

**Subcommittee on Subsidiary Legislation Relating to
Transfer of Management of the Castle Peak Bay Immigration Centre
Follow-up to Meeting on 15 March 2010**

At the meeting on 15 March 2010, Members requested the Administration to follow up on a number of matters. Our responses are set out in the following paragraphs.

(a) Statutory Rules on Treatment of Short-term Detainees

2. The Independent Commission Against Corruption (Treatment of Detained Persons) Order (Cap. 204 sub. leg. A), made in 1976, and the Immigration Service (Treatment of Detained Persons) Order (Cap. 331 sub. leg. C), made in 1997, are the only statutory rules on the treatment of short-term detainees. The two Orders are largely identical. Other similar detention facilities are not subject to statutory but administrative arrangements.

(b) Privacy and Sanitary Conditions at the Castle Peak Bay Immigration Centre (CIC)

3. CIC, currently managed by the Correctional Services Department (CSD) until mid April 2010, has a hygiene standard on par with other penal institutions. After the transfer of management duties pertaining to CIC to the Immigration Department (ImmD), ImmD is responsible and will ensure that the same standard applies. For details, please see the note at **Annex A**.

(c) Legal Advice on the Liability and Remedies for Non-compliance with the Prison Rules and the CIC Operational Manual

4. We have obtained the advice of the Department of Justice. In *R v Deputy Governor of Parkhurst Prison and others Ex parte Hague [1992] 1 AC 58*, the English House of Lords held that whether an enactment gave rise to a cause of action for breach of statutory duty was a question of ascertaining the intention of the legislature. The court considered Prisons Act 1952 and the rules made thereunder, and held that those provisions did not confer on prisoners a cause of action for breach of statutory duty.

5. In relation to the Prisons Ordinance (Cap. 234) and the Prison Rules (Cap. 234 sub. leg. A), we do not see that the legislative intention then was to confer on prisoners a cause of action for breach of statutory duty. In this regard, the fact that treatment of CIC detainees is governed by ImmD's

Operational Manual instead of by the Prison Rules would not have the effect of depriving detainees of such a cause of action. Whether detainees could take legal action other than "breach of statutory duty" would depend very much on the facts. That being the case, availability of such possible alternative cause of action and of remedies would not depend on whether treatment of detainees is governed by ImmD's administrative Operational Manual or CSD's statutory Prison Rules.

(d) Long-term Detainees and Detainees with Drug Problem

6. CIC is designed and equipped as a long-term detention centre with the capacity to accommodate 400 detainees, although generally detainees pending deportation or removal at CIC would be kept for less than a few months. ImmD has the operational capability and necessary resources to take over the management of CIC effective from mid April 2010; there is no question of transferring long-term or indeed any immigration detainees to penal institutions under CSD afterwards. ImmD is responsible for providing proper medical treatment to any CIC detainees with drug problem.

(e) Amendments to the Immigration (Treatment of Detainees) (Amendment) Order 2010 ("the Amendment Order")

7. Some Members have asked whether the statutory provisions on the treatment of detainees at ImmD's Ma Tau Kok Detention Centre (MDC), provided under Cap. 331 sub. leg. C, can be made to apply to CIC detainees.

8. We wish to point out that MDC under Cap. 331 sub. leg. C, compared to CIC under Cap. 115 sub. leg. E, intends to serve different detention functions. Persons detained at MDC are those pending charge or trial and hence are generally detained for less than 48 hours. The need to set out expressly their rights to see legal advisers, etc. is paramount. Persons detained at CIC are mostly released non-local prisoners, illegal immigrants or overstayers pending deportation or removal. This notwithstanding, we accept Members' view that we may make references to Cap. 331 sub. leg. C and set out our intent to apply the same duties and responsibilities to CIC under Cap. 115 sub. leg. E as far as appropriate. Therefore, with Members' support, we intend to move a resolution at the Legislative Council sitting on 14 April 2010. The resolution, draft at **Annex B**, will provide that all the relevant sections of Cap. 331 sub. leg. C will apply in relation to the treatment of CIC detainees, subject to -

- (i) straightforward technical or nomenclature changes like the substitution of "guarding officer" by "officer" and "Detention Centre" by "Centre"; and

- (ii) the need to avoid direct duplications with the existing rules in Cap. 115 sub. leg. E.

9. As a result, all relevant sections covering matters including notification to relatives, communications with legal advisers, food and drink, toilet facilities, etc. that are applicable to MDC detainees will be made applicable to CIC detainees.

10. The above notwithstanding, the following sections in Cap. 331 sub. leg. C cannot be made applicable to CIC. The reasons are set out as follows -

- (i) Sections 1, 2 and 5(1): These are the interpretation or purpose clauses, e.g. for providing that a detainee is to be taken to the MDC or for the appointment of “guarding officer” in the context of Cap. 331 sub. leg. C. They cannot apply to CIC. Similarly, CIC under Cap. 115 sub. leg. E has its own interpretation clause and has already set out its meaning of “officer”;
- (ii) Section 7: This section on the power to search detainees directly duplicates with Rule 2 of Cap. 115 sub. leg. E. In the case of CIC, rule 2 of Cap. 115 sub. leg. E provides that a detainee “*may* be searched” on admission, while detainees at MDC “*shall* be searched” as in section 7 of Cap. 331 sub. leg. C;
- (iii) Section 8(1): It directly duplicates with rule 3 of Cap. 115 sub. leg. E. For short-term detention at MDC, detainees are generally allowed to keep all their personal articles during the brief detention period, except for those articles which may be used to injure the detainees themselves or to escape. In the case of CIC, rule 3 of Cap. 115 sub. leg. E essentially covers the possession of articles by detainees. In this regard, as detainees at CIC may be detained for weeks or months, it is not practical to allow a detainee to keep all his/her personal articles during and throughout the detention period; and
- (iv) Section 13: It duplicates with rule 15 of Cap. 115 sub. leg. E which already provides for the handling of complaints. By comparison, the complaint handling system at CIC is more comprehensive. For instance, it has been specified that the Superintendent at CIC has the obligation to advise the complainant on the outcome of the investigation, while section 13 of Cap. 331 sub. leg. C merely requires that a complaint be brought to the attention of the specified officer and be recorded.

11. A table setting out the relevant sections, as well as those that are not applicable in the CIC context, is at **Annex C**.

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**Sanitary Conditions
at Castle Peak Bay Immigration Centre (CIC)**

Sanitary Facilities

Toilets

- Partitioned toilets with washing basin(s) and flushing facilities (located inside the toilets) are provided inside each dayroom and dormitory
- Ratio of detainees to toilets cubicles:
 - Dormitories: 5 detainees per cubicle (400/80)
 - Dayrooms and Playgrounds: 12.5 detainees per cubicle (400/32)

Shower

- Three communal shower rooms with a total of 62 shower heads
- Toilets inside each dormitory are also equipped with shower heads
- Hot water is available
- Detainees are arranged to take shower once a day

Articles provided upon admission (refurnished as needed)

- Soap; spoon; toothbrush; toothpaste; tea mug; pillow; blankets; bed sheet; pillow case

Laundry service

- Detainees' outfits: washed once a day
- Bed sheet, pillow case and blankets: washed once a week

Privacy

- Except in emergency, a male officer must be accompanied by a female officer when entering female detention floors
- Cubicles inside a toilet are segregated by walls of about 4 feet high. Detainees can relieve themselves out of the sight of others

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INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

IMMIGRATION (TREATMENT OF DETAINEES) (AMENDMENT) ORDER 2010

Resolution made and passed by the Legislative Council under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) on [14] April 2010.

RESOLVED that the Immigration (Treatment of Detainees) (Amendment) Order 2010, published in the Gazette as Legal Notice No. 15 of 2010 and laid on the table of the Legislative Council on 24 February 2010, be amended, in section 2(4), by adding after rule 16 –

“17. **Application of certain provisions
of Immigration Service
(Treatment of Detained Persons)
Order**

(1) Subject to the interpretation and modifications provided in subrule (2), sections 3, 4, 5(2) and (3), 6, 8(2), 9, 10, 11, 12, 14, 15, 16 and 17 of the Immigration Service (Treatment of Detained Persons) Order (Cap. 331 sub. leg. C) (the “incorporated provisions”) as in force immediately before this rule comes into operation apply in relation to the treatment of detainees in the Centre as if those provisions were made under section 35(1) of the Ordinance.

(2) For the purposes of subrule (1) –

- (a) a reference to an arrest/detention sheet in the incorporated provisions has the meaning given by section 1 of the Immigration Service (Treatment of Detained Persons) Order (Cap. 331 sub. leg. C);
- (b) a reference to a detainee in the incorporated provisions is a

reference to a detainee as defined by rule 1;

- (c) an incorporated provision specified in column 2 of Part 1 of the Table below has effect as if it were amended by –
- (i) repealing the expression specified opposite to that provision in column 3 of that Part wherever it appears in that provision; and
 - (ii) substituting the expression specified opposite to that provision in column 4 of that Part; and
- (d) an incorporated provision specified in column 2 of Part 2 of the Table below has effect as if the words specified opposite to that provision in column 3 of that Part were omitted.

TABLE

PART 1

Item	Incorporated provisions	Expressions repealed	Expressions substituted
1.	3	the member of the Service who authorized the detention	an officer
2.	4(1), 9(3) and 12(3)	a member of the Service	an officer
3.	5	guarding officers	officers
4.	5(2)	A guarding officer	An officer
5.	5(3)	a guarding officer	an officer

6.	5(3), 6(2) and (3), 8(2) and 10(1) and (2)	the guarding officer	an officer
7.	5(3)	another member of the Service	a member of the Immigration Service established by section 3 of the Immigration Service Ordinance (Cap. 331)
8.	5(3)	other member of the Service	member
9.	5(3)	Detention Centre	Centre
10.	8(2)	Subject to subsection (1), a	A
11.	9(2), 14(2) and 16(2)	member of the Service	officer
12.	9(4), 12(1) and (2) and 15	an office of the Service	the Centre
13.	15	the guarding officer or members of the Service	an officer
14.	17	offices of the Service	Centre

PART 2

Item	Incorporated provisions	Words or characters omitted
1.	5(2)	by this Order
2.	5(3)	in section 2 or
3.	6(1)(c)	by this Order
4.	6(3)	in this Order
5.	17	of clothing
6.	17	的衣物”.

Clerk to the Legislative Council

[14] April 2010

**Relevant Sections in the Immigration
(Treatment of Detained Persons) Order (Cap. 331C)
To be included in the Amendment Order**

Section in Cap. 331C	To be included in the Amendment Order	Not applicable to the Castle Peak Bay Immigration Centre (CIC) or covered by the Immigration (Treatment of Detainees) Order (Cap. 115E)
1. Interpretation	-	Not applicable. Cap. 115E has an interpretation rule.
2. Detainee to be taken to Detention Centre	-	Not applicable. “Detention Centre” in Cap. 331C means the Ma Tau Kok Detention Centre only.
3. Notification to relatives, etc.	√	-
4. Communication with legal advisers, etc.	√	-
5. Appointment and duties of guarding officers	5(2) & (3)	5(1): Cap. 115E already sets out who is an “officer”.
6. Individual detention record to be kept	√	-
7. Search of detainee	-	Rule 2 of Cap. 115E already provides for the search of detainees. It provides that “a detainee <i>may</i> be searched” on admission, instead of “ <i>shall</i> be searched” as in Cap. 331C.
8. Articles found in detainee’s possession	8(2)	8(1): Rule 3 of Cap. 115E already covers the possession of articles by detainees.

9.	Comfort of detainees	√	-
10.	Food and drink	√	-
11.	Toilet facilities and exercise	√	-
12.	Sickness or injury	√	-
13.	Complaints by detainees	-	Rule 15 of Cap. 115E already covers the handling of complaints, and is more comprehensive, e.g. the Superintendent has the duty to advise a complainant the outcome of his investigation.
14.	Female detainees	√	-
15.	Safety of detainees in emergency	√	-
16.	Use of handcuffs	√	-
17.	Notice to detainees	√	-
18.	<i>Visits by justices</i>	√ <i>Note</i>	-

Note: The Immigration (Treatment of Detainees) (Amendment) Order 2010 already has a provision on visits to detainees by the Justices of the Peace.