

立法會
Legislative Council

LC Paper No. CB(2)463/00-01
(These minutes have been
seen by the Administration)

Ref : CB2/SS/1/00

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 second meeting
held on Thursday, 26 October 2000 at 8:30 am
in Conference Room A 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

Mrs Apollonia LIU
Assistant Director of Administration

Mr David WONG
Principal Assistant Secretary for Secretary

Mr Samson CHAN
Acting Assistant Commissioner of Correctional Services

Miss Shirley WONG
Government Counsel, Department of Justice

Attendance by Invitation : Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

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

Staff in Attendance : Miss Anita HO
Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Assistant Secretary (2)7

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I. Meeting with deputation

The Chairman welcomed Mr LAW Yuk-kai, the representative of the Hong Kong Human Rights Monitor (HKHRM) to the meeting. Mr LAW focused on the system of Justice of the Peace (JP) visits to prisons and other correctional institutions. His views were summarized below -

- (a) The rights of the inmates should be safeguarded through a system of visits by independent visitors. The Administration should ensure that JPs would conduct regular and minimum visits to prisons in accordance with section 5 of the JP Ordinance (Cap 510);
- (b) JPs were given the powers and functions to visit custodial institutions and detained persons under a primary legislation, i.e. section 5 of the JP Ordinance. The primary legislation did not impose limits on JPs visits in respect of number of visits and number of visitors. It was inappropriate for the Prison Rules (PR) which was a piece of subsidiary legislation to restrict such powers and functions;
- (c) It was undesirable that JPs who wished to conduct prison visits outside their tour of duty had to rely on PR77(9), i.e. visits granted at the discretion of the Commissioner of Correctional Services (the Commissioner). The Administration should consider amending PR222 to allow more than two JPs to conduct a prison visit if necessary. The

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JPs should also be conferred with the power of a visiting JP as provided for in Part III of the PR; and

- (d) The Administration should clarify the relationship between visiting JPs and visiting committees under section 23(1)(a) and (b) of the Prison Ordinance (Cap 234) respectively.

2. The representative of HKHRM urged the Administration to review the statutory provisions as well as the relevant administrative arrangements in order to ensure that JPs could carry out their duties properly and effectively. He also suggested that the range of JPs visiting a prison at any one time should be prescribed in law to ensure that there would not be too few or too many visitors.

II. Meeting with the Administration

Section 23 of the Prisons Ordinance

3. The Chairman asked whether any visiting committee had been appointed under section 23(1)(b). Principal Assistant Secretary for Security (PAS(S)) responded that visiting JPs and visiting committees were two different entities. Members of the latter who were not necessarily JPs shall be appointed by the Chief Executive for the purpose of visiting prisons and other institutions under the control of the Commissioner. He confirmed that the Administration did not see the need to appoint visiting committee because the JP visits system had been operating well.

Section 5 of JP Ordinance and PR 222

4. Miss Emily LAU asked the Administration whether there was any contradiction between section 5 of JP Ordinance and PR 222 as observed by the HKHRM.

5. Deputy Director of Administration (DD of Adm) said that one of the main functions of JPs, as provided in section 5 of the JP Ordinance, was to visit custodial institutions which included prisons, detention centres, hospitals, etc. To facilitate JPs to carry out their duties, rules governing JP visits to various institutions were made and prescribed in respective subsidiary legislation. He opined that there was no contradiction between section 5 of the JP Ordinance and PR 222.

6. In response to Miss Emily LAU's enquiry, Assistant Legal Adviser 2 (ALA2) explained that there was a hierarchy of rules governing JP visits to prison. While section 5 of the JP Ordinance set out the general duties and functions of JPs, section 23 of the Prisons Ordinance stated that the Chief Executive should appoint such

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numbers of JPs as he considered necessary and visiting JPs should carry out their duties and exercise their powers prescribed by the PR. She had not observed any obvious contradiction between section 5 of the JP Ordinance and PR 222.

7. In response to members' concern about the restriction on JPs' visits prison, ALA2 explained that neither section 5 of the JP Ordinance nor section 23 of the Prisons Ordinance mentioned such restrictions. However, PR 222 required that not more than two visiting JPs should visit each prison at least once a fortnight. PR 222 also stated that JPs might conduct visits on such other days as they might be required. In order words, there was limitation on the number of JPs visiting a prison at any one time but there was no ceiling on the frequency of such visits. While a JP might not visit the same prison with a pair of JP who were conducting their tour of duty, he might visit the same prison some other time.

8. Miss Emily LAU supported the view of HKHRM that more than two visiting JPs should be allowed for each visit if necessary. DD of Adm pointed out that judging from the wordings of PR 222, it did not provide for such a scenario. However, a JP who wished to join a tour of duty with a pair of JPs might make a request to the Commissioner. The Commissioner had the discretion under PR77(9) to permit persons of respectability to view the institutions under his control. If the JP decided not to join the tour of duty, the Administration Wing could make separate arrangement for such visit on top of the routine scheduled visits. The JP would be allowed to carry out his duties and functions in accordance with section 5 of the JP Ordinance.

9. Mr LAU Kong-wah pointed out that the JP's power to visit a prison under PR77(9) was at the discretion of the Commissioner and not conferred by law. Miss Emily LAU informed members that she was only permitted to interview the inmates who had requested to meet her when she last visited the Lai Chi Kwok Detention Centre at the discretion of the Commissioner. Miss LAU added that she was unable to tour round the Centre. Members expressed concern that while JPs had various powers when conducting visits under PR222, they would not have the same powers if they were to visit the prison at the Commissioner's discretion. They suggested the rules governing JP prison visits should be further relaxed.

Adm 10. In response to Mr LAU Kong-wah's request, DD of Adm undertook to provide information on the system of JP visits in the UK for members' reference.

Surprise visits

11. Mr James TO reiterated his view that in order to enhance the surprise element of JP visits, CSD should be given a JP list for identify verification and the procedure of giving advance notification to the Administration Wing for a JP prison visit

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should be dispensed with. He pointed out that the requirement for a JP visiting a prison should not be stricter than that of a solicitor visiting his client in prison.

12. PAS(S) and Acting Assistant Commissioner of Correctional Services (AACCS) responded that the nature of prison visits conducted by a solicitor and a JP was very different. Given that JPs conducting a visit under PR 222 enjoyed a wide range of duties and powers, CSD had the responsibility to ensure that JPs could exercise their rights and powers appropriately and effectively during their tour of duty. There was an operational need for the notification procedure because CSD needed the information to verify the identity of a JP before he was admitted to a prison visit. Throughout his visit the JP would be accompanied by an officer not below the rank of Chief Officer of CSD under Rule 117. The purpose was to explain the operation of the prison to the JP and to safeguard his personal safety. The present staffing establishment was to have one Chief Correctional Services Officer in each custodial institution and for larger institutions, there would be a maximum of two such officers. AACCS expressed concern that frequent visits by JPs might affect the daily operation of a prison.

13. Miss Emily LAU reiterated that increasing the surprise element in JP visits would enhance the credibility of the visits system. She said that practical measures should be introduced to improve the verification procedure so that JPs were allowed to conduct surprise visits at any time without giving any advance notification. For instance, identification cards could be issued to JPs to verify their status as JPs and a full list of JPs should be given to the Commissioner. The Chairman asked and ALA advised that PR 222 as presently worded would 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.

Adm 14. DD of Adm responded that the purpose of the proposed amendments to PR was to enhance the flexibility of JPs to choose their visiting partners and there was no intention to restrict their power to visit a prison. He noted members' views that the stipulation prescribed in PR222 and the administrative arrangements made under the said rule were too restrictive for JPs to perform their duties and powers and that the rules governing JP visits should be further relaxed. He said that the Administration had already undertaken at the last meeting 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. Since members had made further suggestions at this meeting, the Administration would also consider the feasibility of allowing more than two JPs to conduct a prison visit at one time and conferring them with the same duties and powers as provided for in Part III of the PR. He undertook to revert the Administration's views to the relevant Panel as soon as possible.

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15. Members agreed that the issues should be referred to the Panel on Home Affairs for follow-up.

The way forward

16. Members agreed that the Chairman should make a verbal report to the House Committee at its meeting on 27 October 2000. Members also agreed that the Chairman should address the Council on behalf of the Subcommittee on the deliberations of the Subcommittee and the undertaking of the Administration.

17. The meeting ended at 9:50 am.

Legislative Council Secretariat
16 November 2000