

**Drug Dependent Persons Treatment
and Rehabilitation Centres (Licensing) Ordinance (10 of 2001)
(Commencement) Notice 2002**

Purpose

This note outlines the issues discussed at the two meetings of the Subcommittee formed to consider the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (10 of 2001)(Commencement) Notice 2002 and the Administration's responses to these issues. It also explains the Administration's position on the date of commencement of the licensing scheme for drug dependent persons treatment and rehabilitation centres.

Background

2. The Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill was introduced into the Legislative Council on 1 November 2000. The Bill aimed to introduce a licensing scheme for the drug treatment and rehabilitation centres with a view to upgrading their service and facilities and protecting the well-being of persons undergoing treatment in these centres. After scrutiny by a Bills Committee (which held nine meetings to examine the provisions in the Bill), the Bill was passed on 25 April 2001 as the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (10 of 2001)(the Ordinance). After consultation with all parties concerned including the drug treatment and rehabilitation centres, 1 April 2002 has been designated as the commencement date of the Ordinance.

3. After the commencement notice made under section 1(2) of the Ordinance was tabled in the Legislative Council for negative vetting on 6 February 2002, a subcommittee to consider the notice was formed, following media report that two of the centres were concerned that due to land use issue, they might not be able to obtain the required licence to continue their operation. The Subcommittee held two meetings on 4 and 5 March 2002.

4. At the meeting on 4 March 2002, 14 deputations from the centres spoke on, among others, planning and land issues related to the

licensing scheme provided under the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance. The Subcommittee held further discussion on 5 March 2002, during which Members sought clarifications on a number of issues relating to the licensing scheme from the Administration. A summary of the Administration's response on the planning and related issues raised, clarifications sought and assistance rendered or will be rendered to the centres to be affected by the licensing scheme are set out in the following paragraphs. As a matter of fact, many of the issues raised at the meeting on 4 March 2002 are not new. They had been outlined and rehearsed at the consultation forum held by the Bills Committee.

Town planning issues

5.. In land use terms, drug treatment and rehabilitation centres are treated as a kind of 'Social Welfare Facility' (SWF). The development of SWF on areas covered by statutory plan would need to comply with the provision of the plan, irrespective of the existence of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (the Ordinance). On the basis of existing information, 38 existing drug treatment and rehabilitation centres will be affected by the licensing scheme. These centres can be classified into five categories as set out below :-

Status	No. of Centres	Remarks
Existing Use Tolerated under the Town Planning Ordinance	5	No planning action necessary.
Falling Within Area Not Covered by Statutory Plan	8	No planning action necessary
Comply With the Provision of Statutory Plans	17	No planning action necessary
Require S.16 Planning Application	4*	Planning permission application required (time for processing :

		within 2 months)
Require Amendment to Statutory Plan	4*	Centres fall within “Green Belt” zone. Rezoning application required (time for processing : 3 – 12 months)
Total	38	

(* Tentative figures based on latest assessment by Planning Department)

6. As it can be noted above, eight out of 38 centres are assessed as requiring applications for compliance with the Town Planning Ordinance. S.16 application will be processed by the Planning Department (PlanD) for submission to the Town Planning Board (TPB) for consideration within two months of receipt. In processing such applications, existing uses on the site and relevant Government departments’ comments will be taken into account by the TPB and each case will be considered on its own merits. To quote an example, the Christian Zheng Sheng Association Treatment Centre at Ha Keng, Lantau, submitted such an application on 24 November 1997 and the application was approved on 16 January 1998.

7. Moreover, there is no restriction on who can submit a planning application and there is no absolute need to appoint a professional town planner or authorized person to prepare the submission. Indeed, as already stated in the Guidance Notes to S.16 Application, applicants are welcome to seek advice from the respective District Planning Office (DPO) to identify and resolve key issues prior to the submission of an application. The Social Welfare Department (SWD) which is the licensing authority under the Ordinance, is already in the process of notifying the respective DPOs to assist in this process. The SWD will also coordinate with the relevant agencies in assisting operators and relaying concerns on technical matters to the agencies concerned.

8. As regards amendment to statutory plans, it is the PlanD’s pledge to submit such requests to the TPB for consideration within three months of receipt. It is worth noting that as part of an on-going review of the Master Schedule of Notes of Statutory Plans, the PlanD has already taken

initiative to recommend to the TPB to amend the Notes of the “Green Belt” zone to incorporate ‘SWF’ as a Column 2 use. The current intention is to submit the proposal to the TPB for consideration in March 2002. Should the proposal be accepted by the TPB, follow-up actions will be taken to gazette the amendment plans in accordance with the provision of the Town Planning Ordinance. The four centres which are assessed to require to apply for rezoning will then need to apply for S. 16 permission only. This will greatly simplify the procedures for the four centres, at the same time minimizing unnecessary costs and time in preparing the rezoning applications.

Land

9. The issue of land was explained at the Bills Committee several times and on each occasion, the Administration had pledged to accord full assistance to centres which had a genuine need for land to relocate or make good existing irregularities.

10. In fact, for the most part, the Lands Department have adopted a generally relaxed approach towards drug treatment and rehabilitation centres. Most of these centres are in fairly remote locations and do not cause significant land control or lease enforcement problems. It is recognized, however, that over time, irregularities have occurred such as occupation of government land without consent, erection of unauthorized structures and non-compliance with government lease conditions. Although the circumstances of each case vary, the nature of the use of individual premises and current work priorities militate against stepping-up control or enforcement action.

11. In case regularisation is considered desirable on submission of detailed documents from the centres concerned, land administration measures such as the granting of short-term tenancies (in case of government land) or short-term waivers (in case of private land), etc. could be implemented by District Lands Officers subject to consensus with the requirements of other government departments. The regularisation of existing occupation, illegal structures, etc. would depend on the circumstances surrounding each centre.

12. It is also worth noting that at present, at least five out of 14 non-government organizations (NGOs) are leasing from the Government Property Agency (GPA) government premises at nominal rent for use as rehabilitation

centres or half-way houses. As the sites for these premises are GIC sites, there should be no issue of land use restrictions affecting the NGOs' current uses. Although it has yet to be confirmed accurately whether these premises can technically be suitable or made suitable for the current uses to meet licensing requirements, GPA as landlord should have no objection in principle to a NGOs's proposal to make the premises suitable for licensing purpose. Should centres affected by the licensing scheme require to find properties for removal, GPA will assist as it does now provided that it has suitable surplus government accommodation.

Other assistance

Grace period and exemption

13. All affected centres will be given, under the scheme, a grace period of four to eight years to carry out the necessary improvements. During the grace period, centres can continue to operate by applying for a certificate of exemption from the licensing authority. Such exemption will normally be granted so long as the centre can demonstrate commitment and efforts in making improvements to comply with the licensing requirements.

14. It has to be stressed that the grace period is an administrative measure and as such it has certain flexibility. If required, and after taking into account the circumstances of the case involved, the grace period can be extended beyond four or eight years as the case may warrant. Furthermore, the scheme has a built-in appeal mechanism under which anyone aggrieved by the Director of Social Welfare's decision relating to, among others, the issue of a certificate of exemption may appeal to the Administrative Appeals Board (see section 24 of the Ordinance enclosed).

Coordination

15. The Narcotics Division of the Security Bureau is the lead bureau in the overall design of the scheme. In fact the Action Committee Against Narcotics (comprising mainly non-official members) and the Drug Liaison Committee (comprising representatives from all treatment and rehabilitation agencies) have all along been consulted in the formulation of policy on this issue. An inter-departmental working group was formed back in 1997 to work out details of the proposal and field visits to the centres had been arranged from time to time.

16. Since the passage of the Ordinance in April 2001, SWD has taken on the role of a co-ordinator and made active preparation for the scheme's implementation. After the establishment of a licensing office for the implementation of the Ordinance, SWD has carried out field visits, together with representatives of other departments, to the centres with a view to getting a better understanding of their concerns and to offer assistance in their applications. A series of seminars on the licensing requirements have already been arranged for centre operators. Following extensive consultations with parties concerned, SWD also issued a set of Code of Practice to all the centres in December 2001. A one-stop unit which provides information on the licensing requirements has also been set up in the Drug InfoCentre in the Queensway Government Offices to facilitate the centres to obtain the requisite licensing information.

17. Taking into account Members and centre representatives' views and to further improve co-ordination in implementing the scheme, an inter-departmental working group with representatives from all concerned departments will be established. Initially the working group can also invite representation from interested members of the Legislative Council, and representatives of the affected centres. The working group's task will be to review land use and licensing applications by the centres and to provide the latter with the necessary guidance and assistance on such applications. Meetings are expected to be frequent in the initial period following the establishment of the working group. After the implementation of the licensing scheme has commenced for some time, it is expected that the working group will meet periodically on a need basis.

Relaxation of other requirements

18. The Buildings Department and the Fire Services Department have both agreed to adopt a relaxed approach on requirements that drug treatment and rehabilitation centres have to comply with in relation to the issue of certificate of exemption. The Buildings Department has so far carried out inspections of 20 of the 38 centres. Their findings are that they have no in-principle objection to the issue of exemption certificate to these centres. As the rest of the centres are likely to be similar to those that have been inspected, no major problem is anticipated.

Funding assistance

19. The Narcotics Division has been in touch with Social Welfare Department on tapping the Lotteries Fund, the Hong Kong Jockey Club Charities Trust, the Chinese Permanent Cemeteries Fund and other charitable organisations on possible need for financial assistance from these centres. The Director of Social Welfare has indicated that she would make a plea and recommendation to the Lotteries Fund Advisory Committee for a grant for this purpose. The Beat Drugs Fund has also set up a special funding scheme in January this year (which will commence at the same time as the Ordinance) to provide assistance to those centres which encounter difficulties in seeking support from other Funds. Briefing session on the new funding scheme had been organised for the centre operators in January 2002. Consideration will be given to streamline the application procedures for works to be financially supported by different source of funding.

20. Regarding the centres' concern about the fund for hiring authorised persons to carry out the necessary inspection and estimates, under the Beat Drugs Fund, an applicant can elect to have the grant disbursed under the advance payment mode (vis-a-vis the reimbursement mode). Under the advance payment mode, payment can be made by the Fund to the authorised person direct, provided the claim and the amount involved have been properly verified. Under the Lotteries Fund, centres can make applications together with proposals for the intended improvement works.

Conclusion

21. The objective of introducing the licensing scheme is to provide a regulatory framework that is in line with present day requirements for voluntary residential drug treatment and rehabilitation centres, and to protect the well-being of persons undergoing treatment in these centres through improvement in service. All centres concerned agreed to this objective and many welcome the timely commencement of the Ordinance so as to enable upgrading works to start. Indeed, the scheme has in part been formulated on suggestion by some of the operators.

22. It needs to be emphasized that it is in the interest of those receiving treatment in these centres, as well as the community as a whole that the scheme be implemented as proposed. Unless and until the scheme is formally launched, applications for exemption certificate will not be made by

the operators, and until such applications have been received, the Government will not be in a position to carry out an accurate assessment of the situation and to devise appropriate measures to help the centres to solve their specific problems. Delaying the commencement of the Ordinance by several months will not help change the requirements these centres will need to comply with. The assistance that the Administration is rendering and will render to the centres as outlined in this paper already addresses the centres' concerns, as revealed in numerous previous consultations with such centres, and already represents the best efforts the Administration can make. We are, therefore, of the view that the licensing scheme should commence on 1 April 2002 as originally planned and agreed upon by all parties.

Narcotics Division,
Security Bureau
March 2002

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PART V

APPEAL

24. Appeals against decisions of Director

(1) A person who is aggrieved by a determination or decision of the Director made in respect of him under any of the following provisions may appeal to the Administrative Appeals Board -

- (a) section 6(2)(b) (refusing to issue a licence);
- (b) section 8(3)(b) (refusing to issue a certificate of exemption);
- (c) section 9(3)(b) (refusing to renew a licence or certificate of exemption);
- (d) section 14 (cancelling a licence or certificate of exemption).

(2) An appeal under subsection (1) shall be made within 21 days after the person aggrieved has received notice of the determination or decision.

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