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GOVERNMENT SECRETARIAT
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HONG KONG

本函檔號 OUR REF: SBCR 10/2091/94 pt.25

來函檔號 YOUR REF:

Mr Raymond Lam
Clerk to LegCo Panel on Security
Legislative Council
3/F Citibank Tower
3 Garden Road
Central

2 February 2010

By Fax: 2509 0775

Dear Mr Lam,

**Subsidiary Legislation relating to
the Castle Peak Bay Immigration Centre**

Further to the discussion at the Panel meeting held on 5 January 2010, we enclose a supplementary note as requested by certain Members.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'C. Nung'.

(Christopher Nung)
for Secretary for Security

**The Immigration (Treatment of Detainees)
(Amendment) Order 2010**

**Treatment of Detainees at the
Castle Peak Bay Immigration Centre**

We briefed the Panel on Security on 5 January 2010 on the Government's plan to make four pieces of subsidiary legislation to enable the Immigration Department (ImmD) to take over the management of the Castle Peak Bay Immigration Centre (CIC) from the Correctional Services Department (CSD), effective from April 2010, and related matters. Some Members requested further information about the treatment of these immigration detainees.

2. Under CSD's management since 2005, CIC is specified as a "prison" in the Prisons Order (Cap. 234 sub. leg. B). As such, CSD officers have been relying on the Prison Rules (Cap. 234 sub. leg. A) in managing the CIC. In fact, persons put under CSD's custody are primarily convicted and sentenced prisoners or prisoners awaiting trial. In this regard, Members will note that the Prison Rules may appear as prescriptive and restrictive in dealing with the inmates' eligibility for basic provisions, e.g. food and clothing, as well as communications with outside, complaint avenues, prison discipline, etc.

3. Immigration detainees are not convicted or sentenced prisoners but are persons detained for immigration investigation or pending removal under the Immigration Ordinance (Cap. 115). ImmD relies on the existing Immigration (Treatment of Detainees) Order to ensure proper treatment of these detainees. Minor amendment have to be made to the Order to enable ImmD to take over management of the CIC effective from April 2010, and to facilitate consistency in the treatment of the CIC detainees notwithstanding the transfer of management duties between the two Departments. ImmD will not add to the Order such powers and restrictions inherent in the Prison Rules but are considered not absolutely necessary for ImmD's effective management of immigration detainees. For example, the Order does not contain provisions on powers such as examination of detainees' urine; searches of body cavities; reading of detainees' letters; etc. Furthermore, some Prison Rules are not relevant to CIC detainees, such as the requirement for prisoners to work.

4. Effective from April 2010 when ImmD takes over the management of CIC, ImmD will rely on the provisions of the amended Order, supplemented by detailed measures set out in the Department's CIC Operation Manual. The treatment enjoyed by the detainees at CIC will remain the same, if not more generous in some respects, as illustrated in the table at **Annex**. Members will note that the two new provisions we add to the Order are to: enable the continuation of visits by Justices of the Peace (JPs) to CIC after it has ceased to be a "prison" under the Prison Rules; and ensure that CIC detainees may continue to smoke in designated areas at CIC as before.

5. The daily average numbers of persons detained at CIC in 2007, 2008 and 2009 are 373, 323 and 238 respectively, with an average period of detention of 16 to 17 days.

Security Bureau
February 2010

**Treatment of Detainees at the
Castle Peak Bay Immigration Centre (CIC)**

	CIC under CSD management [relevant Prison Rules]	CIC under ImmD management [Immigration (Treatment of Detainees) Order and the Operation Manual]
Protection and rights	<p>A prisoner shall have ample avenues for making complaints and steps shall be taken to redress grievances as far as practicable.</p> <p>A prisoner awaiting trial¹ shall be ordinarily entitled to attend religious services conducted in prisons.</p> <p>Justices of the Peace (JPs) shall visit prisons and record any abuses, and ensure that such abuses are brought to the notice of the management.</p> <p>When prisoners are being removed to or from prison, e.g. transfer between prisons while serving their sentences, their exposure to public view shall be minimized.</p>	<p>The Order already provides for complaints handling. On top, the Immigration Ordinance provides that any person aggrieved by a decision made by a public officer may lodge an objection with the Chief Secretary for Administration.</p> <p>CIC detainees will continue to enjoy the same arrangement as under the Immigration Department (ImmD)'s CIC Operation Manual.</p> <p>A new provision for JP visits will be added to the Order, enabling JP visits to CIC to continue. Any observations made by a JP, in particular adverse observations, will be brought to the personal attention of the Director or Deputy Director of Immigration for follow-up.</p> <p>This arrangement is not applicable since CIC detainees are not serving "sentences" and in general do not need to be transferred to another detention facility.</p>

¹ Generally speaking, immigration detainees at CIC now receive the same treatment as prisoners awaiting trial, where appropriate.

<p>Discipline</p>	<p>A prisoner awaiting trial shall not sell or transfer to any other person any article.</p> <p>There are offences against prison discipline (such as disobeying lawful orders) against which the Correctional Services Department (CSD) is empowered to impose punishments ranging from caution to separate confinement of a maximum of 28 days.</p> <p>Mechanical restraints may be used to, say, prevent a prisoner from causing injuries, property damage or disturbance.</p> <p>CSD may order the removal of a prisoner from association to maintain prison discipline.</p>	<p>ImmD's Operation Manual will set out that no detainee shall sell or transfer to anyone any articles provided for his own use.</p> <p>The Order already contains a provision for handling misconducts of detainees which may lead to separate confinement for a maximum period of 7 days, i.e. less stringent than the maximum punishment under the Prison Rules.</p> <p>The Order already provides that a violent detainee may be physically and mechanically restrained.</p> <p>The Operation Manual will set out that a detainee may be accommodated in another cell in order to maintain discipline.</p>
<p>Accommodation and bed</p>	<p>Every prisoner shall be provided with a separate bed and adequate blankets.</p>	<p>The Operation Manual will ensure that all detainees enjoy the same provisions, namely separate bed and adequate blankets, before and after the transfer of management from CSD to ImmD.</p>

Clothing	Prisoners shall be provided with adequate clothing and shall not be in possession of any articles without approval. Prisoners awaiting trial may wear their own clothes and may procure or receive approved clothes.	The Operation Manual will ensure that all detainees enjoy the same treatment, before and after the transfer of management from CSD to ImmD.
Food & diet	There are provisions regarding the quantity and quality of food for prisoners, as well as prisoners' right to complain about food arrangements. Prisoners awaiting trial may procure food.	The Order already contains a provision allowing for effective complaints handling. The Operation Manual will further set out arrangements regarding matters like quantity and quality of the food provided and the arrangements for detainees to procure food.
Medical services & hygiene	There are provisions regarding the medical facilities, the medical examination of prisoners, the treatment of sick prisoners, and the control of contagious diseases. Also, there are provisions on the duties of prisoners as regards their personal hygiene and the duties of a medical officer as regards matters like treatment of sick prisoners.	The Order already contains provisions regarding medical examination and the control of contagious diseases. Other relevant arrangements consistent with the current arrangements will be set out in the Operation Manual.
Bath	A prisoner shall take a bath on reception, unless the Superintendent or the medical officer decides otherwise.	The Operation Manual will set out the same arrangements.
Detainees' properties	Articles retained without authority shall be confiscated or placed in custody of CSD.	The same arrangements will be maintained; the Order already contains a provision on possession of articles.

Smoking	Under the Prison Rules, coupled with an exemption under the Smoking (Public Health) Ordinance, detainees are currently allowed to smoke in designated areas in CIC.	A new provision will be added to the Order ² to enable the current arrangements to continue.
Searches and examination	There are provisions on searches of prisoners, including body cavity searches. Moreover, there is a provision requiring prisoners to provide his urine for examination.	The Order already has a provision on searches of detainees. ImmD sees no need to add provisions for body cavity searches or examination of urine. Unlike correctional institutions, CIC does not or seldom have convicted persons known to be involved in drug trafficking or addiction. Hence, such power or function can be dispensed with.
Letters to or from the outside	There are provisions on the sending and receipt of letters by prisoners. In general, all letters may be opened, searched and read by CSD before passing to a prisoner ³ .	The Order already provides that a detainee would be approved to send and receive letters at all reasonable times upon meeting relevant conditions. The Operation Manual will set out relevant conditions. In general, a detainee should open his letters in the sight of an officer ⁴ but the officer shall not read the content of the letters.

² Coupled with the Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2010.

³ There are a few qualifiers, such as letters to or from legal advisers shall only be opened or searched in presence of the prisoner; letters to or from a prisoner may be read for the purpose of maintaining prison discipline; etc.

⁴ To ensure that no prohibited articles are contained therein.

<p>Visits by relatives and friends</p>	<p>Prisoners awaiting trial are generally allowed to have a brief visit for a quarter of an hour on any week day. Visitors may bring pre-approved items or authorized articles for the detainees.</p>	<p>The Order already has a provision to allow for outside visits. The same arrangement applies and details consistent with the status quo will be set out in the Operation Manual.</p>
<p>Interview with legal advisers</p>	<p>Reasonable facilities shall be allowed for the prisoner's legal adviser to interview the prisoner in sight but not in the hearing of an officer.</p>	<p>The Operation Manual will provide the same arrangement. Officers are prohibited from hearing the interview.</p>