

**Subcommittee on Subsidiary Legislation Relating to  
Transfer of Management of the Castle Peak Bay Immigration Centre  
Follow-up to Meeting on 5 March 2010**

**Introduction**

The arrangement for the Correctional Services Department (CSD) to manage the Castle Peak Bay Immigration Centre (CIC) is a time-limited one. CIC detainees are not convicted prisoners, but immigration detainees pending investigation or removal. There is already the Immigration (Treatment of Detainees) Order (Cap. 115 sub leg E) providing for the treatment of these persons. Indeed, many provisions of the Prison Rules (PR) (Cap. 234 sub leg A) are irrelevant (e.g. welfare fund for prisoners) or unnecessary (e.g. power to conduct searches of external orifice) in the context of CIC. Furthermore, over 80% of the CIC detainees are detained for less than two weeks.

**Specific Responses**

3. As for the matters raised by Members, our responses are as follows –

(a) **Detention Period**

Statistics on the detention period of CIC detainees are provided at Annex A.

(b)&(c) **Treatment of Short-term and Long-term Detainees**

CIC is the only place of detention designed for not only short-term (say up to 48 hours) detention of immigration detainees. Other places of detention include the Ma Tau Kok Detention Centre and the detention rooms in the control points.

Regardless of the length of detention period, all detainees are provided with proper necessities. They are also allowed to communicate with friends, relatives and legal advisers. Any detainee who is dissatisfied with the treatment he received can lodge a complaint. However, places for short-term detention are generally in “office setting” and are of a much smaller scale than CIC, which has a capacity of 400 detainees. Facilities like sick bay, areas for exercise, laundry rooms or common rooms are therefore not necessary in these places. Based on the same consideration, it is not necessary to apply Cap. 115 sub leg E (e.g. provisions on roll call or separate

confinement) to these places. Indeed, no statutory rules are made in respect of the treatment of detainees in the short-term detention places used by any law enforcement agencies.

(d) **Safeguards against Non-compliance**

Any non-compliance by Immigration Department (ImmD) staff with the CIC Operational Manual could be a disciplinary offence, as in the case of any contravention of PR or breach of duty by CSD staff. It is impracticable to provide a general comparison on liability and possible remedies between a breach of PR and a breach of CIC Operational Manual. Such issues have to be considered in light of the nature of the case concerned and the relevant circumstances. In the event that a public officer has committed a misconduct against a prisoner or detainee, we consider that the mere fact that his detention is governed by the Operational Manual instead of the PR is unlikely to make any material difference in liability and remedies.

(e) **JP Visits**

The current arrangements for JP visits will continue and not be affected by the transfer of the CIC management. We have proposed to add the new rule 16 to Schedule 1 to Cap 115 sub leg E. The new rule provides for the key arrangements for JP visits including: the CIC Superintendent must provide facilities to enable JPs to visit the CIC detainees; visiting JPs must be permitted to visit detainees at all reasonable times and for reasonable periods; the visiting JPs must record their observations; any adverse observations must be brought to the attention of the Director of Immigration or Deputy Director of Immigration as soon as practicable; etc. Other arrangements will by and large follow the current practice and will be set out in the CIC Operation Manual. For instance, ImmD would liaise with Director of Administration's Office to invite two JPs to visit CIC detainees at least once every fortnight. We consider the arrangements proper and adequate. Members may also wish to note that other than prisons and CIC, JPs also visit other facilities (e.g. hospitals and juvenile homes) and in general, the detailed arrangements regarding such visits are set out on an administrative basis.

(f) **Matters under the PR not relevant to CIC**

The PR are prescriptive in setting out the basic necessities for

prisoners (e.g. food and accommodation) as well as other arrangements (e.g. communications with outsiders). Matters provided under the PR, but are not relevant in the CIC context and thus will not be provided in either Cap. 115 sub leg E or the CIC Operational Manual, are set out at Annex B.

(g)&(h) **CIC Operational Manual**

The relevant parts of the latest draft of the CIC Operational Manual regarding the treatment arrangements for detainees are provided in Annex C. ImmD will make the materials available to public access before it takes over the management of the CIC.

(i) **Sanitary Facilities and Conditions**

The CIC was commissioned in 2005 and is equipped with proper sanitary facilities including shower rooms, laundry rooms, etc. Each detention dormitory is also equipped with separate toilet with fresh flushing water. The sanitary conditions will not be affected by the transfer of the management.

(j) **Alignment with the PR**

As set out in the paragraph 1 above, immigration detainees are not convicted prisoners. With the transfer of management back to ImmD, we would de-gazette CIC as a "prison" and add CIC as a "Centre" under Cap. 115 sub leg B. Given that immigration detainees is by nature different from convicted prisoners, we consider it not necessary, nor proper, to copy each and every provision of the PR to Cap. 115 sub leg E. New legislation is made on a need basis. It is on this basis that we have not proposed any new rules on matters such as power to search external orifice.

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**Castle Peak Bay Immigration Detainees  
Detention Period of Detainees**

The daily average numbers of persons detained at CIC in 2007, 2008 and 2009 are 373, 323 and 238 respectively.

In 2009, the breakdowns in term of detention period are as follows -

<b>Detention period</b>	<b>%</b>
1 to 6 days	57.1
7 to 13 days	24.1
14 to 20 days	4.3
21 to 29 days	4.4
30 to 60 days	7.9
Over 60 days	2.2

**Matters set out in Prison Rules (PR) that are not relevant to  
the Castle Peak Bay Immigration Centre (CIC)**

<b>PR Rule</b>	<b>Description</b>	<b>Remarks</b>
9(1A)	Searches of external orifice	We do not consider such power necessary in the case of CIC detainees
17	Leave of absence	Provision not relevant to immigration detainees
21	Children of female prisoners	Immigration detainees under the age of 18 are not accommodated in CIC but in facilities like the Tuen Mun Children and Juvenile Home
22	Payment of portion of fine to obtain remission	Not relevant to immigration detainees
22A	Discharge on general holiday	- Ditto -
34A	Examine prisoner's urine	We do not consider such power necessary in the case of CIC detainees
38 - 46	Labour work	Not relevant to immigration detainees who are not sentenced prisoners
51	Persons imprisoned on default of payment	- Ditto -
69	Remission of sentence	- Ditto -
70	Application of the Pensions Ordinance, the Public Service (Administration) Order and government regulations	Relevant provisions also apply to the Immigration Service

<b>PR Rule</b>	<b>Description</b>	<b>Remarks</b>
143-161	Duties of the Medical Officer such as treatment of sick prisoners	Medical service will be contracted out. Service level will be on par with the one
190-191	Segregation of prisoners awaiting trial from convicted prisoners. Superintendent may modify any practice which is clearly unnecessary for a particular class of prisoners	CIC will only house immigration detainee, who are not convicted prisoners
201	Option of employment	No employment is arranged for immigration detainees
210-214	Treatment of appellants, e.g. persons who have lodged an appeal to which the Magistrates Ordinance (Cap 227) applies	No such persons are detained at CIC
215	Treatment of prisoners committed for contempt	- Ditto -
243-255K	Rules of procedure and disciplinary awards, as well as reviews and appeals regarding CSD officers	Rules of such nature are set out in the Immigration Service Standing Orders, which are promulgated by the Director of Immigration under the Immigration Service Ordinance (Cap. 331)
256-264B	Correctional Services Department Welfare Fund	Rules of such nature are set out in Immigration Service (Welfare Fund) Regulations (Cap. 331 sub leg D)
265-272	Prisoners' welfare fund	No such fund for immigration detainees

- END -

**Foreword**

The treatment of detainees in the Castle Peak Bay Immigration Centre (CIC) is specified in the Immigration (Treatment of Detainees) Order, Cap. 115 sub. leg. E. The CIC Operational Manual (Treatment of Detainees) (hereinafter referred as Manual) provides staff of the CIC with guidance on the proper management of detainees in the CIC with regard to their daily routine and welfare as well as the security of the CIC.

Aside from the related legislation and this Manual, staff of the CIC should always refer to the prevailing orders and instructions as stipulated in the Immigration Service Standing Orders or Immigration Service Temporary Orders, the latest departmental notices / circulars and divisional / sub-divisional / sectional instructions or notices in executing their duties.

## **1. Visits by Justices of Peace (JP)**

- 1.1 The general conditions in relation to the JP visits are provided in rule 16 of the Immigration (Treatment of Detainees) Order (Cap. 115 sub. leg. E).
- 1.2 Subject to the arrangement of the Director of Administration's Office, two visiting justices (VJs) shall be invited to, in company if possible, visit the Centre at least once a fortnight. The VJs would also be invited to and be provided facilities to:
  - (i) hear and investigate any complaints which any detainee may desire to make to them;
  - (ii) visit detainees in separate confinement;
  - (iii) inspect the diets of the detainees; and
  - (iv) inspect any of the records of the treatment provided to detainees, such as food provision, medical services, visits received, etc.
  - (v) promote the efficiency of the service in collaboration with the Director and make inquiry into any matter referred to them by the Chief Executive;
  - (vi) furnish the information required by the Chief Executive from time to time with respect to the offences reported to them;
  - (vii) attend to all reports received as to the mind or body of any detainee being likely to be injured by discipline or treatment to which he is subjected, and to communicate their opinion to the Chief Executive;
  - (viii) organize lectures and addresses in the Centre subject to the approval of the Director, provided they do not interfere with the discipline of the Centre; and
  - (ix) inquire into the state of the Centre and report to the Chief Executive with respect to any repairs or additions which may appear to them to be necessary;
- 1.3 The names of the VJs shall be furnished by authorized contact person of the Director of Administration's Office to the Director of Immigration and the Centre shall be opened to them at all reasonable times during their tour of duty.



## **2 Health and Cleanliness**

### **2.1 Exercise**

- 2.1.1 Every detainee shall be provided with not less than one hour of exercise in the open air (playground or exercise yard) daily if the weather permits.
- 2.1.2 Indoor exercise will be arranged for detainee during rainy or inclement weather.

### **2.2 Bath**

- 2.2.1 Every detainee shall be allowed to take a bath on reception, unless the Superintendent or Medical Officer otherwise directs.
- 2.2.2 Detainees will be arranged to take shower soon after the exercise period.

### **2.3 Cleanliness**

Every detainee should keep his cell, room or dormitory, his utensils, books and other articles issued for his use, and his clothing and bedding, clean and neatly arranged.

## **3 Handling of Requests from Detainees**

- 3.1 It is the duty of all staff to deal with requests from detainees. Under normal circumstances, detainees' requests will be put into "Request Interview Book" at respective dayrooms for the consideration of senior officers.
- 3.2 All staff shall –
  - (a) treat the detainees with kindness and humanity;
  - (b) listen patiently to any detainee who has a complaint to make; and
  - (c) inform CIO(CIC) when any detainee desires to see him or the Superintendent.

## **4 Medical Service**

### **4.1 Medical examination**

- 4.1.1 Every detainee shall, as soon as possible after his admission, be separately examined by Medical Officer, who shall record the state of health of the detainee, and such other particulars as he may deem necessary.
- 4.1.2 Provided that when a detainee is admitted too late to be examined on the same day he shall be examined as soon as possible on the next, and in any case within 24 hours of admission.
- 4.1.3 A sick detainee may be allocated to the Sickbay for treatment by the Medical Officer.

### **4.2 Final interview with Medical Officer**

- 4.2.1 Every detainee shall as short a time as is practicable before release, or transferred to another place, be examined by the Medical Officer.
- 4.2.2 A detainee shall not be transferred to another place unless the Medical Officer certifies that he is fit for removal.
- 4.2.3 A detainee due for release who is suffering from an acute or dangerous illness shall, unless he refuses to stay, not be sent out of Centre until in the opinion of the Medical Officer it is safe to send him out.

### **4.3 Private medical adviser**

Every detainee may for the purposes of his defence receive a visit from a registered medical practitioner selected by him or by his friends or legal adviser, under the same conditions as applied to a visit by his legal adviser.

## **5 Food and Clothing**

### **5.1. Food Quality and Quantity**

- 5.1.1 Except on the written recommendation of the Medical Officer in the case of a detainee who persistently wastes his food or on medical grounds by direction of the Medical Officer, no detainee will be given less food than is provided in normal Centre diet.
- 5.1.2 Where the Superintendent is satisfied that circumstances exist that warrant the provision of a diet that differs from the normal diet to a detainee, he may direct that the detainee be given a different diet.
- 5.1.3 A detainee who considers he should be provided with a diet that differs from the normal diet may appeal to an Assistant Director against a decision of the Superintendent not to provide him with that different diet.
- 5.1.4 Every detainee may procure for himself, or receive at proper hours, food from outside.
- 5.1.5 Every detainee who prefers to provide his own food for any meal shall give notice thereof in advance of the time the meal is required; but the Superintendent shall not permit any such detainee to receive any Centre diet for the meal for which he procures or receives food at his own expense.

### **5.2 Complaint on Foods**

Every detainee who has any complaint to make regarding the food furnished to him, or who wishes his food to be weighed or measured in order to ascertain whether he is supplied with the prescribed quantity, should make his complaint immediately when his food is handed to him, and it shall be weighed or measured in his presence and in that of the officer deputed for that purpose.

### **5.3 Private clothing**

Detainees are allowed to wear private clothes during the period of detention. Additional clothing may, on request, be provided to the detainees.

## **6 Written communication**

### **6.1 Sending and receiving letters**

6.1.1 Every detainee is allowed to write and send one letter per week not exceeding 4 pages of A-4 paper in length at public expense. They are also allowed to receive any number of letters from their relatives and friends.

6.1.2 The Superintendent may permit a detainee to write and send additional letters at public expense if the detainee has a genuine need.

### **6.2 Screening**

#### **6.2.1 General Mail**

- (i) Unless with prior permission, detainees can only receive letters or photos/pictures;
- (ii) For receiving larger postal articles (e.g. private clothings sent by relatives), the Superintendent's prior permission will be needed.

#### **6.2.2 Special Mail**

Regarding the correspondence directed to detainee, which requires explanation or assistance (e.g. letters from Legal Aid Department, Court, etc), it will be the duty of the Detention Operation Officer to deliver the letters to the detainee. Proper records will be made on the Detainee Inward Mail Registers and the Detainee Record.

### **6.3 Letter Papers and Envelopes**

6.3.1 Letter papers and envelopes can be obtained from various locations, such as dayrooms, centre hospital, reception office, etc. Staff, who issue the letter papers and envelopes, shall put the registered nos. of the recipients in a book for record purpose.

6.3.2 The letter papers and envelopes will be marked with the recipient's registered no.

6.3.3 Subject to Senior Immigration Officer's approval, detainees may be issued with aerograms.

#### 6.4 General arrangements

6.4.1 Detainees may drop their letters into the letterbox affixed at various locations.

6.4.2 ImmD staff will collect the letters from respective letterboxes every morning

6.4.3 Except with the intervening public holidays, inward and outward letters will be issued to and mailed out within 24 hours on receipt of the letters in normal working days. All inward letters will be stamped with the date of receipt.

### 7 **Visits**

#### **(A) Visits by Relatives or Friends**

##### 7.1 Visit Hours

Normal visiting hours are listed below:-

Monday to Sunday (including Public Holidays): -  
0900 to 1700 hours (no lunch break).

(The latest registration is by 1630 hours)

##### 7.2 Visit Duration

Detainees can be visited for a duration of 15 minutes on each occasion.

##### 7.3 Operation Procedures

7.3.1 The metal detector doorway staff will check the visitors' identities at the Gate Office before allowing them to proceed to visitors' waiting room.

7.3.2 Visitors shall produce their ID cards/documents to the main gate

staff for verification.

- 7.3.3 Visit room staff will verify the visitors' information against the visit cards. Visitors who are not on the visitor list provided by or agreeable to the relevant detainee will not be allowed to pay visit.
- 7.3.4 A person who is not on the visitor list but wishes to visit a detainee will be required to make registration at the Gate Office. The staff of the Gate Office will then report the registration to the officer of the Welfare Unit who will, after confirming with the concerned detainee that he/she is willing to be visited by that person and agrees to put that person on the visitor list, pass such request to CIO(CIC) for approval. The person will then be allowed to pay visit upon the inclusion of his/her name into the visitor list.
- 7.3.5 Normally a maximum of two visitors will be allowed to visit a detainee. All visitors or requests for visit are handled on a first-come-first served basis. No prior appointment is needed.
- 7.3.6 Subject to Senior Immigration Officers' approval, additional visits or extension of visits may be allowed.
- 7.3.7 Proper records shall be made on the visit cards and visit books. Information to be recorded shall include the time and date, the particular of relevant detainee and visitors, the interview room and window used, etc.
- 7.3.8 Oi/c of Visit Room shall ensure that the talk-phones installed at visit booths are cleaned daily after the visit hours.

## **(B) Legal Visits**

### 7.4 Visit Hours

7.4.1 Normal visiting hours for legal visitors are as follows:

<u>Day</u>	<u>Time (hours)</u>
Monday to Friday	0900 to 1700 (no lunch break)
Saturday	0900 to 1200 ( Ditto )
Sunday & Public Holiday	Closed

### 7.5 Working Procedures

7.5.1 Visit room staff will verify the identities of the legal visitors (legal adviser plus any accompanying clerk or interpreter) against the list of the legal personnels. Legal visitors should produce document(s) to prove their purpose of visit.

7.5.2 Legal visits will be conducted at the legal visit room.

7.5.3 Legal visits will be conducted within the sight but out of the hearing of the supervising staff.

7.5.4 Oi/c, Visit Room shall ensure proper record be made in Legal Visit Book after the visit. Information to be recorded shall include the time and date, the particular of relevant detainee and legal visitors, the interview room used, etc.

## **(C) Others Arrangements**

7.6 Relevant arrangements such as the days and time for visits shall be publicly promulgated through notices at the gates of the Centre. Any changes in the arrangements must be so publicly promulgated, and as far as practicable before any changes taking effect.

7.7 All visitors shall go through metal detector doorway. Lockers will be provided for visitors to store their personal belongings before seeing the detainees.

- 7.8 A detainee shall not be allowed to receive articles from visitors without the approval from the Superintendent. All approved articles from outside are subject to inspection and pooling, if applicable, before issue to the respective detainee. Details of the hand-in articles would be recorded onto the `Hand-in Articles Records' register.
- 7.9 An application for visits of detainees by NGOs will be considered on individual merits, including but not necessarily limited to the followings:
- purpose of visit;
  - welfare of the detainees; and
  - implication to the operation of the Centre.

## **8 Provision of books to detainees**

Subject to the conditions as the Superintendent may determine, every detainee shall be allowed to borrow books for leisure and such other reading materials as are available in the Centre and to exchange them as often as practicable.

## **9 Smoking Arrangement**

- 9.1 No detainee shall be allowed to smoke or to have in his possession any tobacco except in accordance with such order as may be given by the Director of Immigration.
- 9.2 Following the enactment of the Smoking (Public Health) (Amendment) Ordinance 2006 (Cap. 371) on 1 January 2007, exemption is provided to "An area set aside by the Director of Immigration under rule 11A of Schedule 1 to the Immigration (Treatment of Detainees) Order (Cap. 115 sub. leg. E) in a place specified in Schedule 2 to that Order for smoking by persons detained there".
- 9.3 The relevant areas in which detainees may smoke are:
- (a) smoking booths; or
  - (b) toilets in dormitories.



## **10 Temporary retention and supply of papers, etc.**

- 10.1 The Superintendent shall, on the application of any detainee, permit him to have any books, papers or documents in his possession at the time of his arrest, which may not be required to be produced in evidence, and are not reasonably suspected of forming part of any property improperly acquired by him, or are not for some special reason required to be taken from him for the purposes of justice.
- 10.2 Any such detainee shall have supplied to him, at his own expense, such newspapers, or other means of occupation as are not, in the opinion of the Superintendent, of an objectionable nature.

## **11 Prohibition of sale**

- 11.1 Every detainee shall not sell or transfer to any other person any article whatsoever allowed to be introduced into the detainee for his own use.
- 11.2 ImmD may seize any articles transferred by one detainee to another. No detainee is allowed to participate in any form of gambling or betting.

## **12 Religious services**

- 12.1 The religion, if any, of a detainee shall be recorded at the time of his admission and he shall be treated during his detention as being of any religion so recorded unless the Superintendent is satisfied that the detainee is an adherent of another religion or has ceased to adhere to any religion.
- 12.2 It shall not be compulsory for any detainee to attend any religious service but he shall be ordinarily entitled to attend religious services of his religion conducted in the Centre.

## **13 Accommodation and Bed**

### **13.1 Certification of Accommodation**

13.1.1 No sleeping accommodation for detainees shall be used unless it is certified by the Superintendent to be of such a size, and to be lighted, ventilated and fitted in such a manner, as is requisite for health, and when such accommodation is locked it shall be furnished with the means of enabling detainees to communicate at any time with an officer of the Centre.

13.1.2. Every detainee shall be provided with a separate bed.

### **13.2 Women's accommodation**

13.2.1 The whole of the premises allocated to women shall be entirely separate from that allocated to men.

13.2.2 The keys of the premises allocated to women shall be under the control of female officers.

## **14 Protection from public view**

When detainees are being removed to or from the Centre, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult or curiosity.