

立法會
Legislative Council

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(These minutes have been
seen by the Administration)

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

**Minutes of meeting
held on Monday, 18 December 2000 at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members Present** : Hon Cyd HO Sau-lan (Chairman)
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, 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
- Members Absent** : Hon James TO Kun-sun
Hon Andrew WONG Wang-fat, JP
- Public Officers Attending** : Ms Mimi LEE
Principal Assistant Secretary for Security (Narcotics)
- Miss Christina CHONG
Assistant Secretary for Security (Narcotics)
- Miss Ann HON
Assistant Director of Social Welfare
- Mrs Lily NG
Senior Social Work Officer
- Ms Brenda LAU

Action

Social Work Officer

Ms Fanny IP

Senior Assistant Law Draftsman

Clerk in Attendance : Ms Doris CHAN
Chief Assistant Secretary (2) 4

Staff in Attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Ms Dora WAI

Senior Assistant Secretary (2) 4

I. Matters arising from the last meeting

Referring to the views expressed by the deputations at the last meeting on 29 November 2000, Mr Michael MAK opined that most of the existing drug treatment and rehabilitation centres were not operated in a professional manner. He considered that apart from fire and building safety, professional management was also of paramount importance in protecting the well-being of persons undergoing treatment in these centres. He did not support the granting of exemption to centres not complying with the licensing requirements, and recommended the Administration to provide proper guidance and training to help centres achieve the standards required by the Bill. The Chairman considered that the point raised by Mr MAK was controversial, and suggested to deal with the matter under a separate item at a later stage.

II. Meeting with the Administration

Comparing the Bill with related ordinances
(LC Paper No. CB(2)367/00-01(10))

2. Principal Assistant Secretary for Security (Narcotics) (PAS(N)) briefed the committee on the above paper which summarized the key areas of the three related ordinances and the Bill for easy comparison. The three ordinances were the Drug Addiction Treatment Centres Ordinance (Cap. 244); the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) and the Drug Addicts Treatment and Rehabilitation Ordinance (Cap. 326).

Action

3. PAS(N) stated that Cap. 244 dealt mainly with drug addiction treatment centres managed by the Correctional Services Department where treatment was provided on a compulsory basis for persons found guilty of minor criminal offences. Its objective was different from that of the Bill which was targeted to regulate voluntary residential treatment and rehabilitation centres, most of which were not currently governed by any existing legislation.

4. PAS(N) then pointed out that Cap. 165 was the ordinance with a longest history among the several ordinances cited. Since its enactment in 1936, major amendments had been introduced in 1966 to bring private hospitals under regulation. The ordinance required hospitals and nursing/maternity homes be registered with the Director of Health. As the ordinance was relatively old and outdated, the regulations contained therein were considered not suitable for regulation of voluntary residential treatment services.

5. As regards Cap. 326, PAS(N) said that as it was enacted 40 years ago, it was not applicable in today's society and would be repealed under clause 31 of the Bill. She explained that Cap. 326 provided for establishment of treatment centres which provided service on a detention basis whereas the Bill provided for establishment of voluntary drug treatment centres which would not have detention power. As the voluntary approach was found to be very effective in drug treatment, the Administration wished to give these centres more support by way of a licensing scheme introduced in the Bill. The Administration had no intention to interfere with the autonomy of these centres, and there had been consultations with the public and discussions with the affected agencies before drafting the Bill.

6. The Chairman recalled Mr Andrew WONG's concern raised at the first meeting whether there were overlaps between the Bill and Cap. 165. The Chairman further asked whether all centres operating on a voluntary basis did not use dangerous drugs for treatment.

7. PAS(N) explained that Cap. 165 was of a wider scope and more general nature. It not only dealt with drug treatment centres, but also hospitals and nursing/maternity homes. The present Bill was more specific with the definition of a treatment centre clearly spelt out in the Bill. In reply to the Chairman's question, PAS(N) said that a small number of centres used dangerous drugs for treatment, e.g. the Society for the Aid and Rehabilitation of Drug Abusers (SARDA). Although SARDA already had a licence under Cap. 165 for using dangerous drugs, it had to apply to the Social Welfare Department (SWD), the licensing authority, for another licence under the Bill. Although some centres might have to apply for two licences from two government departments in the future, the Administration would make it very clear that when dealing with applications under Cap. 165, the Department of Health (DH) would put its emphasis on aspects like medical facilities, specialist staff and storage of dangerous drugs whilst SWD, when dealing with applications under the Bill, would focus on the

Action

physical environment of the centres such as building and fire safety and implementation of the Code of Practice (the Code). PAS(N) said that there had been internal debate within the Government for over a year as to whether one or two licences should be required for such centres. After thorough discussion, it was considered that the present proposal was the best option. In reply to Dr LO Wing-lok's enquiry, PAS(N) confirmed that centres not using dangerous drugs were not required to apply for a licence from DH under Cap. 165. She added that centres in 20 different locations were only using Christian therapeutic drug treatment or other physical treatment and were therefore not required to apply for a licence under Cap. 165.

Comments on the Bill by the Privacy Commissioner for Personal Data and the Administration's response

(LC Paper No. CB(2)367/00-01(09))

8. PAS(N) reported that the Administration had consulted the Privacy Commissioner for Personal Data (the Commissioner) on the proposed legislation. The Administration had taken the Commissioner's comments on board and had revised clause 23 of the Bill to strengthen the protection of personal data of persons undergoing treatment in a treatment centre. Such data might contain information relating to current or previous drug-related activities of individuals which might result in prosecution if obtained by the Police. Clause 23 now provided that all such data obtained by the Police was inadmissible as evidence against residents of treatment centres or rehabilitated persons under the Dangerous Drugs Ordinance.

9. The Commissioner also suggested that the Administration should list out clearly in the Bill the particulars to be submitted to the Director of Social Welfare (DSW) for applying for a licence or certificate of exemption. However, the Administration did not consider it necessary because the Bill itself already delimited the scope of information to be sought by DSW and the purpose of seeking such information. Only the particulars which DSW considered relevant to determining the issue of a licence or certificate of exemption should be required. In case an applicant considered that the information sought was in excess, the applicant could always resort to the Personal Data (Privacy) Ordinance for remedy. In view of the Commissioner's comments and to better protect the interests of applicants, detailed guidelines on procedures, including the types of particulars required for the applications for a licence, would be included in the Code.

Letter dated 23 November 2000 from Privacy Commissioner for Personal Data

(LC Paper No. CB(2)367/00-01(12))

10. PAS(N) noted the concern expressed by the Commissioner in his letter to the Bills Committee dated 23 November 2000. PAS(N) assured the Bills Committee that the types of information required for applications for a licence would be expressly

Action

stated in the Code. The Administration would consult the Commissioner again when drawing up the Code.

11. The Chairman expressed her worry about the negative psychological impact on residents or rehabilitated persons when they were requested by the Police to render assistance in the investigation of drug-related cases. The Chairman asked whether this could be avoided by deleting personal data such as names and addresses from the documents. She also asked the actual purpose of keeping such data. PAS(N) explained that the data was for aggregate statistical and law enforcement purposes. The aggregate statistics would enable the Administration to have a better knowledge of the number of such centres and their mode of operation. The Bill sought to regulate treatment centres and in case of a centre found to be operating illegally, there might be a need for the Police to examine relevant records before they could make a prosecution against illegal operation of the centre.

12. At the request of the Chairman, Senior Assistant Legal Adviser (SALA) briefed members on the information and evidence required for prosecution. He said that the basic elements that the Police was required to prove in a prosecution of operating a treatment centre without a licence were that at least four drug dependent persons were receiving rehabilitation and detoxification treatment in that premises at that time. Medical reports proving they were indeed drug dependent persons might also be required. SALA added that with the agreement of the court, the hearing could be conducted without revealing the personal particulars of the drug dependent persons concerned.

13. In response to further concerns expressed by the Chairman over possible involvement of drug dependent persons in investigation of drug-related cases, Assistant Director of Social Welfare (ADSW) explained that allowing the Police and SWD having access to personal data was inevitable in the law enforcement process. As to whether the use of such data could be restricted in court proceedings, PAS(N) undertook to obtain legal advice on the matter. The Chairman opined that legal advice from Hong Kong Bar Association and the Law Society of Hong Kong should also be sought.

Adm

14. SALA pointed out that clause 23 only prohibited the use of statements or admission made by a drug dependent person against him in proceedings under the Dangerous Drugs Ordinance (Cap. 134). The use of such information by the Police for other purposes was not prohibited.

15. As the Chairman remained concerned about the use of such personal information by the police, PAS(N) said that the Administration had already tried as much as possible to protect the personal data of the drug dependent persons concerned. However, since drug-related crimes were very serious in nature, extreme care should be exercised on how to strike a balance between protection for drug dependent persons

Action

and the society as a whole when formulating a policy in this regard. For this reason, it was not possible to provide total unlimited protection to the drug dependent persons in question. PAS(N) pointed out that some of these persons, having personally experienced the harm caused by drug addiction, might be willing to cooperate with the Police in the investigation of drug-related cases.

16. Mr Michael MAK said that since clause 23 stated that all information given by a person undergoing treatment was only inadmissible in proceedings against that person under the Dangerous Drugs Ordinance, it implied that the Police might use the information for the purposes of other ordinances. He therefore still had reservation about clause 23.

Adm

17. Mrs Sophie LEUNG appreciated the difficulty in striking the right balance between protection of human rights and fighting drugs. As many overseas countries advocating human rights also faced the same problem, she requested the Administration to obtain information from overseas countries for the Bill Committee's reference.

18. The Chairman then asked whether the Code would be passed to the Legislative Council for consideration by way of subsidiary legislation. PAS(N) explained that both the Administration and the agencies preferred to keep the Code as an administrative document in order to allow greater flexibility. The Administration would continue to consult the agencies and the Commissioner during the drafting process and would provide a copy to the Bills Committee for members' information if necessary when it was finalized.

Process to be gone through by an offender before and after a probation order was issued

(LC Paper No. CB(2)367/00-01(11))

19. PAS(N) briefed the Bills Committee on the process to be gone through by an offender before and after a probation order was issued by the court as detailed in paragraphs 2 to 4 and 5 to 8 of the paper. PAS(N) explained that the court would issue a probation order for a drug dependent offender to complete a drug treatment programme only if he agreed to do so. If the offender, after admission to the centre, found it not suitable for whatever reasons, he could always discuss with the probation officer for alternatives.

20. Mr LAW Chi-kwong asked SALA to advise on the rights of offenders in accepting or refusing probation orders. Mr LAW believed that an offender could hardly refuse a probation order as other possible alternatives were usually much less favourable to the offender. SALA agreed to Mr LAW's comments and stated that under the Probation of Offenders Ordinance (Cap. 298), the Court was required to explain to the offender the content of the proposed probation order and obtain the

Action

agreement of the offender to be put on probation before making such an order. SALA added that in principle the court should deal with the offender in a manner most effective and best suited to his circumstances. If an offender refused to be placed on probation, the Court had other sentencing options, and those were not necessarily worse alternatives, for the offender. Therefore the offender could not be considered as having no choice but to accept a probation order. If an offender was required to undergo a drug treatment programme under a probation order but he refused to signify agreement to the rules of the centre upon admission or found it not suitable after admission, he could discuss with the probation officer to work out other alternatives.

21. ADSW pointed out that admission of persons into a non-governmental centre was always made on a voluntary basis. Such centre would interview the offender before his admission so as to ensure that he was willing to undergo treatment in that centre under the probation order. If the offender was under 16, consent would also be obtained from his family.

22. Dr LO Wing-lok asked for the number of cases where an offender requested alternatives when he found it unacceptable to carry on the treatment after his admission to a centre. ADSW replied that this situation rarely occurred as past cases showed that the offender either had successfully completed the treatment or had quitted it. Requests for transfer of centre were rare. As to the approximate number of such cases per year, ADSW said that the number was extremely small but she could not quote a figure since the Administration did not keep a record of such requests.

23. Dr TANG Siu-tong asked what action would the court normally take against those offenders who quitted the treatment programme prescribed in the probation orders. ADSW replied that the court would take action based on the circumstances of each case and there were no hard and fast rules. However, if the offence committed by an offender was more serious in nature, the court might extend the period of the probation order or consider for more serious sentencing.

Administration's response to views expressed by drug treatment and rehabilitation agencies raised at the meeting held on 29 November 2000

(LC Paper No. CB(2)512/00-01)

24. PAS(N) outlined the main points of the Administration's response to the questions raised by agencies which were not answered at the last meeting due to lack of time -

- (a) The Administration had no intention to change the existing multi-modality approach. The voluntary residential treatment and rehabilitation service proposed to be regulated under the Bill was only one of the various modalities provided.

Action

- (b) As the licensing provision under the Bill was location-based, an agency had to apply for three licences or three exemption certificates if the agency had treatment centres at three different locations.
- (c) In compiling the Code, SWD, as the licensing authority, would coordinate with Buildings Department (BD) and Fire Services Department (FSD) on aspects relating to building and fire safety.
- (d) Agencies were encouraged to put in applications to charitable funds for financial assistance to carry out planned improvement works to centres. They could also seek help from the Government for land allocation.
- (e) SWD would work closely with agencies when drawing up the draft Code so that their concerns such as manpower deployment during outdoor activities would be addressed in the Code.
- (f) One of the direct objectives of the Bill was to protect the well-being of the residents. SWD as the licensing authority might need to respond quickly if the interests of residents or the public were at stake. In view of this, if the appeal mechanism applied to every power given to DSW, undue delay might result when carrying out DSW's directions and thus defeating the purpose of the Bill.
- (g) The penalties set out in the Bill were lighter instead of heavier than those in similar ordinances. Details were provided in paragraph 11 of the paper.
- (h) It was considered not appropriate for the Bill to regulate staff training. In-service training for frontline workers in the anti-drug field was currently organized by SWD and non-governmental organizations. The Beat Drugs Fund would also give priority consideration to funding applications for staff training programmes run by centres.
- (i) As regards the proposal to designate treatment centres as restricted areas, the Administration considered that there was no need to do so as the trend was for more openness. Some treatment centres such as Shek Kwu Chau Rehabilitation Centre had already adopted an open approach nowadays.
- (j) The Bill was not inconsistent with other ordinances related to drug treatment and rehabilitation. The increase in the success rate of drug treatment was not a direct objective of the Bill.
- (k) Clarification of the claims made by The Christian Zheng Sheng

Action

Association as detailed in paragraphs 16 to 18 of the paper. To avoid re-occurrence of similar misunderstandings, SWD was planning to visit the agencies to identify their needs in respect of land and building/fire safety, and would provide as much assistance and guidance as possible. Agencies were welcome to put in applications for sites for consideration by the Lands Department (LD) and the Government Property Agency (GPA).

Questions from members

25. The Chairman said that agencies were well aware of the potential dangers existing in their centres or their surroundings and were keen to improve the physical environment of their centres in order to obtain a licence to continue their operation. However, the amount of money required for the necessary upgrading works for all affected centres was substantial. The Chairman suggested that the Administration should consider carefully whether the licensing scheme should be put on hold until the funding to carry out all necessary improvement works to centres was available. She also urged the Administration to consider ways to avoid closure of centres upon enactment of the Bill. She wished to know whether those centres which had been achieving good results would be provided with necessary resources for improvement to their buildings. PAS(N) responded that several major charitable funds such as the Lotteries Fund, Beat Drugs Fund, Chinese Permanent Cemeteries Fund and the Hong Kong Jockey Club Charities Trust had agreed to favourably consider applications submitted by agencies affected under the Bill. Agencies should start working out their improvement work plans and put in their funding applications well in advance. PAS(N) noted that some Christian agencies would not apply for the Lotteries Fund due to Christian faith, even though those funds were the largest sources of funding. She pointed out that other funds such as the Beat Drugs Fund and the Chinese Permanent Cemeteries Fund were also available to meet their needs.

26. Mrs Sophie LEUNG was concerned as to whether a drug-free environment at centres could be maintained after the enactment of the Bill. In reply to Mrs LEUNG, PAS(N) referred to regulations 7, 8, 10 and 11 of the Drug Addicts Treatment and Rehabilitation Regulations, under which the superintendents of centres were empowered to refuse/permit a resident to receive phone calls, censor a resident's letters, confiscate any unauthorized articles found in the possession of a resident, refuse visits to a resident and prohibit anybody without lawful authority from entering into the centres. These regulations were found inappropriate nowadays as most centres were currently operated on a voluntary basis instead of a detention bases. The Administration had held five meetings with the affected agencies and learned that the majority of the centres operated smoothly and effectively without resorting to similar statutory rules. Legal advice obtained by the Administration was that some of the regulations, e.g. censoring a resident's letters and confiscating a resident's belongings, were in contravention of the human rights provisions of the Basic Law. The

Action

Administration had already advised agencies that there would be sufficient safeguard if prior consent was obtained from a resident before enforcing the rules stipulated by a centre for effective management. Mrs LEUNG urged the Administration to clearly explain the proposed amendments to the agencies and to encourage them to work positively with residents in order to develop a mutual-trust relationship.

27. In response to the Chairman, PAS(N) said that the admission formalities to a centre, including the signing of a document of consent by an offender, would take place after the issue of a probation order. She reiterated that the decision to accept or refuse the arrangements proposed under a probation order rested with the offender. Social workers would explain to the offenders the rules and environment of the centre before the offenders made a decision. The Chairman shared the view of Mr LAW Chi-kwong that some of the offenders might not be truly willing to sign the document of consent and had no real choice in the matter.

28. Referring to the objectives of the Bill as set out in paragraph 14 of the paper, Dr TANG Siu-tong questioned the need for DSW to obtain the personal data of residents of treatment centres. PAS(N) explained that the authority given to DSW under the Bill to inspect treatment centres and examine their books and documents was to facilitate the enforcement of law. If a centre was suspected to be operating without a licence, DSW would need to examine the records kept by the centre in order to determine whether the centre was operating illegally. However, the personal data of a resident would be fully protected as such data obtained during the investigation process was inadmissible as evidence in legal proceedings against the resident concerned under the Dangerous Drugs Ordinance. Dr TANG further opined that there must be other ways to prove whether a centre was operating illegally. PAS(N) stated that, depending on the nature of the case, it might not be necessary to obtain residents' personal data on each occasion. The Chairman said that this issue would be further discussed at the next meeting when information on overseas practices would be available.

29. Mr IP Kwok-him expressed concern about the voluntary approach currently adopted by most centres. He pointed out that although many residents were willing to undergo voluntary treatment before admission, some of them might change their mind when encountering hardship during the treatment process. As frontline workers were worried about how they should handle such situations, clear guidelines on the subject should be included in the Code. As the circumstances and funding requirements of the treatment centres varied, the plan to bring them all to a certain standard by a certain time might create adverse impact on some centres. He was of the view that apart from stipulating fire and building safety requirements, more thoughts should be given to solving the more practical problems in other areas. The Chairman pointed out that during a recent visit to some centres by the Bills Committee, members found that the premises of some centres could mean a container or a wooden shed next to a dangerous slope. PAS(N) explained that the significant

Action

differences in physical environment between the centres now was one of the main reasons for introducing this Bill, as providing a safe environment to residents was one of the prime objectives of the Bill. PAS(N) promised to supply more information to the Bills Committee on this aspect at the next meeting.

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30. Mr IP then asked about the resources available to assist the agencies to achieve the required standards as well as the possible consequences of not complying with the required standards. The Chairman said that some centres had to be closed if they could not meet the required standards within the grace period of 4 years or 8 years at a maximum after the enactment of the Bill. The Chairman asked the Administration to consider the merits of allowing centres to obtain financial support to complete the necessary improvement works before introducing the licensing scheme or deferring the effective date of the licensing scheme by two years. PAS(N) said that the Administration had no intention of closing any centres and would provide as much guidance and assistance as possible to help them obtain sufficient financial support to carry out necessary works, and would try to accommodate their timetable. The Administration would also consider granting exemption to centres provided that they had worked positively towards the target but for some reasons were still unable to achieve the required standards. As for financial support, the Administration had requested the Beat Drugs Fund to reserve funds for centres in need. In addition, it had also obtained agreement from several major charitable funds to provide funding to these centres. The Chairman asked the Administration to provide an estimated figure required to complete all necessary improvement works for all centres as well as the amounts now available from various charitable funds. PAS(N) replied that a rough estimate of the first figure asked by the Chairman was about 90 million, which would be needed in phases over about 8 years; and the annual provisions of the Beat Drugs Fund and the Chinese Permanent Cemeteries Fund amounted to approximately \$20 million and more than \$20 million respectively. PAS(N) would provide more detailed figures of various funds before the next meeting.

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31. Mr LAW Chi-kwong raised three points. Firstly, he requested the Administration to confirm that the probation officers would ensure that the offender was willing to sign and fully understood the document of consent, which included the rules of the centre of which the offender was going to receive treatment, before a probation order was issued. Secondly, provisions should be included in the Code to avoid discrimination against AIDS. Thirdly, the Administration should not underestimate some agencies' distrust of the Government. The Administration should develop mutual trust by giving every assistance to the centres to help them comply with the statutory requirements. The Chairman fully agreed that the means of developing a mutual-trust relationship among agencies, residents and the Administration should be explored. PAS(N) fully endorsed their views, and pointed out that the Administration had been paying attention to this area. The communication between the relevant government departments and the concerned agencies in recent years had improved since the establishment of the Drug Liaison

Action

Committee chaired by the Commissioner for Narcotics. Some agencies had indicated that the quarterly meetings of the Committee provided an excellent occasion for them to voice their views to the Administration.

32. Dr LO Wing-lok enquired whether the Equal Opportunities Commission (EOC) would be involved during the drafting of the Code. ADSW said that in preparing the draft Code EOC had been consulted. The relevant sections of the revised Code would be submitted to EOC again for its comments.

III. Date of next meeting

33. The next two meetings would be held on 15 January 2001 at 8:30 am and 22 January 2001 at 10:45 am.

34. The meeting ended at 12:50 pm.

Legislative Council Secretariat

28 February 2001