

立法會
Legislative Council

LC Paper No. CB(2)1170/09-10
(These minutes have been seen
by the Administration)

Ref : CB2/SS/2/09

**Subcommittee on Subsidiary Legislation Relating to
Transfer of Management of the Castle Peak Bay Immigration Centre**

**Minutes of the first meeting
held on Friday, 5 March 2010, at 3:00 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Dr Hon Margaret NG
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon Cyd HO Sau-lan
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Public Officers attending : Agenda item II

Mr Alan LO Ying-ki
Principal Assistant Secretary for Security,
Security Bureau

Mr Corrado CHOW
Assistant Director (Enforcement and Torture Claim
Assessment), Immigration Department

Mr S W NG
Assistant Principal Immigration Officer (Castle Peak
Bay Immigration Centre), Immigration Department

Ms Elaine NG
Government Counsel

Clerk in attendance : Miss Odelia LEUNG
Chief Council Secretary (2)6

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Judy TING
Senior Council Secretary (2)7 (Acting)

Miss Jenny LEE
Legislative Assistant (2)6 (Acting)

Action

I. Election of Chairman

Dr Margaret NG, the Member who had the highest precedence in the Council among those who were present at the meeting, presided over the election of Chairman.

2. Dr Margaret NG was nominated by Mr LAU Kong-wah and the nomination was seconded by Mr James TO. Dr Margaret NG did not accept the nomination. Mr James TO was nominated by Ms Cyd HO and the nomination was seconded by Dr Margaret NG. Mr James TO accepted the nomination. There being no other nominations, Mr James TO was elected Chairman of the Subcommittee.

II. Meeting with the Administration

File ref: SBCR 10/2091/94	--	Legislative Council Brief
LC Paper No. LS46/09-10	--	Legal Service Division Report on the four Orders (L.N. 13 to L.N.16 of 2010)
LC Paper No. CB(2)1028/09-10(01)	--	Marked-up copy of the Orders prepared by the Legal Service Division
LC Paper Nos. CB(2)1028/09-10(02) and (03)	--	Letter dated 18 February 2010 from the Assistant Legal Adviser to the Principal Assistant Secretary (Security) C of the Security Bureau and the reply dated 22 February 2010 from the Principal Assistant Secretary (Security) C to the Assistant Legal Adviser

Action

- | | |
|-------------------------------------|--|
| LC Paper No.
CB(2)1028/09-10(04) | -- Background brief on the "Subsidiary Legislation Relating to Transfer of Management of the Castle Peak Bay Immigration Centre" prepared by the Legislative Council Secretariat |
| LC Paper No.
CB(2)633/09-10(04) | -- Discussion paper dated December 2009 provided by the Security Bureau to the Panel on Security for the meeting on 5 January 2010 |
| LC Paper No.
CB(2)1028/09-10(05) | -- Extract of minutes of meeting of the Panel on Security on 5 January 2010 |
| LC Paper No.
CB(2)892/09-10(01) | -- Supplementary note provided by the Security Bureau to the Panel on Security on 2 February 2010 |

3. The Subcommittee deliberated (index of proceedings attached at **Annex**).

Deliberations

4. Members noted that the Immigration (Treatment of Detainees) (Amendment) Order 2010 (the Amendment Order) had not included all the provisions in the Prison Rules (Cap. 234 sub. leg. A) that might be relevant to the management of the Castle Peak Bay Immigration Centre (CIC). They identified a number of differences in legislation on the treatment of detainees upon transfer of management of CIC from the Correctional Services Department (CSD) to the Immigration Department (ImmD) in April 2010. These included, inter alia, arrangements relating to visits of detainees by Justices of the Peace (JPs), disciplines, searches and examination, letters to and from outside and interviews with legal advisers. Members raised the following questions and concerns -

- (a) the reasons for not including in the Amendment Order provisions of the Prison Rules that might be relevant and the adequacy of the powers for effective management of CIC by ImmD;
- (b) the differences in the effects of specifying the treatment of detainees in statutory provisions and in the ImmD's CIC Operation Manual (the Operation Manual);
- (c) whether the treatment of detainees, in particular their rights and protection (including visits by JPs, transfer between places and

Action

provision of food and interpretation services), would be the same after transfer of management from CSD to ImmD;

- (d) whether the Amendment Order applied to CIC only or to other detention centres managed by ImmD as well and the reasons for any difference in application;
- (e) whether staff of ImmD resisted the conferment and exercise of those powers which were included in the Prison Rules but would not be added to the Amendment Order such as examination of urine and searches of body cavities; and
- (f) whether the sanitary facilities and conditions at CIC and other detention places managed by ImmD were of an acceptable standard.

5. Principal Assistant Secretary for Security (PAS(SB)) explained that immigration detainees were not convicted or sentenced prisoners but were persons detained for immigration investigation or pending removal under the Immigration Ordinance (Cap. 115). ImmD would not add to the Amendment Order such powers and restrictions in the Prison Rules that were considered not necessary for ImmD's effective management of immigration detainees such as examination of detainees' urine; searches of body cavities, etc. Moreover, some Prison Rules were not relevant to CIC detainees, such as the requirement for prisoners to work. Effective from April 2010 when ImmD took over the management of CIC, ImmD would rely on the provisions of the Immigration (Treatment of Detainees) Order (Cap. 115 sub. leg. E) (the Order) as amended, supplemented by detailed measures to be set out in its Operation Manual. The Amendment Order included provisions relating to visits by JPs to CIC and smoking by detainees in designated areas at CIC as before. The proposed new Rule 16 in the Order already set out the key arrangements regarding visits by JPs. Other arrangements would by and large follow the current practice, for example, two JPs would be invited to visit CIC at least once a fortnight. PAS(SB) stressed that the treatment enjoyed by detainees at CIC would remain the same, if not more generous in some respects. In the Administration's view, the powers provided in the Order as amended would be adequate for the effective management of CIC.

6. PAS(SB) clarified that while Schedule 3 to the Immigration (Places of Detention) Order (Cap. 115 sub. leg. B) listed a number of references to places as "places of detention", the Order relating to treatment of detainees would apply to CIC only, as CIC would be the only place specified in Schedule 2 to the Order. All the other references to places in the existing Schedule 2 to the Order such as the custodial ward of Queen Elizabeth Hospital and of the Queen Mary Hospital were proposed to be deleted because they were currently under CSD's management (to which the Prison Rules applied) or had been closed

Action

down. The Amendment Order did not apply to other detention places specified in Schedule 3 to the Immigration (Places of Detention) Order. Those places were located at immigration control points and were used for short-term detention (generally less than 48 hours) only. PAS(SB) advised that about 70% of persons were detained at CIC for less than seven days, and as of the end of 2009, only 12 persons had been detained for over two months. Assistant Director (Enforcement and Torture Claim Assessment) (AD(EA)) supplemented that at present only one person had been detained at CIC for more than two years and CIC had a designed capacity of 384 detainees (not including the sick bay).

7. As regards members' concern about the differences in the effects of specifying the treatment of detainees in the Order and the Operation Manual, AD(EA) and PAS(SB) said that subject to confirmation, non-compliance of CSD staff with the Prison Rules would be subject to disciplinary actions under the current arrangements. Government Counsel (GC) advised that Part V of the Prison Rules contained the disciplinary provisions applicable to all officers and other persons employed in prisons.

8. Assistant Legal Adviser 2 advised that the Operation Manual was an internal document of ImmD for the guidance of its staff. Non-compliance with the Operation Manual by ImmD staff would be subject to internal disciplinary proceedings only. Members noted that non-compliance with the provisions in the Order would amount to a breach of statutory duty. Any persons aggrieved by non-compliance with statutory provisions might lodge a civil claim. However, such a remedy might not apply to mere non-compliance with the Operation Manual.

(Post-meeting note: The Administration observes that the legal position on breach of statutory duty and negligence of duty would need to be further looked into.)

9. AD(EA) informed members that ImmD was contemplating a proposal to make available for public access parts of the Operation Manual regarding the treatment of detainees but not, say, parts relating to security. AD(EA) stressed that ImmD did not see the need to use intrusive means such as examination of detainees' urine and body cavity searches for management of CIC because unlike correctional institutions, CIC did not have detainees found to be in possession or trafficking of drug in the past five years. He stressed the professionalism of ImmD staff, who were ready to meet challenges and would not resist the conferment or exercise of certain powers should it be considered necessary.

10. As regards the sanitary environment at CIC, PAS(SB) and AD(EA) advised that the sanitary conditions at CIC and other places of immigration detention were satisfactory and would not be changed after the transfer of

Action

management of CIC. CIC had a covered carpark which would protect detainees from exposure to public view should transfer of detainees between places be necessary. Assistant Principal Immigration Officer (CIC) (APIOCIC) supplemented that four types of menus were made available for detainees of different cultural and religious backgrounds. The existing mechanism for the provision of interpretation services for detainees who spoke different languages would continue and the list of interpreters compiled by the Judiciary would continue to be used after transfer of management of CIC.

11. The Chairman was gravely concerned that the arrangements concerning detainees' interview with legal advisers would be provided in the Operation Manual only, and indicated that he might move a motion to amend the Amendment Order in this respect.

Follow-up

12. Members requested the Administration to -

- (a) provide a breakdown of the number of detainees in terms of their length of stay at CIC;
- (b) advise any differences in treatment of short-term and long-term detainees at the detention centres managed by ImmD and the reasons for the differences, if any;
- (c) provide a comparison of treatment of persons detained at CIC and other detention centres managed by ImmD;
- (d) confirm whether a breach of the Prison Rules by CSD staff was subject to disciplinary proceedings only and explain the differences, if any, in liability, penalty and remedy for breaching the Prison Rules and the Operation Manual;
- (e) provide a comparison of arrangements relating to visits by JP as contained in the Prison Rules and the Amendment Order as well as the Operation Manual;
- (f) advise if there were any aspects of treatment of detainees which were provided in the Prison Rules but had not been/would not be included in the Order or the Operation Manual;
- (g) make available for public access the Operation Manual except those parts relating to security upon transfer of management of CIC from CSD to ImmD;

Action

- (h) provide a copy of the Operation Manual except those parts relating to security to the Subcommittee;
- (i) provide information on the sanitary facilities and conditions at CIC and other detention places managed by ImmD; and
- (j) consider aligning the treatment of detainees at CIC under the Prison Rules with that under the Order and give the reasons should the answer be in the negative.

III. Any other business

Date of next meeting

13. The Chairman informed members that the scrutiny period of the four items of subsidiary legislation under scrutiny had been extended to 14 April 2010. Members agreed that the Secretariat would issue a circular to consult them on their availability before deciding the date of the next meeting.

(Post-meeting note: With the consent of the Chairman, the next meeting will be held on Monday, 15 March 2010, at 4:30 pm.)

14. The meeting ended at 4:50 pm.

Council Business Division 2
Legislative Council Secretariat
26 March 2010

**Proceedings of the first meeting of the
Subcommittee on Subsidiary Legislation Relating to
Transfer of Management of the Castle Peak Bay Immigration Centre
on Friday, 5 March 2010, at 3:00 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000000 - 000444	Dr Margaret NG Mr LAU Kong-wah Mr James TO Ms Cyd HO	Election of Chairman	
000445 – 001220	Chairman Admin	Briefing by the Administration on L.N. 13 to L.N. 16 of 2010 concerning the transfer of management of CIC from CSD to ImmD and other related matters and the reasons for making the four Orders.	
001221 - 002847	Ms Emily LAU Admin Chairman	<p>Ms LAU's enquiry about the availability of visits by JPs to other detention centres managed by ImmD, and the reasons for the differences in arrangements relating to such visits under the Prison Rules and the Amendment Order.</p> <p>PAS(SB)'s confirmation of the availability of JP visits to CIC and other detention centres such as the Ma Tau Kok Detention Centre. PAS(SB) and AD(EA) 's elaboration of the arrangements for such visits after the transfer of management of CIC to ImmD, and the details to be set out in the Operation Manual. Their emphasis that the current practice would by and large be followed.</p> <p>Chairman's request for written information on a comparison of arrangements relating to JP visits as contained in the Prison Rules and the Order as well as the Operation Manual.</p>	Admin
002848 - 004204	Mr LAU Kong-wah Admin Chairman	<p>Mr LAU's enquiry about the scope of application of the Order, the reasons for deleting certain references to places in Schedule 2 to the Order and the justifications for the differences in treatment of short-term and long-term detainees. His echo of members' concern about the differences in the arrangements relating to JP visits to CIC after transfer of management.</p> <p>PAS(SB)'s explanation on the application of the Order to CIC only and the deletion of certain references to places from Schedule 2</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>ALA's clarification that contravention of the provisions of the Order might constitute a breach of statutory duty whereas a breach of the provisions of the Operation Manual would be subject to internal disciplinary proceedings only.</p> <p>Ms HO's request for a copy of the Operation Manual except those parts relating to security to the Subcommittee.</p> <p>Chairman's reference to the arrangement adopted in relation to the Interception of Communications and Surveillance Ordinance (Cap. 589) under which a breach of the Code of Practice would be tantamount to a breach of the statutory provisions.</p> <p><i>[Post-meeting note: The Administration observes that section 63(5) of the Interception of Communications and Surveillance Ordinance states that a failure on the part of any person to comply with any provision of the code of practice is for all purposes not of itself to be regarded as a failure to comply with any provision of this Ordinance (emphasis added).]</i></p> <p>Chairman's emphasis on the differences in remedies available for breaching of statutory duty and mere non-compliance with the Operation Manual.</p>	Admin
005646 - 011200	Mrs Regina IP Admin Chairman	<p>Mrs IP's concern about the non-inclusion of certain powers in the Order such as drug testing and body cavity search and the adequacy of the powers for effective management of CIC.</p> <p>PAS(SB)'s advice that the provisions of and the powers conferred in the Order were adequate for effective management of CIC. His reiteration of the different nature of convicted persons and detainees, hence the different rules for management of prisons and detention places. His advice that the Prison Rules contained provisions for management not only of detainees but also of staff.</p> <p>Mrs IP's view on the need for drug testing at CIC under certain circumstances, and query about the readiness or otherwise of ImmD staff to exercise such power in view of public opinion.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>AD(EA)'s response that drug possession and trafficking by detainees at CIC had never been found as the majority of detainees were released prisoners pending repatriation. His advice that intrusive means for management of detainees at CIC was considered not necessary. His emphasis on the professionalism of ImmD staff in the discharge of duty.</p> <p>PAS(SB) and AD(EA)'s reiteration of the adequacy of the powers in the Order as amended for effective management of CIC, and their provision of information on the length of stay of detainees at CIC.</p> <p>Mrs IP and Chairman's request for written information on a breakdown of the number of detainees in terms of their length of stay at CIC. Mrs IP's request for written information on a comparison of treatment of persons detained at CIC and other detention centres managed by ImmD.</p>	Admin
011201 - 012202	Chairman Admin	<p>Chairman's view that the decrease of the daily average number of persons detained at CIC might be attributed to the increase of torture claimants being granted release on recognizance.</p> <p>AD(EA)'s provision of information on the length of stay of detainees at CIC with a designed capacity to detain 384 persons. Only one person was detained for over 24 months and less than five for over 12 months.</p> <p>Chairman's echo of the importance of providing in the Order those provisions in the Prison Rules relevant to CIC concerning the rights and protection of detainees.</p> <p>PAS(SB)'s advice that it was not desirable to set out the detailed arrangements in law and other disciplinary departments relied on operation manuals as well. His agreement to consider members' views.</p>	
012203 - 013244	Ms Emily LAU Chairman Admin	Ms LAU's expression of appreciation of ImmD for not conducting body cavity search of detainees at CIC and not seeking unnecessary powers.	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>Ms LAU and Chairman's concern about the sanitary facilities and conditions at CIC and other detention centres managed by ImmD.</p> <p>PAS(SB) and AD(EA)'s confirmation of the provision of satisfactory sanitary facilities and conditions at CIC and other detention places managed by ImmD.</p> <p>Chairman's request for written information on the sanitary facilities and conditions at CIC and other detention places managed by ImmD.</p>	Admin
013245 - 014053	Ms Cyd HO Admin Chairman	<p>Ms HO's concern about detainees' exposure to public view during their removal to and from CIC, choices of food and the availability of interpretation services for detainees of different language and cultural and religious backgrounds.</p> <p>PAS(SB)'s provision of information on design of CIC including an indoor carpark which would avoid exposure of detainees to public view.</p> <p>APIOCIC's elaboration on the availability of four menus and interpretation services for detainees of different backgrounds in line with the existing mechanism and the compilation of a list of interpreters by the Judiciary for use by disciplinary departments.</p>	
014054 - 014829	Chairman Admin	<p>Chairman's reiteration of the view that treatment of detainees at CIC under the Prison Rules and the Order as well as the Operation Manual would not be the same, and the need for aligning the treatment.</p> <p>Chairman's request for written information on any aspects of treatment of detainees which were provided in the Prison Rules but had not been/would not be included in the Order or the Operation Manual.</p> <p>Chairman's grave concern about the future arrangement for detainees interviewing with legal advisers which would be provided in the Operation Manual only. His indication of the possibility to move a motion to amend the Order in this respect.</p> <p>PAS(SB)'s undertaking to consider the views and suggestions made by members.</p>	Admin

Time Marker	Speaker(s)	Subject(s)	Action required
014830 - 15032	Chairman Ms Emily LAU Ms Cyd HO	Chairman's advice that a verbal report would be made to the House Committee on 12 March 2010 Date of next meeting to be confirmed	

Council Business Division 2
Legislative Council Secretariat
26 March 2010