

立法會
Legislative Council

LC Paper No. CB(2)1378/09-10
(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 third meeting
held on Tuesday, 30 March 2010, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon Cyd HO Sau-lan
- Member absent** : Hon Mrs Regina IP LAU Suk-ye, GBS, JP
- Public Officers attending** : Agenda item II

Mr NGAI Wing-chit
Deputy Secretary for Security, Security Bureau

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. Confirmation of minutes

[LC Paper No. CB(2)1170/09-10]

The minutes of the meeting held on 5 March 2010 were confirmed.

II. Meeting with the Administration

[LC Paper Nos. CB(2)1173/09-10(01) and (02)]

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

3. Members welcomed the Administration's decision to accede to their request to make reference to the provisions concerning the treatment of detainees in the Immigration Service (Treatment of Detained Persons) Order (Cap. 331 sub. leg. C) ("the Treatment of Detained Persons Order"), which was applicable to the detention facilities at the first and second floors of No. 1 Ma Tau Kok Road, Kowloon, and to apply the same duties and responsibilities to the Castle Peak Bay Immigration Centre ("CIC") under the Immigration (Treatment of Detainees) Order (Cap.115 sub. leg. E). To achieve the purpose, the Administration proposed to move a resolution at the Council meeting on 14 April 2010 to amend the Immigration (Treatment of Detainees) (Amendment) Order 2010 ("the Amendment Order") so that all the relevant sections of Cap 331 sub. leg. C would apply in relation to the treatment of CIC detainees, subject to technical or nomenclature changes and the need to avoid direct duplications with the existing rules in Cap. 115 sub. leg. E.

4. Members examined in-depth the provisions of Cap. 331 sub. leg. C which were applicable and not applicable to CIC as proposed by the Administration. The provisions of Cap. 331 sub. leg. C proposed not to be applicable to CIC included the interpretation section and sections relating to search of detainees, articles found in detainees' possession and complaints by detainees. Members agreed to the non-application of those provisions to CIC

Action

as Cap. 115 sub. leg. E had its own interpretation clause and had already included similar provisions.

5. Assistant Legal Adviser 2 ("ALA2") drew members' attention to the drafting approach adopted by the Administration. ALA2 pointed out that should Cap. 115 sub. leg. E be amended in the way as proposed by the Administration, that piece of subsidiary legislation would no longer be self-contained and had to be read in conjunction with Cap. 331 sub. leg. C. Such an approach in law drafting was not user-friendly. Moreover, the question of consistency in drafting would arise as the existing provisions of Cap. 115 sub. leg. E were set out, whereas the newly added provision only made reference to the sections in Cap. 331 sub. leg. C without setting out the sections as adapted. Any amendments to Cap. 331 sub. leg. C or Cap. 115 sub. leg. E in future would necessitate a lot of cross-referencing, and might create confusion and misunderstanding.

6. Members requested the Administration to explain the reasons for adopting the proposed drafting approach. In response, Deputy Secretary for Security ("DS for S") said that both approaches, i.e. cross-referencing and setting out the text in full, achieved the same legal effect. He stressed that the proposed approach of cross-referencing was in his view clear, simple and easy to understand.

7. Government Counsel ("GC") supplemented when questioned if any existing legislation adopted the proposed drafting approach that a similar approach was adopted in certain pieces of legislation. For example, Schedules 3, 4 and 5 to the Mass Transit Railway Ordinance (Cap. 556) and Schedule 2 to the Water Pollution Control (Sewerage) Regulation (Cap. 358 sub. leg. AL) were drafted in a similar manner. She indicated that the proposed drafting approach was adopted on instructions from the Security Bureau and it was a policy decision made by the Security Bureau.

8. Members were not convinced of the reasons for adopting the proposed drafting approach, and requested the Administration to set out the text of the relevant provisions of Cap. 331 sub. leg. C in Cap. 115 sub. leg. E.

9. At members' suggestion, the meeting was adjourned for 30 minutes to enable the Administration to consider members' views.

10. At the strong request of members, DS for S agreed to revise the drafting approach and to set out fully the relevant provisions of Cap. 331 sub. leg. C in Cap. 115 sub. leg. E with the necessary modifications. It was agreed that the Administration would provide the revised proposed amendments by 1 April 2010 noon for members' scrutiny.

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11. Ms Cyd HO urged the Administration to state clearly at the moving of the proposed amendments that the parts relating to the treatment of detainees in the Immigration Department ("ImmD")'s CIC Operation Manual ("the Operation Manual") would be made available for public access. Members noted that the relevant parts had been provided to the Subcommittee for reference.

12. Members studied the Administration's response to the letter from Ms Emily LAU relaying the concerns of a staff member of ImmD about preparation of work for transfer of the management of CIC and enforcement powers at CIC.

13. Assistant Director (Enforcement and Torture Claim Assessment) ("AD(EA)") explained that ImmD had made thorough preparation to ensure a smooth transfer. The preparation ranged from equipment procurement to staff training. The former was modeled on the existing equipment used at CIC. Regarding the latter, briefing and training sessions for frontline staff had been in place for months. Drills had been done on dedicated training facilities. To keep staff abreast of the developments of the transfer plan, sharing sessions were held once a week during which staff could exchange views with their supervisors. Furthermore, starting from February 2010, ImmD staff had been deployed to accompany the existing CSD officers at CIC so that they could acquire "real life" experience in management of CIC. Parts of the CIC Operation Manual relating to the duties of the relevant staff were also covered in the training provided. AD(EA) added that as examination of detainees' urine would not be carried out at CIC, there was no question of accountability or dereliction of duties in this respect.

14. At the invitation of Chairman, the Clerk explained the legislative timetable. She elaborated that a written report on the deliberations of the Subcommittee should be submitted to the House Committee on 1 April 2010, the latest, given the deadline for notice of amendments to the subsidiary legislation on 7 April and the intervening holidays from 2 to 6 April. As the Administration would provide the revised proposed amendments by 1 April 2010 noon and members had to consider them, the proposed amendments would not be attached to the report. The revised proposed amendments would be circulated to members for comments, if any, by 7 April noon. Thereafter, the Administration would be informed of members' views, if any. Subject to members' views, the revised proposed amendments would then be circulated to the House Committee on 7 April, and the Administration would give notice for moving the proposed amendments to the Amendment Order before mid-night on 7 April 2010.

15. Members requested ALA2 to study the proposed amendments and advise members of his view.

Action

III. Any other business

16. There being no other business, the meeting ended at 12:30 pm.

Council Business Division 2
Legislative Council Secretariat
28 April 2010

**Proceedings of the third meeting of the
Subcommittee on Subsidiary Legislation Relating to
Transfer of Management of the Castle Peak Bay Immigration Centre
on Tuesday, 30 March 2010, at 10:45 am
in Conference Room A of the Legislative Council Building**

| Time Marker | Speaker(s) | Subject(s) | Action required |
|--------------------|--------------------------------------|---|------------------------|
| 000000 - 001004 | Chairman | Confirmation of minutes of the first meeting on 5 March 2010. | |
| 001005 - 001838 | Chairman Admin | Briefing by DS for S on the Administration's response to members' concerns raised at the last meeting. His elaboration on the application of 13 sections of Cap. 331 sub. leg. C to CIC detainees under Cap. 115 sub. leg. E by way of moving a proposed resolution to the Amendment Order at the Council meeting of 14 April 2010. | |
| 001839 - 002653 | Chairman ALA2 Admin | <p>ALA2's advice that the drafting approach of cross-referencing was not user-friendly. The question of consistency in drafting would arise and any amendments to Cap. 331 sub. leg. C or Cap. 115 sub. leg. E in future would necessitate a lot of cross-referencing.</p> <p>DS for S's explanation that both approaches achieved the same legal effect. His emphasis that the proposed approach was clear and simple.</p> <p>Chairman's view that the proposed approach was not user-friendly. His enquiry about the reasons for not stating fully the text of the relevant sections in Cap. 115 sub. leg. E.</p> <p>DS for S's dismissal of any concern that the drafting approach would serve the purpose of preventing detainees from knowing their rights as the relevant information would be displayed at CIC. His reiteration that the proposed approach was clear and simple.</p> | |
| 002654 - 002820 | Ms Cyd HO | Ms HO's remark on the possible social cost if the provisions were drafted in the way as proposed. Her proposal for moving amendments to the Amendment Order should the Administration insist on its drafting approach. | |
| 002821 - 003304 | Mr LAU Kong-wah Admin Chairman | Mr LAU's enquiries about the merits of the proposed approach and examples of ordinances drafted in the same way. | |

| Time Marker | Speaker(s) | Subject(s) | Action required |
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| | | <p>GC's advice that Schedules 3, 4 and 5 to the Mass Transit Railway Ordinance (Cap. 556), and Schedule 2 to the Water Pollution Control (Sewerage) Regulation (Cap. 358 sub. leg. AL) were examples of legislation drafted in a similar way. Her advice on the same legal effect achieved by both approaches. Her remark that the proposed approach was adopted on instructions from the Security Bureau and it was a policy decision made by the Security Bureau.</p> <p>DS for S's reiteration of the merits of the proposed approach.</p> <p>Mr LAU's agreement to DS for S's views.</p> <p>Chairman's disagreement to DS for S's views.</p> | |
| 003305 - 010035 | <p>Ms Emily LAU Admin Chairman Ms Cyd HO ALA2 Clerk Mr LAU Kong-wah</p> | <p>Ms LAU's emphasis on the need for consistency in a piece of legislation. Her request for the Administration to consider members' views.</p> <p>DS for S's emphasis on the time constraint as the transfer of the management of CIC would take place in mid April 2010. His reiteration of the legal effect and clarity of the approach.</p> <p>Chairman's concern that Cap. 115 sub. leg. E would not be self-contained if the proposed approach was adopted. His stress on the consistent call of LegCo Members to improve the readability of legislation.</p> <p>Ms HO's reiteration of the importance of user-friendliness and consistency of legislation to obviate the need for cross-referencing.</p> <p>Chairman's enquiry about the time required for setting out the text of the relevant provisions in Cap. 115 sub. leg. E. His enquiry about the viability of completing it in two days.</p> <p>DS for S's expression of possible difficulty in achieving the task in two days.</p> <p>ALA2's advice that both approaches achieved the legal effect.</p> | |

| Time Marker | Speaker(s) | Subject(s) | Action required |
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| | | <p>Provision of information by ALA2 and the Clerk on the legislative timetable. Clerk's advice that the decision to waive the notice for amendments rested with the President.</p> <p>Ms HO and Ms LAU's call for the Administration to revise the drafting approach, otherwise the Subcommittee would propose amendments.</p> <p>DS for S's reiteration of the adequacy of the provisions contained in the Amendment Order to protect the right of detainees. His reiteration that the application of certain sections of Cap. 331 sub. leg. C to CIC detainees was made in response to the request of members. His reassurance of the adequate protection of CIC detainees.</p> | |
| 010036 - 013028 | Chairman | Suspension of the meeting for 30 minutes. | |
| 013029 - 013523 | Chairman Admin Mr LAU Kong-wah Ms Emily LAU Clerk | <p>Resumption of meeting.</p> <p>DS for S's agreement to revise the drafting approach and to set out fully the applicable sections of Cap. 331 sub. leg. C in Cap. 115 sub. leg. E with the necessary modifications.</p> <p>Chairman's request for ALA2 to scrutinize the revised proposed amendments to be provided by the Administration.</p> <p>Ms LAU's enquiry about the legislative timetable.</p> <p>Clerk's provision of information on the timetable for submission of the written report to the House Committee and notice for amendments.</p> <p>DS for S's agreement to provide the revised proposed amendments by 1 April 2010 noon.</p> | |
| 013524 - 013635 | Ms Cyd HO | Ms HO's request for the Administration to state clearly at the moving of the proposed amendments that the part relating to the treatment of detainees in the Operation Manual would be made available for public access. | |
| 013636 - 014444 | Ms Emily LAU Admin Chairman | Ms LAU's request for explanation of the Administration's response to her letter dated 22 March 2010. | |

| Time Marker | Speaker(s) | Subject(s) | Action required |
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| | | <p>AD(EA)'s provision of information on staff training and equipment procurement in relation to the transfer of management of CIC and availability of the Operation Manual to staff. His advice that examination of detainees' urine would not be carried out at CIC.</p> <p>Ms LAU's enquiry about the number of ImmD staff to be deployed to CIC as well as the legal effect of the Operation Manual.</p> <p>AD(EA)'s advice that 103 ImmD staff would be deployed to CIC, and a breach of the Operation Manual would be subject to disciplinary proceedings.</p> <p>Ms LAU's request for the Administration to explain the preparation work in detail to staff.</p> | |
| 014445 - 014705 | Clerk Ms Cyd HO | <p>Clerk's reiteration of information on the legislative timetable.</p> <p>Ms HO's request for ALA2 to thoroughly scrutinize the revised proposed amendments.</p> | |