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**Paper for the House Committee meeting
on 3 November 2000**

**Report of the Subcommittee on the Prison (Amendment) Rules 2000,
Immigration (Vietnamese Migrants) (Detention Centres) (Amendment) Rules 2000
and Probation of Offenders (Amendment) Rules 2000**

Purpose

This paper reports on the deliberations of the Subcommittee on the Prison (Amendment) Rules 2000, Immigration (Vietnamese Migrants) (Detention Centres) (Amendment) Rules 2000 and Probation of Offenders (Amendment) Rules 2000.

Background

2. The Justices of the Peace Ordinance (Cap.510) (JP Ordinance) provides a local system for the appointment, resignation and removal of Justices of the Peace (JPs). One of the main functions of JPs, as set out under section 5 of the JP Ordinance, is to visit any custodial institution or detained person. The current practice is to pair a Non-official JP with an Official JP in arranging JP visits. While such pairing in some cases is only an administrative arrangement, in the case of statutory visits to certain institutions as required under Rule 6(1) of the Immigration (Vietnamese Migrants) (Detention Centres) Rules, Rule 6(1) of the Immigration (Vietnamese Boat People) (Shek Kwu Chau Detention Centre) Rules, Rules 222(1) of the Prison Rules and Rule 42(1) of the Probation of Offenders Rules, such pairing is set out in the law.

3. The Administration Wing of the Chief Secretary for Administration's Office (the Administration Wing) which provides secretariat service for the JP scheme conducted a review of the JP system, with special focus on the JP visits programme. One of the proposals was to give JPs more flexibility on the choice of visiting partners by allowing Non-official JPs to choose either an Official JP or a Non-official JP as their visiting partner in JP visits. The Administration decided not to implement the proposal because there was considerable support both for and against the proposal.

4. When being consulted on the review of the JP system and the result of the consultation exercise on 12 July 1999, members of the Panel on Home Affairs of the

Legislative Council (LegCo) felt strongly that the Administration should allow Non-official JPs the choice of either an Official JP or a Non-official JP as their visiting partner. After having further considered the proposal and upon consultation with relevant Bureaux/Departments, the Administration decided that the proposal should be implemented. According to the Administration, Official JPs will not be given a choice of partners and they will be arranged to conduct visits with Non-official JPs.

5. Rule 222(1) of the Prison Rules (Cap. 234 sub. leg.), Rule 6(1) of the Immigration (Vietnamese Migrants) (Detention Centres) Rules (Cap. 115 sub. leg.) and Rule 42(1) of the Probation of Offenders Rules (Cap. 298 sub. leg.) are amended to remove the restriction that the two JPs visiting prisons, hostels, detention centres, approved institutions must be of the combination of one Official JP and one Non-official JP. According to the Administration, while Rule 6(1) of the Immigration (Vietnamese Boat People) (Shek Kwu Chau Detention Centre) Rules also make specific reference to the pairing arrangement for JP visits, the Security Bureau will carry out a review into the laws relating to Vietnamese refugees and migrants, including the relevant legislation which will either be amended or repealed as appropriate after the review. It is therefore not necessary to amend Rule 6(1) of the Immigration (Vietnamese Boat People) (Shek Kwu Chau Detention Centre) Rules in this exercise.

The Subcommittee

6. At the House Committee meeting on 13 October 2000, members agreed that a subcommittee be formed to study the Amendment Rules. The membership list of the subcommittee is in **Appendix I**.

7. Under the chairmanship of Hon Cyd HO Sau-lan, the subcommittee has held two meetings to discuss with the Administration. A representative of the Hong Kong Human Rights Monitor (HKHRM) also gave views on the proposed amendments to the Prison Rules at one of the meetings.

Deliberations of the Subcommittee

8. The subcommittee has focused its discussion on Rule 222 of the Prison Rules regarding the duty of JPs to visit prisons. The main deliberations of the subcommittee are summarised in the following paragraphs.

Pairing arrangement for JP visits

9. Members are in support of the Administration's proposal of allowing Non-official JPs to choose either Official JPs or Non-official JPs as their visiting partner because they will have more flexibility in choosing their visiting partners.

10. Some members are of the view that JP visits to custodial institutions or detained person should be conducted by Non-official JPs only because the objective of the JP visits programme is to ensure that the rights of the inmates are safeguarded through a system of visits by independent visitors. The Administration has explained to members that the current practice is to pair a Non-official JP with an Official JP in arranging JP visits for the following reasons -

- (a) Official JPs can explain to the Non-official JPs questions relating to the procedures and policies of the government during the visits when required; and
- (b) Official JPs can help the Non-official JPs in making the transport arrangement to institutions.

11. Some members consider that an individual Non-official JP should be allowed to conduct prison visits. The Administration has responded that Rule 222 of the Prison Rules only requires two visiting JPs, if possible, to visit a prison. A Non-official JP can conduct prison visits on his own. A member considers that arranging two JPs for each prison visit is a good practice to enhance credibility of the visits system.

12. The Administration has informed members that if the proposal of allowing Non-official JPs to choose either an Official JP or a Non-official JP as their visiting partner in JP visits is implemented, individual Non-official JPs will be consulted as to whether they wish to have another Non-official JP or an Official JP as visiting partner for JP visits. The Administration Wing will arrange random pairing with the aid of computer according to the choice of Non-official JPs and they can vary their choice subsequently. The JP Secretariat will provide the necessary logistic support if both visiting JPs are Non-official. If a Non-official JP wishes to pair up with another JP to visit a particular institution, then the Administration Wing will make special arrangement for such visit on top of the routine scheduled visits.

13. Members note that individual Non-official JP may also indicate preference for visiting a particular institution or category of institutions. The Administration will arrange visiting duties according to their preference as far as possible.

Surprise visit to prisons

14. While members are in support of the Administration's proposal of allowing more flexibility in the pairing arrangements on JP visits, they urge that the Administration should further relax the rules governing visits to prisons by JPs. Members recognise that there is need to arrange JP visits on a rotation basis in order to ensure a minimum number of visits to a prison and a reasonable spread of visits over time. However, they consider that JPs should be allowed to conduct surprise visits at any time without giving any advance notification. They point out that increasing the surprise element in JP visits will enhance the credibility of the visits system.

15. The Administration has advised that under Rule 222 of the Prison Rules, two visiting justices can visit a prison or hostel operated by the Correctional Services Department at all reasonable times during their tour of duty (usually two weeks), and such visits are surprise visits in nature. The names of the two visiting justices will be furnished by the Chief Secretary for Administration to the Commissioner of Correctional Services (the Commissioner). The visiting justices can also conduct visits on such other days as they may be required. Other JPs not on the list are required to give advance notification to the Administration Wing if they would wish to conduct impromptu visit to the prison/hostel so that the latter can confirm their identity to the Commissioner and arrange for such visits under Rule 222 of the Prison Rules. The Commissioner can also ascertain the status of the visiting JPs directly with the Administration Wing to enable such visits. The Administration has explained that the Correctional Services Department (CSD) does not know whether the visitors are JPs or not. There is therefore an operational need for the JPs conducting impromptu visits to give advance notification to the Administration Wing for verification of their status. No visiting JP has ever been denied access to the prison concerned once their status has been verified.

16. The Administration has further pointed out that the Commissioner can permit under Rule 77(9) of the Prison Rules persons of respectability to view the institutions under his control at such times as he may approve. JPs can therefore visit any prison or hostel at any time as an approved visitor permitted by the Commissioner although such visits are outside the visiting justices system. In response to a member's enquiry, the Administration has confirmed that the Commissioner will allow a visiting JP to be accompanied by his assistant(s) if considers necessary, under special circumstances Rule 77(9) of the Prison Rules will apply to such cases.

17. Members are not satisfied with the arrangement as explained by the Administration in paragraphs 15 and 16. They maintain the view that JPs should be allowed to visit any prison at any time without giving advance notification to the Administration Wing. Such surprise visits should form an integral part of the JP visit system. Members consider that it is unreasonable that JPs who are appointed by the Chief Executive are subject to more restrictions than persons of respectability under Rule 77(9) of the Prison Rules in discharging their primary function of visiting custodial institutions and detained persons.

18. The Administration pointed out that while JPs have various duties and powers when conducting visits to prisons under Rule 222 of the Prison Rules, they will not have the same duties and powers if they only visit the prison under Rule 77(9) of the Prison Rules. The Administration also reiterated that JP visits at present are already unannounced so that the JPs concerned can observe the real condition in the prisons. To enhance the surprise element of the visits, the Administration Wing will advise all the Official JPs (who are usually responsible for arranging the visits) of the following -

- (a) not to give advance notice to the prisons and institutions to be visited as far as practicable; and

- (b) while they can continue to use government transport for JP visits, they are free to use private or public transport to visit the prisons and institutions with the Non-official JPs.

19. Some members maintain that practical measures can be taken to ensure the surprise element of JP visits. They suggest that identification cards can be issued to JPs to verify their status as JPs and a full list of JPs should be given to the Commissioner. Members stress that JPs should be granted immediate and unhindered access to prisons upon presentation of their JP identification cards. The Assistant Legal Adviser has advised that Rule 222 of the Prison Rules as presently worded will not preclude the Chief Secretary for Administration from giving a full list of JPs to the Commissioner instead of giving a list of visiting JPs for a particular tour of duty.

20. In response to members' request to relax the restrictions on conducting surprise visits, the Administration has expressed concern that as a JP has to be accompanied by an officer not below the rank of Chief Officer of CSD under Rule 117 of the Prison Rules during the visit, frequent surprise visits by JPs may affect daily operation of a prison.

Number of visiting JPs for each prison visit

21. HKHRM has suggested that more than two visiting JPs should be allowed for each prison visit if necessary. Some members ask whether it is permissible to do so under relevant rules governing JP visits. The Administration has pointed out that the intention of Rule 222 of the Prison Rules is that two visiting JPs would visit a prison at one time, but the JPs can also conduct their visit separately if it is not possible for them to visit in company. The Administration Wing will arrange additional visit to an institution upon request of JPs on top of the scheduled visit. It is the best use of manpower to pair two JPs for one visit because there are currently only less than 1 000 Official and Non-official JPs. However, the Commissioner is empowered under Rule 77(9) of the Prison Rules to permit other JP(s) to view the prison during the same visit. Some members opine that it is not a satisfactory arrangement because JPs other than those visiting under the JP visits system will not have the duties and powers as provided for under Rules 222-235 of the Prison Rules.

22. The representative of HKHRM has also expressed the view that while JPs are given the powers and functions to visit custodial institutions and detained persons under a primary legislation i.e. section 5 of the JP Ordinance, it seems inappropriate for Rule 222 of the Prison Rules which is a piece of subsidiary legislation to restrict such powers and functions. The Assistant Legal Adviser has advised members that while section 5 of the JP Ordinance has set out the general functions of JPs, section 23 of the Prisons Ordinance (Cap. 234) has clearly stipulated that the Chief Executive shall appoint such numbers of visiting JPs as he considers necessary and visiting JPs shall carry out the duties and exercise the powers prescribed by the Prison Rules. She has not observed any obvious contradiction between section 5 of the JP Ordinance and Rules 222-235 of the Prison Rules.

Review of the JP visit system

23. Members are of the view that the administrative arrangements as prescribed under Rule 222 of the Prison Rules are too restrictive for JPs to perform their functions and powers under section 5 of the JP Ordinance e.g. the need to give advance notification for impromptu visits and the limit on the number of JPs for each prison visit. At members' request, the Administration has undertaken to study the proposal of allowing JPs to conduct impromptu JP visits to prisons and other correctional institutions without the need for prior arrangement made by the Director of Administration or the Commissioner. The feasibility of allowing more than two JPs who are entitled to the same duties and powers as provided for in the Prison Rules to visit a prison at one time will also be considered. A member points out that while the Administration should consider implementing administrative arrangements to facilitate JP visits to prisons, the security and smooth operation of prisons should not be compromised. The member suggests that the Administration should conduct an overall review of the relevant administrative arrangements and statutory provisions in order to strike a balance between facilitating JP visits and ensuring the smooth operation of prisons.

24. Members agreed that the issues should be referred to the Panel on Home Affairs for follow-up. The Administration has undertaken to report to the relevant LegCo Panel as soon as practicable.

Recommendation

25. The subcommittee recommends that the Amendment Rules be supported.

Advice sought

26. Members are invited to support the recommendation of the subcommittee in paragraph 25 above.

Legislative Council Secretariat

2 November 2000

**Subcommittee on Prison (Amendment) Rules 2000,
Immigration (Vietnamese Migrants) (Detention Centres) (Amendment) Rules 2000
and Probation of Offenders (Amendment) Rules 2000**

Membership List

Chairman	Hon Cyd HO Sau-lan
Members	Hon James TO Kun-sun Hon LAU Kong-wah Hon Emily LAU Wai-hing, JP (Total : 4 Members)
Clerk	Miss Flora TAI Yin-ping
Legal Adviser	Miss Anita HO Ying-chu
Date	23 October 2000