

立法會 *Legislative Council*

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

**Minutes of the first meeting
held on Monday, 23 October 2000 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members Present : Hon Cyd HO Sau-lan (Chairman)
Hon James TO Kun-sun
Hon LAU Kong-wah
Hon Emily LAU Wai-hing, JP

Public Officers Attending : Mr P C LEUNG
Deputy Director of Administration (1)

Mrs Apollonia LIU
Assistant Director of Administration (1)

Mr David WONG
Principal Assistant Secretary for Secretary (B)

Mr Samson CHAN
Acting Assistant Commissioner of Correctional Services

Miss Shirley WONG
Government Counsel, Department of Justice

Clerk in Attendance : Miss Flora TAI
Chief Assistant Secretary (2)

Staff in Attendance : Miss Anita HO
Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Assistant Secretary (2)7

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I. Election of Chairman

Miss Cyd HO was elected Chairman of the Subcommittee.

II. Meeting with the Administration

[Legislative Council Brief on Prison (Amendment) Rules 2000 issued on 4 October 2000 by the Administration Wing of the Chief Secretary for Administration's Office]

2. At the invitation of the Chairman, Deputy Director of Administration (DD of Adm) briefed members that the three Amendment Rules sought to remove the restriction that the two Justices of the Peace (JPs) visiting custodial institutions and detained persons must be of the combination of one Official JP and one Non-official JP. The proposed amendments were in response to members' request at the meeting of the LegCo Panel on Home Affairs on 12 July 1999 to give Non-official JPs more flexibility on the choice of visiting partners.
3. The Subcommittee focused its discussion on Rule 222 of the Prison Rules (PR) regarding JP visits to prisons.

Pairing arrangement for prison visits

4. Miss Emily LAU asked about the rationale for the existing pairing arrangement. She said that JP visits to custodial institution should be conducted by Non-official JPs only because the objective of the JP visits programme was to ensure that the rights of the inmates were safeguarded through a system of visits by independent visitors. DD of Adm responded that he could not trace the original policy intention of the pairing arrangement. In his view, the existing arrangement would enable the Official JP to explain to the Non-official JP the operation and policies of the Government when required. In addition, the Official JP was usually responsible for making logistical arrangements for prison visits.

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5. DD of Adm further explained that PR222(1) required two JPs to carry out their duty to visit each prison at least once every fortnight (tour of duty). This was to ensure a minimum number of visits to a prison, and a reasonable spread of such visits over time. For Official JPs, the type of institutions to be visited would be unrelated to the department they came from to ensure that the observations they made in the institutions visited were independent and objective. JPs were also invited to indicate their preferences such as institutions or categories of institutions that they would wish to visit on a more regular basis. Under the proposed arrangement, the Administration would consult individual Non-official JPs as to whether they would wish to have another Non-official JP or an Official JP as visiting partner for JP visits. The Administration would arrange their tour of duty according to their preferences with the aid of computer. DD of Adm informed members that the Administration had implemented the system of random pairing since 1992 to ensure transparency and fairness.

6. In response to Miss Emily LAU, Assistant Director of Administration (AD of Adm) said that a JP was at liberty to vary his choice subsequently. Miss LAU further asked whether two JPs could pair up on their own for a particular visit. DD of Adm responded that although random pairing was considered more credible, the Administration would make special arrangement for such visit on top of the routine scheduled visits.

Number of JPs for each prison visit

7. Mr James TQ considered that one JP should be allowed to conduct a prison visit. DD of Adm responded that PR222 only required two visiting JPs if possible to visit a prison. The intention of PR222 was that two visiting JPs would visit a prison at one time, but the JPs could also conduct their visit separately if it was not possible for them to visit in company. The JP Secretariat would make necessary logistical arrangement if the visits were to be conducted by only one Non-official JP or both visiting JPs are Non-official. Mr LAU Kong-wah considered that arranging two JPs for each prison visit was a good practice to enhance credibility of the visits system.

8. Miss Emily LAU asked whether three JPs could visit a prison at the same time. DD of Adm explained that the intention of PR222 was for two JPs to conduct a tour of duty to a prison at the same time. The Administration held the view that two JPs visiting a prison was sufficient under the JP visit system. If another JP wished to join the visit, a request might be made to the Commissioner of Correctional Services (the Commissioner). The Commissioner had the discretion under PR77(9) to permit persons of respectability to view the institutions under his control. Hence, JPs might visit any prison at any time as an approval visitor permitted by the Commissioner, although such visits would be outside the JP visits system. DD of Adm further pointed out that it was the best use of manpower to pair

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two JPs for the visit only because there were currently only about 1 000 Official and Non-official JPs.

Visits under PR77(9)

9. Mr. James TO pointed out that JPs would not have the duties and powers as provided for under PRs 222-235 if they visited a prison at the Commissioner's discretion. Mr TO asked whether PR77(9) was a means to prevent JPs from conducting surprise visits. DD of Adm replied in the negative. Principal Assistant Secretary for Security (B) (PAS(S)B) said that only a few JP visits had been conducted outside the tour of duty in the past. There was no question of PR77(9) being used to discourage surprise visits. While he could not set out the circumstances under which the Commissioner would accede to the request of a person of respectability to visit a prison, his understanding was that the Commissioner would give due considerations to all the relevant factors in order to make a reasonable and appropriate decision. Miss Emily LAU asked and Acting Assistant Commissioner of Correctional Services (AC/CS) confirmed that the Commissioner would allow a visiting JP to be accompanied by his assistant(s) if considered necessary, under special circumstances PR77(9) would apply to such cases.

10. Mr LAU Kong-wah said that he failed to understand why JPs who were appointed by the Chief Executive were subject to more restrictions than persons of respectability under PR77(9) in discharging the primary function of visiting prisons. AD of Adm explained that this was because JPs were conferred with extensive power under Part III of the PR which included, among other things, the power to inspect books and duty to report abuses.

Administrative arrangements for JP visits

11. In response to Miss Emily LAU's question on the administrative arrangement for JP visits, AD of Adm explained that the Administration would prepare a schedule for tour of duty under which JPs were randomly paired up for each prison visit. By virtue of PR 222 (2), the names of the visiting JPs should be furnished by the Chief Secretary for Administration to the Commissioner and the prisons and hostels under the Commissioner's control should be open to them at all reasonable times during their tour of duty. JPs who wished to conduct visits outside their tour of duty must notify the Administration Wing in advance so that necessary information would be passed to the Correctional Services Department (CSD) for the purpose of identity verification. She explained that the procedure was necessary because CSD had no idea as to whether a visitor was a JP or not.

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12. The Chairman asked and DD of Adm clarified that CSD would be furnished with the names of the JPs of a particular tour of duty and not the list of all the JPs. Miss Emily LAU said that the Administration had indicated to her that it would consider her suggestion of issuing identity cards to JPs or a full list of JPs to CSD so that CSD could verify their identity on the spot. In the circumstances, the Administration could dispense with the notification procedure.

13. AD of Adm informed members that after consultation with relevant departments, the Administration had concluded that the present system of JP visits was operating well. JPs were only required to present letters of appointment in respect of the visit in question issued by the Administration Wing when visiting a prison. Under the existing system, no visiting JPs had been denied access to prisons in the past.

Surprise visits

14. Miss Emily LAU and Mr James TO maintained that JPs should be able to conduct surprise JP visits in order to ensure the credibility of the visits system. The Chairman asked whether it was permissible under the law for JPs to conduct surprise visits. DD of Adm said that all JP visits to institutions were surprise visits in nature, as JPs might conduct their visits at any reasonable time during their tour of duty but the exact date and time of the visits were not made known to the institutions beforehand. Moreover, the PR also allowed JPs to seek impromptu visits on top of their regular visits through the Administration Wing or CSD.

15. Mr James TO and Miss Emily LAU disagreed that the current JP visit system carried a heavy surprise element, given that JPs must notify the Administration Wing in advance for any prison visits they wished to make. They pointed out that pre-arranged visits would defeat the purpose of the JP visit system. They called for a further relaxation of the rules governing JP visits to prison.

16. Mr James TO said that a lawyer could visit his client in prison at any time upon presentation of his identity document. He said that the requirement for a JP visiting a prison should not be stricter than that of a lawyer. Miss Emily LAU shared his view. She asked whether CSD would have any operational difficulties if JPs were allowed to conduct surprise visits at any time to any custodial institutions.

17. AC/CS explained that under PR117, visiting JPs had to be accompanied by an officer not below the rank of Chief Officer of CSD throughout the visit. Prior notice was required because CSD needed to know who was visiting and verify his identity. Apart from security concerns, JP visits without prior notice might affect the operation of CSD, in particular if the visits were frequent or involved a large number of JPs. PAS/S quoted the provisions in PR208(1) to illustrate that the exercise of

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powers by JPs should not interfere with the security, good order and government of the prison.

18. Miss Emily LAU said that it was unlikely that a large number of JPs would conduct a surprise visit to a prison at the same time. In the circumstances, there should not be any major impact on the operation of the prison. Mr LAU Kong-wah said that while the Administration should use administrative means to facilitate JPs to conduct surprise visits, the security and operation of prisons should not be compromised.

19. DD of Adm said that if a scheduled tour of duty was abolished and JPs were given unfettered discretion in their choice of date, time, place and frequency of visits, the Administration would run the clear risk of seeing prolonged neglect of certain institutions and excessive interest in the others over a period of time. This would be against the intent of the current policy. He said that apart from mandatory JP visits every fortnight, the Commissioner was prepared to consider positively any request for visits to a prison under PR77(9). DD of Adm also pointed out that apart from prison visits by JPs, there were various channels for prisoners to reflect their views or lodge complaints on the operation of prisons and treatment of prisoners. These channels were publicized in the notice board of prisons. Prisoners could write to the Ombudsman, the Chief Executive, members of the Executive Council, LegCo and District Councils, the Police or the Independent Commission Against Corruption.

20. Members considered that visits to prisons arranged under PR77(9) was far from satisfactory. Mr James TO and Mr LAU Kong-wah pointed out that while JPs had various duties and powers when conducting visits to prisons under PR222, they would not have the same duties and powers if they were to visit the prison at the Commissioner's discretion under the category of "person of respectability".

21. Miss Emily LAU and Mr James TO maintained the view that the Administration should relax the rules with the view to allowing JPs to conduct surprise visits to prisons and other correctional institutions without the need for prior arrangement made by the Director of Administration or the Commissioner. Mr LAU Kong-wah opined that the Administration should conduct an overall review of the administrative arrangements and relevant statutory provisions in respect of JP visits to prisons in order to strike a right balance between facilitating JP visits and ensuring smooth operation of prisons.

The way forward

22. DD of Adm said that it was the intention of the Administration to implement the proposal of giving JPs more flexibility on the choice of visiting partners as soon as possible. He noted that while members wished to have more relaxed rules for the

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JPs visit system, members did not object to the three Amendment Rules. He therefore suggested that members should recommend to support the three Amendment Rules. He pointed out that the Administration needed more time to study members' suggestion of allowing JPs to conduct impromptu JP visits without the need for prior arrangements made by the Director of Administration or the Commissioner, and whether the request could be achieved administratively or by legislative means. He undertook to revert the Administration's position to the relevant LegCo Panel as soon as practicable.

III. Clause by clause examination of the three Amendment Rules

(Marked-up copies of the three Amendment Rules issued vide LC Paper No. CB(2)71/00-01)

23. With the aid of marked-up copies of the Amendment Rules, members went through the proposed amendments. Miss Emily LAU asked why PR did not have a provision similar to Rule 6(3) of the Immigration (Vietnamese Migrants) (Detention Centres) Rules which set out in detail the duties and powers of visiting JPs. AD of Adm explained that it was a matter of presentation. Duties and powers of JPs were spread over in a number of provisions in the PR. Members raised no further queries.

24. Miss Emily LAU suggested that the Administration should consider drawing up a checklist to facilitate JPs in performing their duties and powers. AD of Adm confirmed that in order to assist JPs in focusing on issues that deserved attention during their visits to institutions, the Administration had already formulated checklists to highlight the important areas that JPs might wish to cover in their inspections to different categories of institutions.

IV. Date of next meeting

25. Members noted that the Hong Kong Human Rights Monitor had requested to discuss the proposed amendments to the PR and related issues with the Subcommittee. Members agreed that the Subcommittee would hold another meeting on 26 October 2000 at 8:30 am to discuss with the Hong Kong Human Rights Monitor and the Administration.

26. The meeting ended at 4:05 pm.

Legislative Council Secretariat

9 November 2000