

LEGISLATIVE COUNCIL BRIEF

Immigration Ordinance (Chapter 115)

IMMIGRATION (TREATMENT OF DETAINEES) (AMENDMENT) ORDER 2010

INTRODUCTION

At the meeting of the Executive Council on 26 January 2010, the Council ADVISED and the Chief Executive (CE) ORDERED that the Immigration (Treatment of Detainees) (Amendment) Order 2010 [“the Amendment Order”] at **Annex A** be made.

Annex A

JUSTIFICATIONS

2. The Castle Peak Bay Immigration Centre (CIC) is currently specified as a “prison” in the Prisons Order (Cap. 234 sub. leg. B)¹ and the treatment of detainees there is subject to the relevant Prison Rules (Cap. 234 sub. leg. A). The existing arrangement cannot continue after the Immigration Department (ImmD) assumes the management of CIC, scheduled for April 2010, as members of Immigration Service cannot exercise the powers provided under the Prison Rules. Arrangements have to be made for the continuous detention and management of persons detained in CIC, albeit under the powers and provisions of the Immigration (Treatment of Detainees) Order rather than the Prison Rules.

THE AMENDMENT ORDER

3. Under section 35(1) of the Immigration Ordinance (Cap. 115), the CE may by order provide for the treatment of persons required or authorized to be detained by or under the Ordinance. The Immigration

¹ As specified in the Prisons Order, all “prisons” are “places of detention” for the purpose of the Immigration (Places of Detention) Order. Immigration detainees can thus be detained in a “prison”.

(Treatment of Detainees) Order (Cap. 115 sub. leg. E) (principal Order) was made for this purpose. The Amendment Order will amend the principal Order by specifying CIC in Schedule 2, so that the rules relating to the treatment of detainees as set out in Schedule 1 will apply to persons detained in CIC. Such rules cover matters like possession of articles, accommodation, visits of detainees and complaint handling.

4. Furthermore, the Amendment Order will delete the existing references to the places in Schedule 2 to the principal Order, including the New Horizons Vietnamese Refugee Departure Centre, which was closed in 1998, and the custodial wards of two hospitals which are currently managed by CSD. It will also add two provisions in Schedule 1. One is to enable the continuation of visits by Justices of the Peace (JPs) to CIC even after it has ceased to be a “prison”² and the other is to provide for the smoking arrangements of detainees³ (see paragraph 14 below).

OTHER ORDERS

5. In parallel, the Secretary for Security has made two other Orders-

Annex B (a) the Prisons (Amendment) Order 2010 (**Annex B**), under section 4 of the Prison Ordinance (Cap. 234), to discontinue the use of CIC as a “prison”; and

Annex C (b) the Immigration (Places of Detention) (Amendment) Order 2010 (**Annex C**), under section 35(1) of the Immigration Ordinance (Cap. 115), to specify CIC as a “place of detention”. This will enable CIC to continue to accommodate persons required or authorized to be detained by or under the Immigration Ordinance.

Annex D 6. For reasons set out in paragraphs 14 and 15 below, the Secretary for Food and Health has made, under section 16A of the Smoking (Public Health) Ordinance (Cap. 371), the Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2010 (**Annex D**). The amendments

² Currently, JP visits to CIC are provided for in the Prison Rules.

³ Rule 25(2) of the Prison Rules, applicable to CIC until it ceases to be a “prison”, provides that “No prisoner 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 Commissioner”.

will enable continued exemption from the smoking ban for the designated smoking areas in CIC.

LEGISLATIVE TIMETABLE

7. The legislative timetable for the four Orders (the Amendment Order plus three other Orders) is -

Publication in the Gazette	5 February 2010
Tabling before the Legislative Council (LegCo)	24 February 2010
Commencement of the Orders	15 April 2010

IMPLICATIONS OF THE ORDERS

8. The four Orders have no significant economic, productivity, environmental, family policy or sustainability implications. They are in conformity with the Basic Law, including the provisions concerning human rights. They do not affect the existing binding effect of the relevant legislation.

9. The Correctional Services Department (CSD) currently has an establishment of 102 posts in CIC. These 102 posts will be re-deployed back for staffing the re-developed Lo Wu Correctional Institution. Approval has been obtained for ImmD to create a total of 115 posts to take over the management of CIC. The total annual salary costs of these posts, in terms of the notional annual mid-point salary, are about \$32 million. No additional funding is required for the operation of CIC upon the transfer of management duties.

PUBLIC CONSULTATION

10. The LegCo Panel on Security was briefed on 5 January 2010. Other LegCo Members were also invited to attend. Upon request, we have provided the Panel with additional information about the treatment of detainees before and after ImmD takes over the management of CIC.

PUBLICITY

11. A press release will be issued on 3 February 2010 when the Orders are gazetted, and a spokesman will be made available to handle media inquiries.

BACKGROUND

12. CIC commenced operation in 2005 and is used for the detention of adults provided for under Cap. 115. Owing to the then manpower situation of ImmD and CSD, the Government decided that CSD would take up the management of CIC until the second quarter of 2010.

13. 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. As at end December 2009, CIC has 12 persons detained for over two months.

14. Parts of CIC have been exempted from the smoking ban in indoor areas under the Smoking (Public Health) Ordinance (Cap. 371)⁴. Persons detained in CIC are currently allowed to smoke inside designated smoking booths during daytime. During night-time they are allowed to smoke in the toilets of the dormitories. ImmD considers that the current arrangement of allowing CIC detainees to smoke in designated areas should continue. A sudden and complete ban on smoking would not be acceptable to the detainees and may cause management problems such as smuggling of cigarettes, uncontrolled behaviour among individual detainees and may also be perceived as a deprivation of welfare currently enjoyed by the detainees.

15. ImmD has explored alternatives but found them not practicable. The only outdoor areas at CIC are the basketball courts, which are surrounded with high walls and with overhanging nets. The risk of second-hand smoking at these courts is arguably worse than at the

⁴ As a "prison", CIC is a "correctional facility" for the purposes of the Smoking (Public Health) Ordinance (Cap. 371). Under Item 7 of Part 2 of Schedule 2 to Cap. 371, an area in a correctional facility that is set aside for smoking by prisoners who are allowed to do so in accordance with orders under the relevant Prison Rule is an exempt area from the smoking ban.

purpose-built smoking booths.

ENQUIRIES

16. For enquiries about this brief, please contact Mr Alan LO, Principal Assistant Secretary for Security, at 2810 2330.

Security Bureau

3 February 2010

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IMMIGRATION (TREATMENT OF DETAINEES) (AMENDMENT) ORDER 2010

(Made by the Chief Executive under section 35(1) of the Immigration Ordinance (Cap. 115) after consultation with the Executive Council)

1. Commencement

This Order comes into operation on 15 April 2010.

2. Rules

(1) Schedule 1 to the Immigration (Treatment of Detainees) Order (Cap. 115 sub. leg. E) is amended by renumbering rule 9 as rule 9(1).

(2) Schedule 1 is amended, in rule 9, by adding –

“(2) Subrule (1) does not apply to visits by justices under rule 16.”.

(3) Schedule 1 is amended by adding –

“11A. Smoking

(1) The Director of Immigration may set aside in the Centre an area for smoking by detainees.

(2) Subject to and in accordance with any directions that may be given by the Director of Immigration, a detainee may smoke in an area set aside under subrule (1). ”.

(4) Schedule 1 is amended by adding –

“16. Visits by justices

(1) The Superintendent must provide facilities to justices of the peace appointed by the Chief Executive for that purpose (the “visiting justices”) to enable them to visit detainees and satisfy themselves that detainees are held in accordance with this Order and any other law.

(2) For the purposes of subrule (1), visiting justices must be permitted to visit detainees at all reasonable times and for reasonable periods.

(3) An officer must make a record of every such visit in respect of every detainee.

(4) The Superintendent must keep a book to be known as the “Visiting Justices Report Book” in English and known as “太平紳士探訪紀錄簿” in Chinese.

(5) Visiting justices must record their visits and their observations and comments in the book kept under subrule (4).

(6) The Superintendent must as soon as practicable bring to the attention of the Director of Immigration or the Deputy Director of Immigration any adverse observation or comment recorded by visiting justices in the book kept under subrule (4).”.

3. Centres

(1) Schedule 2 is amended by repealing items 4, 5, 6, 7, 8, 9 and 10.

(2) Schedule 2 is amended by adding –

“11. Castle Peak Bay Immigration Centre at 84 Castle Peak Road, Tuen Mun.”.

Chief Executive

1 February 2010

Explanatory Note

Schedule 1 to the Immigration (Treatment of Detainees) Order (Cap. 115 sub. leg. E) (the “principal Order”) (“Schedule 1”) contains the rules on the treatment accorded to detainees in the centres specified in Schedule 2 to the principal Order (“Schedule 2”). This Order amends Schedule 1 by adding to it certain rules relating to smoking by the detainees and visits of the detainees by justices of the peace.

2. The Order also amends Schedule 2 by –

- (a) specifying the Castle Peak Bay Immigration Centre as a place for detaining people required or authorized to be detained by or under the Immigration Ordinance (Cap. 115); and
- (b) removing some obsolete references in that Schedule.

PRISONS (AMENDMENT) ORDER 2010

(Made by the Secretary for Security under section 4 of the Prisons Ordinance (Cap. 234))

1. Commencement

This Order comes into operation on 15 April 2010.

2. Discontinuance of the use of Castle Peak Bay Immigration Centre as a prison

The use of the Castle Peak Bay Immigration Centre (the place and buildings situated at 84 Castle Peak Road, Tuen Mun) as a prison is discontinued.

3. Schedule amended

The Schedule to the Prisons Order (Cap. 234 sub. leg. B) is amended by repealing the item relating to the Castle Peak Bay Immigration Centre.

Secretary for Security

1 February 2010

Explanatory Note

This Order discontinues the use of the Castle Peak Bay Immigration Centre as a prison.

2. The Schedule to the Prisons Order (Cap. 234 sub. leg. B) is amended accordingly.

**IMMIGRATION (PLACES OF DETENTION)
(AMENDMENT) ORDER 2010**

(Made by the Secretary for Security under section 35(1) of the Immigration Ordinance (Cap. 115))

1. Commencement

This Order comes into operation on 15 April 2010.

2. Schedule 3 amended

(1) Schedule 3 to the Immigration (Places of Detention) Order (Cap. 115 sub. leg. B) is amended by repealing items 2, 3, 6, 7, 15, 16, 17, 18, 19, 20 and 22.

(2) Schedule 3 is amended by adding –

“28. Castle Peak Bay Immigration Centre at 84 Castle Peak Road, Tuen Mun.”.

Secretary for Security

1 February 2010

Explanatory Note

This Order amends Schedule 3 to the Immigration (Places of Detention) Order (Cap. 115 sub. leg. B) by specifying the Castle Peak Bay Immigration Centre as a place for detaining people required or authorized to be detained by or under the Immigration Ordinance (Cap. 115).

2. The Order also removes some obsolete references in that Schedule.

**SMOKING (PUBLIC HEALTH) ORDINANCE
(AMENDMENT OF SCHEDULE 2) ORDER 2010**

(Made by the Secretary for Food and Health under section 16A of the
Smoking (Public Health) Ordinance (Cap. 371))

1. Commencement

This Order comes into operation on 15 April 2010.

2. Designated no smoking areas and exempt areas

Part 2 of Schedule 2 to the Smoking (Public Health) Ordinance (Cap. 371)
is amended by adding –

- “11. 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.”.

Secretary for Food and Health

2 February 2010

Explanatory Note

Part 2 of Schedule 2 to the Smoking (Public Health) Ordinance (Cap. 371) (“Ordinance”) describes the areas that are exempted from the prohibition on smoking imposed by section 3 of the Ordinance. This Order amends that Part to exempt from the smoking prohibition an area set aside by the Director of Immigration in a place of detention specified in Schedule 2 to the Immigration (Treatment of Detainees) Order (Cap. 115 sub. leg. E).