

Extract of the 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

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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.

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