

C071-E

A Bill To

Provide for the licensing, control and inspection of drug dependence treatment centres which provide residential accommodation for persons voluntarily undergoing treatment or rehabilitation after the treatment; and for connected purposes.

Enacted by the Legislative Council.

PART I

Preliminary

1. Short title and commencement

(1) This Ordinance may be cited as the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

2. Interpretation

In this Ordinance, unless the context otherwise requires---

"certificate of exemption" (豁免證明書) means a certificate of exemption issued under section 8(3)(a), or renewed under section 9(3)(a), in respect of a treatment centre;

"Director" (署長) means the Director of Social Welfare;

"drug dependence" (藥物倚賴) means the psychophysical state referred to in paragraph (a) of the definition of "drug dependent person";

"drug dependent person" (藥物倚賴者) means a person who---

(a) is suffering from the psychophysical state in which the usual or increasing doses of a dangerous drug (as defined in the Dangerous Drugs Ordinance (Cap. 134)) or a specified substance are required to prevent the onset of withdrawal symptoms; or
(b) has completed treatment for drug dependence and is undergoing rehabilitation at a treatment centre;

"licence" (牌照、牌) means a licence issued under section 6(2)(a), or renewed under section 9(3)(a), in respect of a treatment centre;

"place" (地方) means any area on land or water and includes any building, structure, enclosure, vehicle or ship;

"rehabilitation" (康復服務) means care or services intended to facilitate the recovery of drug dependent persons or their reintegration into the community, after treatment for drug dependence;

"specified operator" (指明營辦者) means, in relation to a treatment centre, the person specified as its operator in---

(a) a licence; or

(b) a certificate of exemption,

for the time being in force in respect of the treatment centre;

"specified substance" (指明物質) means a substance specified in the Schedule;

"treatment centre" (治療中心) means any place used or intended to be used---

(a) for the treatment for drug dependence or for the rehabilitation of 4 or more drug dependent persons undergoing such treatment or rehabilitation on a voluntary basis; and

(b) for providing residential accommodation for such persons undergoing treatment for drug dependence, or undergoing rehabilitation, at that place.

3. Application of this Ordinance

(1) This Ordinance does not apply to treatment centres managed and controlled by the Hospital Authority.

(2) For the avoidance of doubt, it is declared that the requirement under this Ordinance for a licence or certificate of exemption is without derogation from any requirement to register under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165).

PART II

Licences and Certificates of Exemption

4. Restriction on operating treatment centres

(1) No person shall operate or exercise control over the management of a treatment centre unless he is the specified operator of the treatment centre.

(2) No person shall take part in the management of a treatment centre unless---

(a) a licence; or

(b) a certificate of exemption,

in respect of the treatment centre is for the time being in force.

(3) A person who contravenes subsection (1) commits an offence and is liable---

(a) on the first conviction, to a fine at level 6 and to imprisonment for 6 months, and to a fine of \$5,000 for each day during which the offence continues;

(b) on subsequent conviction, to a fine at level 6 and to imprisonment for one year, and to a fine of \$10,000 for each day during which the offence continues.

(4) A person who contravenes subsection (2) commits an offence and is liable to a fine at level 3.

5. Contravention of conditions of licence or certificate of exemption

(1) Where a treatment centre in respect of which a licence or certificate of exemption has been issued is operated in contravention of any condition of the licence or certificate of exemption, the specified operator and any other person exercising control over the management of the treatment centre each commit an offence.

(2) Without prejudice to subsection (3), it shall be a defence for a person charged with an offence under subsection (1) to prove that---

(a) he did not know and had no reason to suspect the existence of the circumstances giving rise to the contravention; and

(b) he could not, by the exercise of reasonable supervision and reasonable diligence, have prevented those circumstances arising.

(3) In any proceedings against a specified operator for an offence under subsection (1), it shall not be necessary for the prosecution to prove that the specified operator had knowledge of the condition of the licence or certificate of exemption the contravention of which constituted the offence.

(4) A person who commits an offence under this section is liable to a fine at level 6 and to imprisonment for 6 months and to a fine of \$5,000 for each day during which the offence continues.

6. Application for and issue of licence

(1) An application by a person for a licence in respect of a treatment centre shall be made to the Director in such form and manner as the Director may specify.

(2) The Director shall determine an application for a licence---

(a) by issuing to the applicant the licence, subject to such reasonable conditions as the Director may impose; or

(b) by refusing to issue the licence.

(3) If the Director intends to refuse to issue the licence, he shall comply with section 15.

(4) Without limiting the generality of subsection (2)(b), the Director may refuse to issue a licence to the applicant if it appears to him---

(a) (i) where the applicant is an individual, that the applicant is not a fit person;

(ii) where the applicant is a body corporate, that any director of the body corporate is not a fit person;

(iii) where the applicant is a partnership, that any partner of the partnership is not a fit person;

(b) that for reasons connected with the size, staffing or equipment, the place to be used for the treatment centre is not fit to be used as a treatment centre;

(c) that the place to be used as the treatment centre does not comply with any requirements relating to construction, design, structure, fire precautions, health, sanitation or safety set out in---

(i) any provision of the Buildings Ordinance (Cap. 123);

(ii) any Code of Practice published by the Director of Fire Services under section 16(1)(b) of the Buildings Ordinance (Cap. 123);

(iii) any Code of Practice issued by the Director under section 25; or

(iv) any regulation made under section 28;

(d) that if the place were to be used as a treatment centre, there would be a breach

of a condition of the Government lease that restricts the use of the place; or
(e) that the proposed name of the treatment centre is unsuitable or is the same as or similar to---

(i) the name of any treatment centre in respect of which a licence or certificate of exemption is for the time being in force; or

(ii) the name of a treatment centre in respect of which a licence or a certificate of exemption has been cancelled.

(5) A condition of a licence imposed under subsection (2)(a) may relate to, in particular, the accommodation, staffing and equipment of the treatment centre.

(6) The Director may require an applicant to furnish him with such information as he considers relevant for determining whether or not to issue the licence including---

(a) particulars relating to the applicant; and

(b) the proposed name, address, plans and details as to how the treatment centre is to be operated.

(7) The information required under subsection (6)---

(a) shall be furnished in such form and within such period as the Director may specify; and

(b) (if required for considering whether a person is a fit person for the purposes of subsection (4)(a)) shall be supported by a statutory declaration on such facts as the Director may require.

7. Person not to be considered
as fit person

(1) For the purposes of section 6(4)(a), a person is not a fit person if---

(a) he is or was (except where subsection (2) applies) a drug dependent person;

(b) he has been convicted in Hong Kong of any offence specified in Schedule 1 of the Organized and Serious Crimes Ordinance (Cap. 455) and sentenced to imprisonment within the 10 years immediately prior to the day on which the Director considers the matter; or

(c) he has been convicted elsewhere, within that period, of any offence constituted by an act or omission that, if it had occurred in Hong Kong, would have constituted an offence specified in Schedule 1 of the Organized and Serious Crimes Ordinance (Cap. 455), and sentenced to imprisonment on the conviction.

(2) Where a person was a drug dependent person, the Director may consider him a fit person if such person satisfies the Director that he has not been a drug dependent person continuously in the 7 years immediately prior to the day on which the Director considers the matter.

8. Application for and issue of certificate of exemption

(1) A person who is operating a treatment centre immediately before the commencement of section 4 may apply, within 3 months after such commencement, for a certificate of exemption in respect of the treatment centre.

(2) An application for a certificate of exemption shall be made to the Director in such form and manner as the Director may specify.

(3) The Director shall determine an application for a certificate of exemption---

(a) by issuing to the applicant the certificate of exemption, subject to such reasonable conditions as the Director may impose; or

(b) by refusing to issue the certificate of exemption.

(4) If the Director intends to refuse to issue a certificate of exemption, he shall comply with section 15.

(5) The Director may require an applicant to furnish him with such information as he considers relevant for determining whether or not to issue the certificate of exemption including---

(a) particulars relating to the applicant; and

(b) the proposed name, address, plans and details as to how the treatment centre is to be operated.

(6) The information required under subsection (5) shall be furnished in such form and within such period as the Director may specify.

9. Renewal of licence or certificate of exemption

(1) The specified operator of a treatment centre may, before the expiration of the licence or certificate of exemption in respect of the treatment centre, apply for renewal of the licence or certificate of exemption.

(2) An application under subsection (1) must be made to the Director---

(a) not more than 4 months and not less than 2 months prior to the expiration of the licence or certificate of exemption, or within such other period prior to the expiration as the Director may in writing permit; and

(b) in such form and manner as the Director may specify.

(3) The Director shall determine an application under subsection (1)---

(a) by granting the renewal, subject to any reasonable variation of the conditions of the licence or certificate of exemption (as the case may be), as the Director may think fit; or

(b) by refusing to grant the renewal.

(4) If the Director intends to refuse to grant the renewal, he shall comply with section 15.

(5) A licence or certificate of exemption in respect of which an application for renewal is made under this section and which expires before the determination of the application shall remain in effect until the determination by the Director of such

application, unless such application is withdrawn or the licence or certificate is cancelled under section 14.

(6) A renewal granted under this section takes effect---

(a) on the day following the expiration of the licence or certificate of exemption; or

(b) where subsection (5) applies, on the day following the day upon which the licence or certificate of exemption would have expired but for subsection (5).

(7) A renewal granted under this section takes effect for a period of 12 months or such lesser period as may be specified.

10. False statement etc. furnished

while making applications

A person who, in or in connection with an application made under this Ordinance, makes any statement (whether such statement be oral or written), or furnishes any information---

(a) which is false or misleading in a material particular; and

(b) which he knows or reasonably ought to know is false or misleading in such particular,

commits an offence, and is liable to a fine at level 6 and to imprisonment for 6 months.

11. Form of licence and certificate of exemption

(1) A licence shall---

(a) be in such form as the Director may specify;

(b) be endorsed with the conditions of the licence imposed under section 6(2)(a) or the conditions as varied under section 9(3)(a);

(c) specify the applicant as the operator of the treatment centre to which the licence relates; and

(d) specify the period in which the licence remains in force, being a period not exceeding 12 months.

(2) A certificate of exemption shall---

(a) be in such form as the Director may specify;

(b) be endorsed with the conditions of the certificate of exemption imposed under section 8(3)(a) or the conditions as varied under section 9(3)(a);

(c) specify the applicant as the operator of the treatment centre to which the certificate relates; and

(d) specify the period in which the certificate remains in force, being a period not exceeding 12 months.

12. Licence or certificate of exemption

to be displayed

The specified operator of a treatment centre shall display or cause to be

displayed the licence or certificate of exemption for the time being in force in respect of the treatment centre in a conspicuous place at the treatment centre.

13. Evidence of facts stated in licence or certificate of exemption

(1) A licence or certificate of exemption purporting to be issued by the Director, or a copy purporting to be signed and certified by the Director as a true copy of the licence or certificate, is evidence of the facts stated in it as at the date of such licence or certificate of exemption, and shall be received in evidence without further proof.

(2) A certificate purporting to be signed by the Director and certifying that---

- (a) a licence; or
- (b) a certificate of exemption,

has or has not been issued in respect of the treatment centre shall be evidence of the facts stated in it as at the date of the certificate so signed, and shall be received in evidence without further proof.

14. Cancellation of licence or certificate of exemption

The Director may at any time by notice in writing served on the specified operator of a treatment centre cancel the licence or certificate of exemption (as the case may be) in respect of the centre---

(a) on the ground that the specified operator or any other person has committed an offence under section 4, 5, 10, 16, 17 or 19 in respect of the treatment centre;

(b) on the ground that, in respect of the treatment centre or the drug dependent persons residing in the treatment centre, any requirement, order or direction made or given under this Ordinance has not been complied with;

(c) on the ground that any condition of the licence or certificate of exemption has not been or is not being complied with;

(d) if it appears to him that---

(i) the treatment centre has ceased to be operated as such or to exist;

(ii) the specified operator has ceased to operate the treatment centre; or

(iii) on any occasion the treatment centre has been operated in a manner contrary to the public interest;

(e) in the case of a licence only, on any ground specified in section 6(4)(a), (b), (c) or (d) which would entitle him to refuse an application for the licensing of the treatment centre,

but before serving the notice of cancellation, he shall comply with section 15.

15. Notice of refusal or cancellation

(1) The Director shall, before---

(a) refusing an application for a licence or certificate of exemption or an application for its renewal; or

(b) serving a notice under section 14,

give to the applicant or the specified operator of the treatment centre, as the case may be, notice of his intention to do so, which shall---

(i) state the grounds on which he intends to refuse the application or serve a notice under section 14 (as the case may be); and

(ii) contain a statement that such applicant or such specified operator may make written representations to him within 21 days after the day on which the Director's notice is given.

(2) The Director may, after 21 days from the day on which the notice under subsection (1) is given and after considering the written representations (if any) received from the applicant or specified operator, serve on the applicant or specified operator---

(a) a notice in writing of the Director's refusal of the application; or

(b) the notice under section 14,

as the case may be, but a notice under paragraph (a) or (b) shall not have effect earlier than 21 days from the day on which such notice is given.

PART III

Supervision of Treatment Centres

16. Power of Director to give directions

(1) The Director may, in respect of a treatment centre, by notice in writing, give such directions as appear to him to be required to ensure that---

(a) the treatment centre is operated and managed satisfactorily;

(b) the well being of the drug dependent persons residing in the treatment centre is safeguarded in a proper manner;

(c) adequate apparatus and equipment required as safeguards against fire or other hazard likely to endanger the lives or health of the residents are provided in the treatment centre; and

(d) the provisions of this Ordinance are complied with.

(2) A notice under subsection (1)---

(a) shall be served on the specified operator of the treatment centre; and

(b) shall indicate a period within which the directions shall be complied with.

(3) A person who fails to comply with the requirements of a direction given under this section within the period indicated in the notice served on him under subsection (2) commits an offence, and is liable to a fine at level 6 and to imprisonment for 6 months.

17. Director may order cessation of use of any place as a treatment centre

(1) The Director may---

(a) if it appears to him that there is any danger or risk of danger to persons in residence in a treatment centre; or

(b) the requirements of a direction given under section 16(1) have not been complied with within the period indicated in the notice served under that section, by order in writing require that the place or any part of such place used as the treatment centre shall cease to be so used for such period as he thinks fit or until further notice.

(2) An order under this section shall be served on the specified operator of the treatment centre and shall take effect from the date of service.

(3) A person who fails to comply with any requirement of an order served on him under this section commits an offence, and is liable to a fine at level 6 and to imprisonment for 6 months and to a fine of \$5,000 for each day during which the offence continues.

18. Inspection and other powers

(1) The Director or any public officer authorized by him in writing may, in relation to a treatment centre in respect of which a licence or a certificate of exemption has been issued---

(a) at all reasonable times enter and inspect the treatment centre, with such assistants as may be necessary;

(b) require the production of, and examine or take copies of any book, document or other article relating to the operation or management of the treatment centre or to any other activity carried out in or in relation to the treatment centre;

(c) require any information relating to such operation, management or activity to be furnished;

(d) remove for further examination any book, document or other article which he has reason to suspect is or contains---

(i) evidence of the commission of an offence against this Ordinance; or

(ii) evidence of a ground for the cancellation of the licence or certificate of exemption;

(e) do such other things as are necessary for the inspection of the treatment centre or for the inspection or testing of any equipment, works or system used for or in connection with the operation, keeping, management or other control of the treatment centre.

(2) For the purposes of this Ordinance, the Director or any public officer authorized by a warrant issued under subsection (4) may, with such assistants as may

be necessary, enter and inspect any place which he has reason to suspect is being used as a treatment centre without a licence or certificate of exemption.

(3) Where pursuant to subsection (2), the Director or a public officer has entered any place, he may---

(a) require any person apparently in charge of the place to produce for his examination any book, document or other article relating to the management of any business being carried on in the place or to furnish any information relating to such management or business, and to take copies;

(b) remove for further examination any book, document or other article which he has reason to suspect is or contains evidence of the commission of an offence against this Ordinance.

(4) If a magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that a place is being used as a treatment centre without a licence or certificate of exemption, he may issue a warrant authorizing the Director or any public officer, with such assistants as may be necessary, to enter and inspect that place for the purposes of this Ordinance, and may authorize the use of such force as may be necessary in effecting the entry.

(5) Any book, document or other article removed under subsection (1)(d)(i) or (3)(b) shall, as soon as practicable after such removal, be delivered to the Commissioner of Police, or to some person nominated by the Commissioner in that behalf, by the person who removed them.

(6) Where any book, document or other article removed under subsection (1)(d)(i) or (3)(b) is delivered in accordance with subsection (5) to the Commissioner of Police, or to some person nominated by the Commissioner in that behalf, the Commissioner of Police or that person, as the case may be, shall, if no prosecution is instituted within 6 months after such delivery in respect of the suspected offence to which they relate, return or arrange for the return of such book, document or other article---

(a) if removed under subsection (1)(d)(i), to the specified operator; or

(b) if removed under subsection (3)(b), to the person from whom it was so seized.

19. Offences in relation to section 18

(1) A person who---

(a) fails, without reasonable excuse, to produce any book, document or other article upon being so required under section 18;

(b) fails, without reasonable excuse, to furnish any information upon being so required under section 18;

(c) in complying with any requirement made under section 18, furnishes any information which is false or misleading in a material particular and which he knows or reasonably ought to know is false or misleading in such particular; or

(d) obstructs any person in the exercise of any of that person's powers under section 18,
commits an offence.

(2) A person who commits an offence under this section is liable to a fine at level 6 and to imprisonment for 6 months and to a fine of \$5,000 for each day during which the offence continues.

20. Exercise of Director's powers

The Director may authorize any public officer to perform or exercise any function, duty or power imposed or conferred on the Director under this Ordinance.

PART IV

General Provisions Relating to Offences

21. Offences by corporation or partners

(1) If---

(a) a person who commits an offence under this Ordinance is a body corporate; and
(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a director of, or other person concerned in the management of, the body corporate,
the director or that other person also commits the offence.

(2) If---

(a) a person who commits an offence under this Ordinance is a partner of a partnership; and
(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, any other partner or other person concerned in the management of the partnership,
that other partner or person also commits the offence.

22. Time limit for prosecution of offences

Any prosecution under the provisions of this Ordinance shall be commenced---

(a) within 6 months of the commission of the offence; or
(b) within 6 months of the offence being discovered by or coming to the notice of the Director,
whichever is the later.

23. Inadmissibility of information

(1) A statement or admission made by a person---

(a) for the purpose of being admitted to a treatment centre for treatment or rehabilitation; or
(b) while he is undergoing treatment or rehabilitation at a treatment centre,
is inadmissible as evidence in any proceedings against him under the Dangerous Drugs Ordinance (Cap. 134).

(2) Any information obtained in the course of or as a result of the production or removal of any book, document or other article under section 18(1) or (3) is inadmissible as evidence against any person who is undergoing or has undergone treatment or rehabilitation in a treatment centre in any proceedings under the Dangerous Drugs Ordinance (Cap. 134).

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 contains a statement to that effect.

PART VI

Miscellaneous

25. Codes of Practice relating to operation of treatment centres

(1) The Director may issue from time to time Codes of Practice---

- (a) setting out principles, procedures or guidelines for the operation, management or other control of treatment centres;
- (b) providing practical guidance in respect of any one or more of the requirements of this Ordinance.

(2) A copy of any Code of Practice issued under subsection (1) shall be made available by the Director for inspection by the public free of charge at such offices of the Government as the Director may direct during the usual hours of business of the offices.

26. Service of documents

A notice or other document (howsoever described) authorized or required to be

served on a person under this Ordinance shall be deemed to be so served if---

(a) in the case of an individual, it is---

(i) delivered to him;

(ii) left at his last known address; or

(iii) sent by post to him at such address;

(b) in the case of a body corporate, it is---

(i) given to or served on a director of the body corporate;

(ii) left at the body corporate's last known address; or

(iii) sent by post to the body corporate at such address; and

(c) in the case of a partnership, it is---

(i) delivered, left or sent in accordance with paragraph (a) on any partner who is an individual; or

(ii) given, served, left or sent in accordance with paragraph (b) on any partner which is a body corporate.

27. No fee payable in respect of licence

or certificate of exemption

No fee is payable---

(a) on an application for the issue or renewal of a licence or certificate of exemption; or

(b) for the issue or renewal of a licence or certificate of exemption.

28. Regulation

(1) The Chief Executive in Council may by regulation provide for---

(a) the operation, management, supervision and inspection of treatment centres;

(b) the duties and responsibilities of specified operators;

(c) the keeping of books of accounts, records or other information in respect of the operation or activities of, or drug dependent persons admitted to, treatment centres;

(d) the reports and information to be supplied to the Director in respect of treatment centres;

(e) the design, structure, hygiene and sanitation of treatment centres;

(f) the precautions to be taken against fire or other peril likely to endanger the lives or health of drug dependent persons undergoing treatment or rehabilitation at treatment centres;

(g) subject to section 27, the fees to be charged for any matter prescribed or permitted by this Ordinance;

(h) generally, carrying into effect the provisions of this Ordinance.

(2) Any regulation made under this section may---

(a) provide for the exemption of any treatment centre from the application of the regulation or any provision of the regulation;

- (b) empower the Director to grant exemptions, with or without conditions, from the application of the regulation or any provision of the regulation;
- (c) prohibit the performance of particular actions without the consent of the Director;
- (d) authorize the Director to require or prohibit the performance of particular actions; and
- (e) require particular actions to be performed to the satisfaction of the Director.

(3) Any regulation made under this section may provide that a contravention of any provision thereof shall be an offence punishable by a fine at level 4 and to imprisonment for 3 months.

(4) The amount of fees provided for under subsection (1)(g) need not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred by the Director in the discharge of his functions under this Ordinance.

(5) Any regulation made under subsection (1)(g) may provide for the waiver, remission, reduction or refund of any fee.

29. Amendment of Schedule

The Secretary for Security may by order amend the Schedule.

30. Transitional provisions

(1) Where a person is operating a treatment centre immediately before the commencement of section 4, a certificate of exemption is deemed to have been issued unconditionally in respect of the treatment centre specifying the person as the specified operator.

(2) A certificate of exemption deemed to have been issued under subsection (1) has effect---

(a) until the expiration of 3 months after the date of that commencement; or

(b) if the person has made an application in respect of the treatment centre in accordance with section 6 or 8 within 3 months before that expiration---

(i) until the issue of the licence or certificate of exemption (as the case may be) so applied for; or

(ii) (in the case of the application being refused) until 21 days after he has received notice of the decision or, if an appeal is made against the decision under section 24, until such appeal is disposed of, withdrawn or abandoned.

31. Repeal

The Drug Addicts Treatment and Rehabilitation Ordinance (Cap. 326) and all subsidiary legislation made under it are repealed.

Consequential Amendments

Administrative Appeals Board Ordinance

32. Schedule amended

The Schedule to the Administrative Appeals Board Ordinance (Cap. 442) is amended by adding---

"48. Drug Dependent Persons A determination or decision of Treatment and Rehabilitation the Director of Social Welfare Centres (Licensing) Ordinance under section 6(2)(b), 8(3)(b), (of 2000) 9(3)(b) or 14."

SCHEDULE [ss. 2 & 29]

Specified Substances

1. Zopiclone
2. Ketamine
3. Volatile Solvents and Inhalants
 - (i) Amylnitrite
 - (ii) Butylnitrite
 - (iii) Butane
 - (iv) Ether
 - (v) Ethyl Acetate
 - (vi) Halocarbons
 - (vii) Hexane
 - (viii) Ketones
 - (ix) Nitrous Oxide
 - (x) Toluene
4. Ephedrine

Explanatory Memorandum

The purpose of this Bill is to establish a scheme for the regulatory control of treatment centres providing residential accommodation for the treatment and rehabilitation of drug dependent persons who undergo such treatment and rehabilitation voluntarily.

2. Clause 2 sets out the definitions necessary for the interpretation of the Bill. The definitions of "drug dependent person" and "treatment centre" are of particular importance in construing the scope of application of the Bill.

3. Clause 3(1) provides that the Bill does not apply to treatment centres managed and controlled by the Hospital Authority. Clause 3(2) provides that the requirement for a licence or certificate of exemption under the Bill is additional to any requirement to register under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165).

4. (a) Clause 4(1) provides that no person shall operate or exercise control over the management of a treatment centre unless he is specified as its operator in a licence or certificate of exemption issued in respect of the treatment centre.

(b) Clause 4(2) prohibits any person from taking part in the management of a

treatment centre unless a licence or certificate of exemption has been issued in respect of the treatment centre and is for the time being in force.

5. Clause 5 deals with the offences in relation to licence and certificate of exemption. If a treatment centre is operated in contravention of the conditions of its licence or certificate of exemption, the specified operator and any other person exercising control over its management each commits an offence. Clause 5(2) provides a defence for the offence. Clause 5(3) provides that in any proceedings against a specified operator, the prosecutor need not prove the operator's knowledge of the condition that is contravened (while he would have to do so in relation to other persons charged with the offence).

6. Clause 6 deals with the application for and issuance of licences. It also sets out certain circumstances where the Director of Social Welfare ("Director") may refuse to issue a licence.

7. Clause 7 states the circumstances in which the Director shall, in relation to his determination of an application for a licence, consider a person as not being a fit person.

8. Clause 8 deals with the application for and issuance of certificates of exemption.

9. Clause 9 deals with renewal of licences and certificates of exemption. The Director may vary the conditions of a licence or a certificate of exemption upon its renewal.

10. Clause 10 provides that the supply of false or misleading information etc. in or in connection with an application made under the Bill is an offence.

11. Clause 11 deals with the forms of the licence and the certificate of exemption. The licence or certificate must specify the period for which it remains in force, being a period not exceeding 12 months, and must be endorsed with any conditions for its issue.

12. Clause 12 provides that the specified operator of a treatment centre shall display or cause to be displayed in a conspicuous place in the centre the subsisting licence or certificate of exemption.

13. Clause 13 provides for aids in proof.

14. Clause 14 deals with the cancellation of licence or certificate of exemption.

15. Clause 15 deals with notices of refusal or cancellation. Before the Director refuses an application for the issuance or renewal of a licence or certificate of exemption, or cancels a licence or certificate of exemption, he must give written notice of his intention to do so and allow 21 days thereafter for written representations to be made to him. Any refusal or cancellation is not to take effect earlier than 21 days from the date the notice is given.

16. Clause 16 empowers the Director to give directions in writing to the specified

operator of a treatment centre to ensure the satisfactory operation and management of the treatment centre. Such directions are to be complied with within the period indicated in the notice. Failure to do so is an offence.

17. Clause 17 empowers the Director to order the use of any place as a treatment centre to cease when it appears to him that there is danger or risk of danger to the persons in residence in a treatment centre or that the directions given under clause 16 have not been complied with. Failure to comply with the requirements of such an order is an offence.

18. Clause 18 confers on the Director and authorized public officers certain powers for the purposes of the Bill, including the power to enter and inspect, with or (in certain cases) without, a warrant.

19. Clause 19 provides for offences in relation to clause 18.

20. Clause 20 provides that the Director may authorize any public officer to perform or exercise any function or duty imposed on the Director under the Bill.

21. Clause 21 deals with offences committed by a corporation or by partners of a partnership.

22. Clause 22 imposes a time limit for the bringing of a prosecution for offences.

23. Clause 23 provides that any statement or admission made by a person seeking for admission to a treatment centre or in the course of his undergoing treatment or rehabilitation at the centre shall be inadmissible as evidence in any proceedings against him under the Dangerous Drugs Ordinance (Cap. 134). Any information obtained in consequence of the exercise of the power under clause 18 to require production of or to remove any book, document or other article is also inadmissible in such proceedings against a person who is undergoing or has undergone treatment or rehabilitation in a treatment centre.

24. Clause 24 provides for appeals to the Administrative Appeals Board in relation to determinations and decisions of the Director made under clauses 6(2)(b), 8(3)(b), 9(3)(b) and 14.

25. Clause 25 empowers the Director to issue Codes of Practice setting out principles for the operation or management of treatment centres.

26. Clause 26 deals with the mode of service of documents on an individual, a body corporate and a partnership.

27. Clause 27 provides that no fee is payable in respect of an application for, or for the issue or renewal of, a licence or certificate of exemption.

28. Clause 28 empowers the Chief Executive in Council to make regulations.

29. Clause 29 empowers the Secretary for Security to amend the Schedule of the Bill by order.

30. Clause 30 contains transitional provisions. A person who is operating a treatment

centre immediately before the commencement of clause 4 is deemed to have been issued a certificate of exemption in respect of the treatment centre for the period specified in clause 30(2).

31. Clause 31 repeals the Drug Addicts Treatment and Rehabilitation Ordinance (Cap. 326) and all subsidiary legislation made under it.

32. Clause 32 is a consequential amendment.

33. The Schedule lists the specified substances, which are relevant for determining whether a person is a drug dependent person for the purposes of the Bill.