill so as to allow more flexibility to cater for centres which may, with good reasons, require a longer time to bring their premises up to standard. Through the certificate of exemption mechanism, the SWD will be able to monitor the progress made by centres in moving towards fulfilment of the licensing requirements.

Resource assistance for centres to comply with requirements of the Bill

18. Members note that the conditions of the premises of the existing centres vary. While some may only require minor modifications, some may have to be demolished and reconstructed. Members are concerned whether sufficient assistance will be provided to these centres to help them comply with the licensing requirements. To understand the financial implications involved, members have requested the Administration to provide information on the estimated costs and funding for the upgrading works.

19. The Administration has informed members that according to an initial estimate made by the SWD, around \$104 million is required for centres to upgrade their building and fire safety standards. The funding need will spread over a period of eight years, but will mostly fall on the initial four to six years. The Administration has assured members that it will provide assistance to the centres in various ways. In regard to land, support has been sought from the Government Property Agency and the Lands Department in identifying sites for centres in need of new land for reprovisioning their premises. In respect of financial assistance, the Administration has obtained the support of a number of charitable funds, including the Lotteries Fund and the Beat Drugs Fund, in giving priority consideration to applications by centres which will conduct upgrading or construction works. For centres with difficulties in accepting grants from the Lotteries Fund due to conflict with the Christian faith, they can either seek exemption from making acknowledgement to the Fund or apply for grants from the Beat Drugs Fund and other charitable funds not derived from the betting business.

Protection of personal data of persons undergoing treatment

20. When the licensing scheme is implemented, centres will be required to keep a simple register of residents' information, such as their names, identity card numbers, addresses, date of admission and contact details of at least one relative or contact person. The Bills Committee has considered in detail how such personal information will be protected under the licensing scheme.

21. Clause 23(1) of the Bill provides that any statement or admission made by a person seeking treatment or rehabilitation at a centre shall be inadmissible as evidence in any proceedings against him under the Dangerous Drugs Ordinance (Cap. 134). Members note that based on the advice of the Privacy Commissioner for Personal Data, the Administration has added a sub-clause (2) to provide that any information obtained in the course of or as a result of the production or removal of any book, document or other article from a centre shall be inadmissible as evidence against any person who is undergoing or has undergone treatment or rehabilitation in a centre in any proceedings under the Dangerous Drugs Ordinance.

22. The Administration has pointed out that in addition to the protection under the Bill, there is also protection under the Personal Data (Privacy) Ordinance (Cap. 486). According to principle 1 in Schedule 1 to the Ordinance, personal data shall not be collected unless the collection of data is necessary for or directly related to that purpose and the data should only be adequate but not excessive in relation to that purpose. The Director of Social Welfare (DSW) has to follow this principle strictly and in case a person considers that the information sought by DSW is in excess of the purpose of the Bill, the person can always resort to Cap. 486 for remedy. Moreover, under principle 3 of Cap. 486, personal data shall not be used for any purpose other than the purpose for which the data were to be used at the time of the collection of the data. It is therefore a contravention of Cap. 486 if residents' information is used other than for the purpose for which it is held.

Prosecution authority for offences under the Bill

23. Members are concerned about clauses 18(5) and 18(6) of the Bill which require DSW to deliver to the Police any book, document or other article removed from a centre for the purposes of prosecution lest residents' privacy will be compromised and their rehabilitation process be disrupted due to the need to assist the Police in certain investigations. They have therefore requested the Administration to consider letting DSW take up all matters relating to the prosecution of any offence under the Bill as in their view, such an arrangement would afford greater protection of the personal information of the residents concerned. At present officers of the SWD authorised by the Secretary for Justice or officers of the Department of Justice are conducting the prosecution of offences under the Child Care Services Ordinance (Cap. 243) and the Residential

Care Homes (Elderly Persons) Ordinance (Cap. 459). The Police are not involved in the prosecution process in both cases.

24. The Administration considers the proposal of the SWD assuming the role of prosecutor for offences under the Bill viable, given that technical constraints including resource and training can be resolved. It will therefore amend clauses 18(5) and 18(6) to delete the provision in respect of passing information to the Police. The new clauses 18(5) and 18(6) require DSW to return to the centres the documents obtained within six months if no notice of refusal or cancellation is given under clause 15(1) or no prosecution is instituted.

Appeals against decisions of the Director

25. The Bills Committee has considered in detail the appeal mechanism provided under clause 24 of the Bill. Under clause 24(3), the effect of a decision of the Director that is appealed against under subsection (1) shall be suspended as from the day on which the appeal is made until such appeal is disposed of, withdrawn or abandoned unless -

- (a) such suspension would, in the opinion of the Director, be contrary to the public interest; and
- (b) the notice of the decision contains a statement to that effect.

Members have expressed concern about the meaning and scope of public interest and the possible use of it to override the suspension of DSW's decision under the appeal procedure.

26. The Administration has pointed out that section 12(2) of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) also contains a similar provision. Although Cap. 459 has been put into full implementation since June 1996, DSW has not received any appeal lodged under section 12 so far and has not invoked section 12(2). Nevertheless, the Administration is of the view that section 12(2) of Cap. 459, and similarly clause 24(3) of the Bill, are still required because there may be some exceptional situations that warrant invoking such power. In such a situation, it may serve the public interest better if the operation of the centre is suspended as soon as possible. The Administration stresses that while the interest of the persons operating drug treatment and rehabilitation centres should be taken care of, the interest of the public at large should also be safeguarded.

27. A member has suggested that DSW should seek an injunction instead. However, the Administration considers that it would not be an effective way to achieve the objective of protecting public interest in the rare circumstances under which DSW has to invoke clause 24(3). In the Administration's view, it would be a poor decision to require DSW to seek an injunction when he immediately wants to stop a centre from operating. The Administration has further

explained that the affected centres can seek judicial review on DSW's decision should clause 24(3) be invoked. Moreover, the invocation of clause 24(3) will not affect the on-going process of the appeal sought by the centre concerned. Further, clause 24(3) is needed to protect the well-being of drug dependent persons undergoing treatment and the interest of the community at large. The clause allows DSW to react promptly to urgent scenarios and will only be invoked most exceptionally where objective circumstances so truly justify.

28. Following further discussion, members agree that DSW should state clearly the ground on which his opinion is based in the notice of his decision. The Administration will move an amendment to effect this change.

Committee Stage amendments

29. The Committee Stage amendments to be moved by the Administration are in **Appendix III**. They include a new consequential amendment to section 49D of the Dangerous Drugs Ordinance (Cap. 134) to allow drug treatment centres to provide information to DSW in accordance with the Bill. The proposed amendments are supported by the Bills Committee.

Consultation with the House Committee

30. The Bills Committee consulted the House Committee on 23 March 2001 and obtained its support for the Second Reading debate on the Bill to be resumed on 25 April 2001.

Legislative Council Secretariat

30 March 2001

Appendix I

**Bills Committee on Drug Dependent Persons Treatment
and Rehabilitation Centres (Licensing) Bill**

Membership list

| | |
|----------------------|---|
| Chairman | Hon Cyd HO Sau-lan |
| Members | Hon James TO Kun-sun |
| | Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP |
| | Hon Andrew WONG Wang-fat, JP |
| | 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 |
| | (Total : 9 Members) |
| Clerk | Ms Doris CHAN |
| Legal Adviser | Mr LEE Yu-sung |
| Date | 1 March 2001 |

Appendix II

Bills Committee on Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill

Organisations represented at the Bills Committee meeting on 29 November 2000

- Hong Kong Council of Social Service
- Wu Oi Christian Centre
- Glorious Praise Fellowship (HK) Limited
- Barnabas Charitable Service Association
- Caritas Wong Yiu Nam Centre
- Drug Addict Counselling and Rehabilitation Services
- SER Foundation for Humanitarian Aid
- St. Stephen's Society
- Christian Zheng Sheng Association Ltd
- Ling Oi Youth Centre
- Perfect Fellowship
- Society for the Aid and Rehabilitation of Drug Abusers
- The Christian New Being Fellowship Ltd

suspected offence to which they relate within 6 months after the day of their removal; or

- (b) subsection (1)(d)(ii) and no notice is given to the specified operator under section 15(1) within 6 months after the day of their removal,

the Director or public officer shall return or arrange for the return of such book, document or article to the specified operator or the person from whom they were so removed (as the case may be)."

24(3)(b) By deleting "contains a statement to that effect." and substituting -

"-

- (i) contains a statement to that effect; and
- (ii) states the ground on which the Director's opinion is based."

30(2)(b)(i) By deleting "為止" and substituting "之時".

New By adding immediately after the subheading of

"Consequential Amendments" -

Dangerous Drugs Ordinance

31A. Prohibition against disclosure of records

Section 49D(2) of the Dangerous Drugs Ordinance (Cap. 134) is amended -

(a) in paragraph (f), by repealing the full stop and substituting a semicolon;

(b) by adding -

"(g) to the Director of Social Welfare or any public officer under section 18 of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (of 2001)."."

Schedule By deleting "2. Ketamine".