

LEGISLATIVE COUNCIL BRIEF

Protection of Children and Juveniles Ordinance
(Chapter 213)

Juvenile Offenders Ordinance
(Chapter 226)

Probation of Offenders Ordinance
(Chapter 298)

Reformatory Schools Ordinance
(Cap. 225)

Immigration Ordinance
(Cap. 115)

PROTECTION OF CHILDREN AND JUVENILES (PLACES OF REFUGE) (AMENDMENT) ORDER 2006

PLACES OF DETENTION (JUVENILE OFFENDERS) APPOINTMENT (CONSOLIDATION) (AMENDMENT) ORDER 2006

REMAND HOME (AMENDMENT) RULES 2006

PROBATION OF OFFENDERS (APPROVED INSTITUTION) (CONSOLIDATION) (AMENDMENT) ORDER 2006

REFORMATORY SCHOOL (ESTABLISHMENT) (CONSOLIDATION) (AMENDMENT) ORDER 2006

IMMIGRATION (PLACES OF DETENTION)(AMENDMENT) ORDER 2006

INTRODUCTION

At the meeting of the Executive Council on 17 October 2006, the Council ADVISED and the Chief Executive ORDERED that :

A

(a) the Protection of Children and Juveniles (Places of Refuge) (Amendment) Order 2006, at Annex A, should be made under section 2A of the Protection of Children and Juveniles Ordinance;

B&C

(b) the Places of Detention (Juvenile Offenders) Appointment (Consolidation) (Amendment) Order 2006 and the Remand Home (Amendment) Rules 2006, at Annex B and Annex C respectively, should be made under sections 16 and 17 of the Juvenile Offenders Ordinance respectively; and

D

(c) the Probation of Offenders (Approved Institution) (Consolidation) (Amendment) Order 2006, at Annex D, should be made under section 11 of the Probation of Offenders Ordinance.

E

2. The Secretary for Health, Welfare and Food (SHWF) made the Reformatory School (Establishment) (Consolidation) (Amendment) Order 2006, at Annex E, under section 10 of the Reformatory Schools Ordinance on 20 October 2006. The Secretary for Security (S for S) made the Immigration (Places of Detention) (Amendment) Order 2006, at Annex F, under section 35(1) of the Immigration Ordinance on 12 October 2006.

F

JUSTIFICATIONS

Background

3. The Finance Committee approved in 2003 a sum of \$330 million to construct a new residential training complex, the Tuen Mun Children and Juvenile Home, to provide better rehabilitative service for young offenders and mal-adjusted juveniles under statutory care and supervision. The new complex will co-locate six existing correctional/residential homes operated by the Social Welfare Department, namely, the Ma Tau Wai Girls' Home (MTWGH), the Pui Chi Hoys' Home (PCBH), the Begonia Road Juvenile Home (BRJH), the Fanling Girls' Home (FGH), the Shatin Boys' Home (STBH) and the O Pui Shan Boys' Home (OPSBH). These homes are listed in the subsidiary legislation made under the above five Ordinances as places of refuge, places of detention, reformatory schools and/or approved institutions.

Protection of Children and Juveniles Ordinance (Cap. 213)

4. Section 34(5) of the Protection of Children and Juveniles Ordinance provides that the Director of Social Welfare (DSW) may make an order to detain a child or juvenile in a "place of refuge" when it is considered by DSW,

the legal guardian, to be desirable in the interests of the child/juvenile. Section 34E of the same Ordinance further provides that DSW or any police officer of the rank of station sergeant or above may make an order to detain in a place of refuge a child or juvenile who appears to be in need of care or protection before he/she is brought before a juvenile court or after he/she is brought before a juvenile court for further enquiries to be made about him/her.

5. Under section 2A of this Ordinance, the Chief Executive may by order declare any place to be a “place of refuge” for the purposes of the Ordinance, and a “place of refuge” is defined in section 2 to mean such premises as declared by the Chief Executive. Four premises are currently designated as places of refuge under the Protection of Children and Juveniles (Places of Refuge) Order (Cap.213 sub. leg. B), including MTWGH and PCBH.

Juvenile Offenders Ordinance (Cap. 226)

6. Section 5 of the Juvenile Offenders Ordinance provides that the police may cause a person under the age of 16 who is not released on bail after arrest to be detained in a “place of detention” before he/she is brought before a juvenile court. Section 7 of the same Ordinance further provides that a child or young person who is remanded or committed for trial by the court but not released on bail may be ordered by the court to be retained in a place of detention. Similarly, section 14 provides that a court may sentence a child or young person who is found guilty of an offence punishable in the case of an adult by imprisonment to be detained in a place of detention.

7. Under section 16 of this Ordinance, the Chief Executive may by order appoint any place to be a place of detention for the purposes of this Ordinance, and a “place of detention” is defined in section 2 to mean such premises as appointed by the Chief Executive. At present, three premises are listed as places of detention under the Places of Detention (Juvenile Offenders) Appointment (Consolidation) Order (Cap. 226 sub. leg. A), including BRJH situated at 62, Begonia Road, Yau Yat Chuen, Kowloon and MTWGH situated at 51 Sheung Shing Street, Homantin, Kowloon.

8. Besides, the Chief Executive has made the Remand Home Rules under section 17 of this Ordinance specifying the places to be used as places of detention and to provide for their inspection, classification, treatment and control of detained children and young persons. At present, two premises, namely, BRJH and MTWGH, are specified in the schedule to the Remand Home Rules (Cap. 226 sub. leg. D) as the places of detention to which the

Rules apply.

Probation of Offenders Ordinance (Cap. 298)

9. Section 3(1) of the Probation of Offenders Ordinance provides that a probation order may be made by the Court to require a convicted person to be under the supervision of a probation officer for a period of one to three years. Section 3(3) of the Ordinance further provides that an offender may be required by a probation order to reside in an “approved institution” for a period of not more than 12 months from the date of the order.

10. Under section 11 of the Ordinance, the Chief Executive may by order approve premises for the reception of persons who may be required to reside therein by a probation order, and an “approved institution” is defined in section 2 to mean such premises as approved the Chief Executive. Two premises are currently assigned as approved institutions under the Probation of Offenders (Approved Institution)(Consolidation) Order (Cap.298 sub. leg. B). They are FGH and STBH.

Reformatory Schools Ordinance (Cap. 225)

11. Section 17(1) of the Reformatory Schools Ordinance provides that the court may order that youthful offenders who are convicted of an offence punishable, in the case of an adult by a fine or by imprisonment, be detained in a reformatory school for a period of one to three years.

12. Under section 10 of this Ordinance, SHWF may by order establish one or more reformatory schools for the reformation of youthful offenders. Every such order shall specify the premises in which the reformatory school to which it refers shall be established and shall state whether the same shall be used for male or female offenders or both. At present, only one reformatory school is listed under the Reformatory School (Establishment) (Consolidation) Order (Cap.225 sub. leg. A), namely, the OPSBH, and it caters for male youthful offenders only.

Immigration Ordinance (Cap. 115)

13. Under section 35(1) of the Immigration Ordinance, persons required or authorized to be detained may be detained in such places as S for S may by order direct. Under paragraph 4 of the Immigration (Places of Detention) Order (Cap. 115 sub. leg. B), a person, who in the opinion of an Immigration Officer is under the age of 18 years, may be detained in any place set out in Schedule 2 thereto. At present, three existing homes, namely the Begonia

Road Boys' Home (BRBH), MTWGH and PCBH, as well as two closed homes, namely the Pui Yin Juvenile Home (PYJH) and the Chuk Yuen Children's Reception Centre (CYCRC), are listed in the said Schedule.

New Tuen Mun Children and Juvenile Home

14. To modernize the facilities of the existing homes, reduce operating costs, enhance flexibility in staff deployment and improve service quality, we started constructing a new complex, i.e. the Tuen Mun Children and Juvenile Home, in March 2004 to co-locate the six existing homes outlined in paragraph 3 above. Construction of the new complex is scheduled to be completed by end November 2006. Following the completion, juveniles in these existing homes will be moved into the new complex in phases, with the entire removal exercise estimated to be completed by August 2007.

15. The new complex will need to be listed in the above five Ordinances by 30 November 2006 to tie in with its anticipated completion. To allow buffer for any unforeseen incidents resulting in delay in the removal exercise such as inclement weather, we suggest only removing references to the six existing homes from the subsidiary legislation of the relevant Ordinances on 31 December 2007, i.e. four months after the scheduled completion of the removal exercise.

Proposal

16. With the impending co-location exercise, we would need to introduce simple and technical legislative amendments to replace references to the six relevant existing homes (MTWGH, PCBH, BRJH, FGH, STBH and OPSBH) under the subsidiary legislation of the five Ordinances above by the new complex. We would also take this opportunity to remove references to the two closed homes under the Immigration Ordinance. References under the five Ordinances to the existing and closed homes are summarized as follows :

Ordinance	Existing Homes
Protection of Children and Juveniles Ordinance	MTWGH PCBH
Juvenile Offenders Ordinance	MTWGH BRJH
Probation of Offenders Ordinance	STBH FGH
Reformatory Schools Ordinance	OPSBH

Ordinance	Existing Homes
Immigration Ordinance	BRBH, MTWGH, PCBH, PYJH and CYCRC

THE ORDERS/AMENDMENT RULE

17. The Protection of Children and Juveniles (Places of Refuge) (Amendment) Order 2006, the Places of Detention (Juvenile Offenders) Appointment (Consolidation) (Amendment) Order 2006, the Remand Home (Amendment) Rules 2006, the Probation of Offenders (Approved Institution) (Consolidation) (Amendment) Order 2006, the Reformatory School (Establishment) (Consolidation) (Amendment) Order 2006 and the Immigration (Places of Detention) (Amendment) Order 2006, at Annexes A to F, seek to replace references to any of the relevant existing and closed homes in the lists of places of refuge, places of detention, approved institutions and reformatory school respectively specified for the purposes of the relevant Ordinances.

A to F

18. The current versions of the Orders/Rule are at Annex G for reference.

G

LEGISLATIVE TIMETABLE

19. The legislative timetable will be as follows –

Publication in the Gazette	27 October 2006
Tabling at Legislative Council	1 November 2006

IMPLICATIONS OF THE PROPOSAL

20. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no economic, productivity, sustainability or environmental implications. The proposal will not affect the current binding effect of the five Ordinances and their subsidiary legislation.

21. The financial and civil service implications of the replacement of the six relevant existing juvenile homes by the new complex are set out at Annex H.

PUBLIC CONSULTATION

22. Consultation on the co-location exercise was conducted in 2003, in the context of the Finance Committee's funding approval to construct the new complex. The legislative amendments seek simply to replace references in the law to the existing homes by the new complex, and to remove references to closed homes.

PUBLICITY

23. A press release will be issued on 25 October 2006. A spokesman will also be available to answer media enquiries.

ENQUIRIES

24. For enquiries, please contact Ms Wendy CHEUNG, Assistant Secretary (Family)³ of the Health, Welfare and Food Bureau at 2973 8127.

Health, Welfare and Food Bureau
25 October 2006

**PROTECTION OF CHILDREN AND JUVENILES
(PLACES OF REFUGE)(AMENDMENT)
ORDER 2006**

(Made by the Chief Executive under section 2A of the Protection of Children and Juveniles Ordinance (Cap. 213) after consultation with the Executive Council)

1. Commencement

- (1) Section 2(1) shall come into operation on 31 December 2007.
- (2) Section 2(2) shall come into operation on 30 November 2006.

2. Places of refuge

(1) The Schedule to the Protection of Children and Juveniles (Places of Refuge) Order (Cap. 213 sub. leg. B) is amended by repealing items 4 and 8.

- (2) The Schedule is amended by adding –
“12. Tuen Mun Children and Juvenile Home.”.

Chief Executive

2006

Explanatory Note

The Schedule to the Protection of Children and Juveniles (Places of Refuge) Order (Cap. 213 sub. leg. B) specifies the places of refuge for the purposes of the

Protection of Children and Juveniles Ordinance (Cap. 213). This Order removes The Ma Tau Wai Girls' Home and Pui Chi Boys' Home from the Schedule.

2. The Order also adds Tuen Mun Children and Juvenile Home to the Schedule.

**PLACES OF DETENTION (JUVENILE OFFENDERS)
APPOINTMENT (CONSOLIDATION)
(AMENDMENT) ORDER 2006**

(Made by the Chief Executive under section 16(1) of the Juvenile Offenders Ordinance (Cap. 226) after consultation with the Executive Council)

1. Commencement

- (1) Section 2(1) shall come into operation on 31 December 2007.
- (2) Section 2(2) shall come into operation on 30 November 2006.

2. Schedule amended

(1) The Schedule to the Places of Detention (Juvenile Offenders) Appointment (Consolidation) Order (Cap. 226 sub. leg. A) is amended by repealing items 3 and 8.

(2) The Schedule is amended by adding –

“9.	Tuen Mun Children and Juvenile Home.	For all purposes of the Ordinance.”.
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Chief Executive

2006

Explanatory Note

The Schedule to the Places of Detention (Juvenile Offenders) Appointment (Consolidation) Order (Cap. 226 sub. leg. A) specifies the places appointed to be places of detention for the purposes of the Juvenile Offenders Ordinance (Cap.

226). This Order removes The Begonia Road Juvenile Home and The Ma Tau Wai Girls' Home from the Schedule.

2. The Order also adds Tuen Mun Children and Juvenile Home to the Schedule.

REMAND HOME (AMENDMENT) RULES 2006

(Made by the Chief Executive under section 17(3) of the Juvenile Offenders Ordinance (Cap. 226) after consultation with the Executive Council)

1. Commencement

- (1) Section 2(1) shall come into operation on 31 December 2007.
- (2) Section 2(2) shall come into operation on 30 November 2006.

2. Schedule amended

- (1) The Schedule to the Remand Home Rules (Cap. 226 sub. leg. D) is amended by repealing items 1 and 5.
- (2) The Schedule is amended by adding –
“6. Tuen Mun Children and Juvenile Home.”.

Chief Executive

2006

Explanatory Note

The Schedule to the Remand Home Rules (Cap. 226 sub. leg. D) (“principal Rules”) specifies the places of detention to which the principal Rules apply. These Rules remove the Begonia Road Juvenile Home and the Ma Tau Wai Girls’ Home from the Schedule.

- 2. The Rules also add Tuen Mun Children and Juvenile Home to the Schedule.

**PROBATION OF OFFENDERS (APPROVED
INSTITUTION)(CONSOLIDATION)
(AMENDMENT) ORDER 2006**

(Made by the Chief Executive under section 11 of the Probation of Offenders Ordinance (Cap. 298) after consultation with the Executive Council)

1. Commencement

- (1) Section 2(1) shall come into operation on 31 December 2007.
- (2) Section 2(2) shall come into operation on 30 November 2006.

2. Schedule amended

(1) The Schedule to the Probation of Offenders (Approved Institution)(Consolidation) Order (Cap. 298 sub. leg. B) is amended by repealing –

“Fanling Girls’ Home
Shatin Boys’ Home”.

- (2) The Schedule is amended by adding –
“Tuen Mun Children and Juvenile Home”.

Chief Executive

2006

Explanatory Note

The Schedule to the Probation of Offenders (Approved Institution)(Consolidation) Order (Cap. 298 sub. leg. B) specifies the premises

approved for the reception of persons who may be required to reside therein by a probation order. This Order removes Fanling Girls' Home and Shatin Boys' Home from the Schedule.

2. The Order also adds Tuen Mun Children and Juvenile Home to the Schedule.

**REFORMATORY SCHOOL (ESTABLISHMENT)
(CONSOLIDATION)(AMENDMENT)
ORDER 2006**

(Made by the Secretary for Health, Welfare and Food under section 10(1)
of the Reformatory Schools Ordinance (Cap. 225))

1. Commencement

- (1) Section 2(1) shall come into operation on 30 November 2006.
- (2) Section 2(2) shall come into operation on 31 December 2007.

2. Establishment of a reformatory school

(1) Paragraph 3 of the Reformatory School (Establishment) (Consolidation) Order (Cap. 225 sub. leg. A) is amended by repealing everything after “established” and substituting –

“at the following premises for the use of male youthful offenders –

- (a) the O Pui Shan Boys’ Home (坳背山男童院);
- (b) Tuen Mun Children and Juvenile Home (屯門兒童及青少年院).”.

(2) Paragraph 3 (as amended by subsection (1)) is amended by repealing subparagraph (a).

Secretary for Health, Welfare and Food

Explanatory Note

Paragraph 3 of the Reformatory School (Establishment)(Consolidation) Order (Cap. 225 sub. leg. A) specifies the reformatory school for the use of youthful offenders. This Order adds Tuen Mun Children and Juvenile Home to that paragraph.

2. The Order also removes the O Pui Shan Boys' Home from that paragraph.

**IMMIGRATION (PLACES OF DETENTION)
(AMENDMENT) ORDER 2006**

(Made by the Secretary for Security under section 35(1) of the Immigration Ordinance (Cap. 115))

1. Commencement

- (1) Section 2(1) shall come into operation on 31 December 2007.
- (2) Section 2(2) shall come into operation on 30 November 2006.

2. Schedule 2 amended

- (1) Schedule 2 to the Immigration (Places of Detention) Order (Cap. 115 sub. leg. B) is amended by repealing items 1, 2, 3, 4 and 5.
- (2) Schedule 2 is amended by adding –
“6. Tuen Mun Children and Juvenile Home.”.

Secretary for Security

2006

Explanatory Note

Schedule 2 to the Immigration (Places of Detention) Order (Cap. 115 sub. leg. B) specifies the places at which a person required or authorized to be detained by or under the Immigration Ordinance (Cap. 115) may be so detained. This Order removes the following places from that Schedule –

- (a) The Chuk Yuen Children’s Reception Centre;
- (b) The Ma Tau Wai Girls’ Home;

- (c) The Begonia Road Boys' Home;
- (d) The Pui Yin Juvenile Home; and
- (e) Pui Chi Boys' Home.

2. The Order also adds Tuen Mun Children and Juvenile Home to the Schedule.

Chapter:	213B	PROTECTION OF CHILDREN AND JUVENILES (PLACES OF REFUGE) ORDER	Gazette Number	Version Date
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Schedule:		SCHEDULE	L.N. 9 of 2004	30/01/2004
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[paragraph 2]

PLACES OF REFUGE

Item	Place of refuge
1.	The Po Leung Kuk.
2.	(Repealed L.N. 557 of 1994)
3.	(Repealed L.N. 9 of 2004)
4.	The Ma Tau Wai Girls' Home.
5.	(Repealed L.N. 244 of 1999)
6.	(Repealed L.N. 557 of 1994)
7.	(Repealed L.N. 530 of 1996)
8.	Pui Chi Boys' Home. (L.N. 309 of 1984)
9.	(Repealed L.N. 26 of 1986)
10.	(Repealed L.N. 244 of 1999)
11.	Wing Lung Bank Golden Jubilee Sheltered Workshop and Hostel. (L.N. 94 of 2001)

Chapter:	226A	PLACES OF DETENTION (JUVENILE OFFENDERS) APPOINTMENT (CONSOLIDATION) ORDER	Gazette Number	Version Date
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Schedule:		SCHEDULE	L.N. 95 of 2001	04/05/2001
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	Place	Purpose
1.	(Repealed L.N. 337 of 1983)	
2.	All the police stations in Hong Kong. (G.N.A. 57 of 1955; 15 of 1999 s. 3)	For the purposes of sections 5, 7 and 8 of the Ordinance.
3.	The Begonia Road Juvenile Home situate at 62 Begonia Road, Yau Yat Chuen, Kowloon. (L.N. 36 of 1963; L.N. 243 of 1999)	For all purposes of the Ordinance.
4.	(Repealed L.N. 337 of 1983)	
5.	(Repealed L.N. 243 of 1999)	
6.	(Repealed L.N. 24 of 1986)	
7.	(Repealed L.N. 243 of 1999)	
8.	The Ma Tau Wai Girls' Home situate at 51 Sheung Shing Street, Homantin, Kowloon. (L.N. 95 of 2001)	For all purposes of the Ordinance.

Chapter:	226D	REMAND HOME	Gazette Number	Version Date
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Schedule:		SCHEDULE	L.N. 96 of 2001	04/05/2001
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[rule 1]

The remand sections of-

1. Begonia Road Juvenile Home. (L.N. 245 of 1999)
2. (Repealed L.N. 245 of 1999)
3. (Repealed L.N. 29 of 1986)
4. (Repealed L.N. 245 of 1999)
5. Ma Tau Wai Girls' Home. (L.N. 96 of 2001)

(L.N. 389 of 1983)

Chapter:	298B	PROBATION OF OFFENDERS (APPROVED INSTITUTION) (CONSOLIDATION) ORDER	Gazette Number	Version Date
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Schedule:		SCHEDULE	L.N. 100 of 2004	30/06/2004
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Fanling Girls' Home (L.N. 146 of 1996)

Shatin Boys' Home (L.N. 25 of 1999)

(L.N. 25 of 1999; L.N. 100 of 2004)

Chapter:	225A	Title:	REFORMATORY SCHOOL (ESTABLISHMENT) (CONSOLIDATION) ORDER	Gazette Number:	
Paragraph:	3	Heading:	Establishment of a reformatory school	Version Date:	30/06/1997

A reformatory school shall be established at the premises known as the O Pui Shan Boys' Home (坳背山男童院) at O Pui Shan, Kau Wa Keng, for the use of male youthful offenders.

(L.N. 77 of 1969)

Chapter:	115B	Title:	IMMIGRATION (PLACES OF DETENTION) ORDER	Gazette Number:	
Schedule:	2	Heading:		Version Date:	30/06/1997

[paragraphs 2 & 4]

1. The Chuk Yuen Children's Reception Centre.
 2. The Ma Tau Wai Girls' Home.
 3. The Begonia Road Boys' Home.
 4. The Pui Yin Juvenile Home. (L.N. 22 of 1986)
 5. Pui Chi Boys' Home. (L.N. 100 of 1994)
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Financial and Civil Service Implications

The replacement of the six relevant existing homes by the new Tuen Mun Children and Juvenile Home would result in estimated recurrent savings of \$20 million. The proposal to replace references to the existing and closed homes in the subsidiary legislation of the five Ordinances by the new complex would not incur additional expenditure.

2. There is no staff redundancy as all the Social Workers (Social Work Officer and Social Work Assistant Grades Staff), Registered Nurses, and some of the Clerical Staff, Artisans and Motor Drivers will be transferred to the new complex, while the remaining staff, namely the Teachers, Workshop Instructors, Welfare Workers, Hostel Managers, Enrolled Nurses, Cooks, Workmen, Ward Attendants and Property Attendants will be deployed to other service units to fill the vacancies or perform other duties as required by the Social Welfare Department.