

**Administration's Response to Issues and Requests raised by
the Subcommittee on Rehabilitation Centres (RC) Regulation
on 23 and 24 October 2001**

Section 3 – Administration of RCs

Legal advice has confirmed that it is necessary to empower the Commissioner of Correctional Services to appoint persons to serve RCs by s3(2)(c). Inclusion of this provision is in line with the arrangement in existing legislative schemes for other correctional programmes, e.g. the Detention Centre (DC), Training Centre (TC) and Drug Addiction Treatment Centres (DATC) programmes. Given the provisions of ss3(2)(a) and (b), deleting s3(2)(c) might give rise to the argument that the Commissioner can only appoint a Superintendent and an Officer-in-charge for the service of an RC.

Section 7 – Classification

2. At present, all newly convicted persons, upon admission to a Correctional Services Department (CSD) programme to which he was sentenced, will appear before a board (comprising a senior CSD officer, a medical officer and representatives of the relevant units, such as the aftercare and education units) for the purpose of classification as required by the relevant law. Having considered all factors including the offender's age, criminal history, nature of offence, the risk he may pose to the community and criminal sophistication, the board will assign the offender to an institution of the programme which is considered most suitable for his or her custody.

3. Take the TC programme as an example. For male TC inmates, those aged between 14 and 17 are normally accommodated in Cape Collinson Correctional Institution (CCCI), and those aged 18 to 20 in Lai King Training Centre (LKTC). Special arrangements are in place for those with special needs. For example, those suffering from mentally deficiency with special learning needs are placed in CCCI regardless of their age, while those aged under 17 but assessed to have exceptional strong physique and likely influence on other inmates may be assigned to LKTC. Only one female TC has been established because of the lesser demand and all female inmates are housed in the Tai Tam Gap Correctional Institution.

4. The purpose of the classification requirement for the RC programme is to ensure that CSD would assign all inmates to the most suitable RC. At present two RCs (one for male and one for female young offenders) has been planned for each of the two stages (see s3 of the principal Ordinance). The legislative provision also caters for the possible establishment of more RCs to meet the varied needs of offenders as the programme further develops.

5. The term “training” used in s7 also appears in the long title of the principal Ordinance. It is not a proper term reserved exclusively for TCs. In statutory interpretation the term will be given its natural meaning in context.

Section 8 – Grades

6. The spirit of the grading system is to motivate inmates to exert efforts to make progress in the RC programme for their promotion to a higher grade and eventual release. CSD is working on the grading system to be used in the RC programme and the necessary details. Taking the current TC programme as an example, there is a three-tier grading system comprising the “Basic”, “Intermediate” and “Advanced” grades. All TC inmates are assigned to the Basic Grade on admission. Promotion to higher grades is considered on the basis of their progress made in the programme. Inmates in different grades are entrusted with different responsibility, degree of autonomy and privileges. For example, only inmates of the Advanced Grade are allowed to work outside the institution and inmates of higher grades are entitled to a higher rate of earning and other privileges such as more activities and less supervision. Starting from the Intermediate Grade, inmates may be selected to attend courses outside the institution, such as Outward Bound courses. Inmates of the Advanced Grade may be granted leave of absence to facilitate job/school interviews and family reunion. They may also be considered for participation in events/activities outside Hong Kong.

Section 10 – Training

7. The current drafting of ss10(1) and (2) is in order. Its effect is as follows -

- (a) S10(1) imposes a general obligation to work. An offender must work whether he likes it or not. This is consistent with the

objective of the RC programme to rehabilitate offenders for reintegration into society. The qualification “unless excused by a medical officer on medical grounds” caters for cases such as sickness or injury.

- (b) S.10(2) on the other hand seeks to protect the offender in restricting the type of work that an offender may be required to do. The phrase “description of work” reflects this meaning. S10(2) requires medical certification for the offender’s fitness for the work. In practice, the Medical Officer conducts medical examination on each offender on his admission to RC (see s5) and certifies him fit for a certain type/range of work. Such certification will be regularly reviewed and revised as necessary.
- (c) “Excuse” in s10(1) is different from certification in s10(2). The former is for releasing the offender from the duty to work; the latter certifying his suitability for a particular type of work. For example, the Medical Officer may certify an offender physically fit for cleaning work but not moving bulk material, the latter being physically more demanding.
- (d) S10(2) does not conflict with s10(1) because in practice, any offender admitted will be certified as to the type of work he is fit for. Operating together, ss10(1) & (2) mean that an offender must do a certified type of work unless excused for sickness or injury and at the same time he cannot be compelled to do other work for which the Medical Officer has not certified him fit.

The same legislative scheme can be found in r38 of the Prison Rules (Cap. 234 sub. leg.), r9 of the DC Regulations, and r12 of the TC Regulations.

Section 11 – Religious services and instruction

8. All persons under CSD’s custody are free to attend evangelic meetings held inside CSD institutions. For those who are unable to join the main population due to their own special circumstances, such as for medical or security reasons, special arrangements will be made with the concerned agencies to make special services available to them.

9. In recent years, CSD has come across ample examples in which prisoners have used religious reasons to claim advantages and this has become a growing concern. As far as the legislative provisions are concerned, we consider it appropriate and necessary to follow similar provisions in r11 of DC Regulations and r11 of DATC Regulations (Cap. 244 sub. leg.) and adopt s11 in the RC Regulation to strike a balance between protection of religious freedom and maintenance of prison discipline. It should be noted that religious services in s11 may cover ceremonies of religious worships, prayers or other rituals.

Section 12 and 13 – Board of Review

10. We have revisited the drafting of ss12 and 13 and consider that the present drafting adequately reflects our policy intent with no latent legal problems.

11. Regarding the term “Board of Review”, we consider that the Chinese rendition “覆檢委員會” serves our intended meaning and is in order. The function of the Board is to review the circumstances of an offender and his progress from time to time.

Section 14 – Supervision order

12. As suggested by the Subcommittee, we would move a motion to amend the section (as shown at Annex) to put the following administrative arrangement on a statutory footing –

(a) The Officer-in-charge shall serve the supervision order on the offender upon his discharge from a RC; and

(b) Upon variation of a supervision order, the revised order shall be served on the supervisee and its content shall be read and explained to the supervisee by the Officer-in-charge.

13. The legal responsibility of abiding by the conditions of supervision rests with the supervisee. The Officer-in-charge of RC is obliged to serve the supervision order on the supervisee, read and explain the content to him. It could cause some practical difficulties to require the guardians’ presence in every case when the supervision order is served on the supervisee upon his discharge. Sometimes, it might simply not be easy to find a mutually

convenient time for the guardians and the Officer-in-charge to complete such a procedural requirement and the discharge of the offender might be delayed. That said, in reality the guardians are in the majority of cases made aware of the supervision conditions as CSD has been putting a lot of emphasis on family support and the supervision conditions are amongst the issues on which CSD seeks to work closely with the guardians.

14. Procedurally, in serving and explaining a supervision order to a supervisee, the Officer-in-charge will sign on the back of the order and the supervisee will then sign an acknowledge receipt. Should there be any doubt as to whether the order has been served, the burden of proof that a supervision order has been served rests with the CSD officer concerned.

Section 16 – Procedures relating to drug tests

15. We confirm that a copy of the acknowledgement of notice to supply urine specimen for testing (Form 8 of Schedule 3) will be provided to the offender after his signature. The burden of proof that a notice had been duly served on the supervisee rests with the CSD officer concerned, not the supervisee.

Section 17 – Leave of absence

16. In view of the relatively short detention period for the RC programme (a maximum of nine months), we consider a maximum five-day period adequate for the purpose of the leave, e.g. to facilitate family reunion, job/school interviews and participation in residential activities/courses outside RC. The same provision for leave has also been made for the TC programme (r18 of TC Regulations).

Section 20 – Report

17. The phrase “dealt with” has been used in similar context in r57 of the Prison Rules and r21 of the TC Regulation. The intent is for RC inmates to have the same procedural safeguard when reported for disciplinary offences, i.e. to ensure that any report against an inmates will only be handle by the Superintendent (who is the most senior officer appointed by the Commissioner for administering an RC) and that there will not be undue handling by other unauthorized personnel. In statutory interpretation, a change in the expression

might suggest a change in policy or practice.

18. On the possible concerns that a Superintendent might be challenged for non-compliance with s20 if he delegated the minor work, e.g. typing and filing, to his subordinates, we believe that, in such an unlikely event, a reasonable court in interpreting the legislative provisions will have regard to the intent of the law, namely to ensure that justice will be done in dealing with a report of disciplinary offence. The present drafting is in order and cannot be interpreted to mean prohibition of delegation of, say, typing or filing work.

Schedule 1 – Conditions of a supervision order

19. In formulating the extent of the possible restrictions on association and movement which may be imposed on supervisees, we have had regard to the nature and purpose of the RC programme and the characteristics of the inmates concerned. The RC supervisees are not sophisticated in criminal disposition, and their offences are usually not very serious in nature and hence their criminal connections are usually not deeply-rooted. The scope of restrictions now contained in Schedule 1 provides for sufficient control over and monitoring of the behaviour of the supervisees on one hand while respecting their personal freedom and encouraging them to take independent responsibility of their own activities on the other.

20. In CSD's professional viewpoint, the degree of restrictions on association and movement now made in Schedule 1 which may be imposed on young offenders to be rehabilitated under the RC programme are already adequate for the purpose of the programme, and indeed would only be invoked in warranted cases.

Assistance to inmates with problematic family background

21. From time to time, there are young offenders whose family members are all "undesirable" characters such as all involving in triad/criminal activities. The main issue to be dealt with in such cases concerns their dwelling places on release from CSD institution. While CSD does not have any power to remove any offender from his lawful guardians, CSD officers would generally help by exploring the following options for the offender but any arrangement can only be made with consent from both the offender and his guardians –

- (a) a proper accommodation offered by a willing and suitable relative of the offender;
- (b) a CSD half-way house (for a period of transition);
- (c) a half-way house/hostel run by Non-Government Organisations, for example, Society for the Rehabilitation of Offenders, Hong Kong, Caritas (Hong Kong) and Hong Kong Christian Kun Sun Association Limited, etc.; or
- (d) an accommodation offered by an employer, such as staff quarters provided by some restaurant/canteen owners.

22. In some special cases where the circumstances fall within the scope of the Protection of Children and Juveniles Ordinance (Cap. 213), CSD can initiate action accordingly.

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INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation and
General Clauses Ordinance (Cap. 1))

REHABILITATION CENTRES REGULATION

RESOLVED that the Rehabilitation Centres Regulation, published in the Gazette as Legal Notice No. 195 of 2001 and laid on the table of the Legislative Council on 10 October 2001, be amended by repealing section 14 and substituting -

"14. Supervision order

(1) Before the release of an offender from a rehabilitation centre, the Officer-in-charge shall read and explain to him the supervision order and give to him a copy of the order.

(2) Where a condition of a supervision order against an offender is varied, the variation may

take effect only if the Officer-in-charge has read and explained to him the varied order and given to him a copy of the order."