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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 14 April 2010

**Proposed resolution under section 34(2) of the
Interpretation and General Clauses Ordinance**

I forward for Members' consideration a proposed resolution which the Secretary for Security will move at the Council meeting of 14 April 2010 under section 34(2) of the Interpretation and General Clauses Ordinance relating to the Immigration (Treatment of Detainees) (Amendment) Order 2010. The President has directed that "it be printed in the terms in which it was handed in" on the Agenda of the Council.

2. The speech which the Secretary will deliver when moving the proposed resolution will be issued as soon as it is available.

(Mrs Justina LAM)
for Clerk to the Legislative Council

Encl.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation and General Clauses Ordinance
(Cap. 1))

IMMIGRATION (TREATMENT OF DETAINEES) (AMENDMENT) ORDER 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, by adding –

“(5) Schedule 1 is amended, in rule 1, by adding –
““arrest/detention sheet” (逮捕/羈留紀錄表)
means the sheet or record maintained in
respect of a detainee under rule 4A;”.

(6) Schedule 1 is amended by adding –

“1A. **Notification to relatives,
etc.**

Immediately after the detention of a detainee, or so soon after the detention as may be practicable, an officer must –

(a) at the request of the
detainee, cause a close

relative of the detainee, or any other person named by the detainee for that purpose, to be notified of the detainee's whereabouts; and

- (b) if the detainee is a public officer, cause the head of the department in which the detainee holds office to be notified of the detention orally and in writing.

1B. Communication with legal advisers, etc.

(1) A detainee must be afforded reasonable opportunity to communicate with a legal adviser and to consult with the legal adviser in the presence, but out of the hearing, of an officer unless the communication or consultation would cause unreasonable hindrance or delay to the investigation of the suspected offence or the administration of justice.

(2) For the purpose of preparing his or her defence a detainee detained under the order of a magistrate must be allowed –

- (a) a supply of writing material and, despite anything to the contrary in rule 8, to have letters

to the detainee's legal adviser, relatives and friends posted or delivered with the least possible delay;

- (b) to speak by telephone to the detainee's legal adviser, relatives and friends, unless the communication is reasonably likely to cause hindrance to the investigation of the suspected offence or the administration of justice.

1C. **Duties of officers**

(1) An officer is, while a detainee is in the officer's custody, responsible for the safe custody and welfare of the detainee and for discharging any other duties that are imposed on an officer by this Order in relation to the detainee.

(2) Despite anything in this rule, an officer may temporarily place a detainee in the custody of a member of the Immigration Service established by section 3 of the Immigration Service Ordinance (Cap. 331) for the purpose of furthering an investigation, in which case that member must, until returning the detainee to the custody of an officer at the Centre, have the

responsibilities and duties of an officer in relation to the detainee.”.

(7) Schedule 1 is amended by renumbering rule 3 as rule 3(1).

(8) Schedule 1 is amended, in rule 3, by adding –

“(2) A detainee must, except for reasons which an officer must cause to be recorded in the arrest/detention sheet, be permitted to retain any head-dress the detainee is by custom or religion required to wear, essential clothing and a hearing-aid.”.

(9) Schedule 1 is amended by adding –

“4A. **Individual detention record to be kept**

(1) There must be kept in respect of each detainee a record to be known as the “arrest/detention sheet”, in which must be recorded –

(a) immediately on the detention of a detainee, the reasons for the detention;

(b) all movements and interviews of, requests made by, and meals, articles and any facilities provided to, the detainee; and

(c) any other matters that are by this Order required to be so recorded.

(2) In addition to the matters required to be recorded under subrule (1), there may be recorded by an officer on an arrest/detention sheet any other matters that the officer considers desirable.

(3) Except where in this Order it is otherwise provided, an officer is responsible for recording in an arrest/detention sheet all matters required to be so recorded which occur while the detainee is in the officer's custody.”.

(10) Schedule 1 is amended by adding –

“6A. Sickness or injury

(1) Subject to subrules (2) and (3), if a detainee complains of or appears to be suffering from sickness or injury, the detainee must be provided with adequate medical attention at the Centre.

(2) If a medical officer so advises, or the services of a medical officer cannot be procured at the Centre, the detainee must be escorted elsewhere to receive medical attention.

(3) If the detainee is admitted to a hospital, the detainee must at all times be guarded by an officer until lawfully released on recognizance or otherwise.

6B. Comfort of detainees

(1) Reasonable arrangements must be made for the comfort of detainees.

(2) Whenever practicable both a detainee being questioned or making a statement and the officer asking the questions or recording the statement are to be seated.

(3) A detainee must be permitted to receive from outside any items of clothing that may be necessary, subject to their inspection by an officer.

(4) A detainee who has to spend a night or a substantial part of it at the Centre must be provided with a bed and reasonable bedding.

6C. Food and drink

(1) Reasonable arrangements must be made by an officer for the refreshment of a detainee, including the provision of adequate food, without charge to the detainee.

(2) Without limiting subrule (1), a detainee may be permitted by an officer to obtain other food at the detainee's own expense subject to the food being inspected by an officer.

(3) Drinking water must be supplied to a detainee on request.

(4) Details of all refreshment and food supplied to or received by a detainee must be recorded in the arrest/detention sheet.

6D. Toilet facilities and exercise

Subject to any supervision and other measures that may be necessary to ensure that detainees do not escape or injure themselves, they must be provided with adequate facilities and opportunity to wash, shower, shave, relieve themselves and take a reasonable amount of exercise.”.

(11) Schedule 1 is amended by adding –

“12A. Female detainees

(1) Female detainees must ordinarily be kept separate from male detainees.

(2) A female detainee must be guarded by a female officer and, except in an emergency, no male officer may enter a detention room in which a female detainee is detained otherwise than in the company of a female officer.

12B. Safety of detainees in emergency

In the event of fire or other emergency at the Centre, the safety of any detainees detained there is paramount and if their safety is threatened, an officer must escort the detainees to the nearest police station or other suitable place.

12C. Use of handcuffs

(1) Handcuffs may only be used to restrain a detainee when necessary for the

detainee's own safety or the safety of others or to prevent the detainee's escape.

(2) Any use of handcuffs must be recorded on the arrest/detention sheet by the officer causing them to be used.”.

(12) Schedule 1 is amended by adding –

“17. Notice to detainees

There must be displayed in a conspicuous position in every room used for the detention of a detainee and in other conspicuous places at the Centre where it can readily be seen by detainees, a notice in the following terms –

“Notice to Persons Detained

1. You may request that your relatives or a friend be informed of your detention.
2. Provided that no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice you may communicate and consult with a legal adviser.
3. For the purpose of preparing your defence you will, if you have been detained on the order of a magistrate, be allowed –
 - (a) a supply of writing material, and to have your

letters posted or delivered without delay;

(b) to make telephone calls, provided no hindrance is caused to the processes of investigation or the administration of justice.

4. You may ask to be released on recognizance.
5. If you feel ill, ask for medical attention.
6. Adequate food and refreshment will be supplied free. You are entitled to receive from outside any items of clothing that may be necessary. However you may, if you request, be permitted at your own expense to have food from outside brought to you subject to inspection.
7. Drinking water will be supplied on request.

被羈留者請注意

1. 你可要求通知你的親屬或一位朋友你已被羈留。
2. 在不會對進行調查或對執法構成

不合理延遲或阻礙的前提下，你可與一名法律顧問通訊和商議。

3. 你如根據裁判官的命令被羈留，為準備你的辯護，你會 —
 - (a) 獲供應書寫用品，而你的書信會在沒有延遲的情況下郵寄或送遞；
 - (b) 在不會對進行調查或對執法構成阻礙的前提下，獲准打電話給他人。
4. 你可要求擔保外出。
5. 你如感到不適，請要求醫療護理。
6. 你會獲得免費供應足夠的食物和茶點。你可接受從外間送來的任何所需衣物。但如你提出要求，則可獲准自費得到外間送來的食物，但這些食物須經過檢查。
7. 飲用水會應你的要求供應。”.””.

D R A F T

Legislative Council Meeting on 14 April 2010

Resolution to Amend the Immigration (Treatment of Detainees) (Amendment) Order 2010

Draft Speech of the Secretary for Security

President,

I move that the Immigration (Treatment of Detainees) (Amendment) Order 2010, be amended as set out in the agenda.

To enable the Correctional Services Department (CSD) to transfer the management duties regarding the Castle Peak Bay Immigration Centre (CIC) to the Immigration Department (ImmD) starting from the middle of this month, the Government had tabled on 24 February 2010 four amendment orders to the relevant subsidiary legislation. The Prisons (Amendment) Order 2010 discontinues the use of CIC as a “prison” under CSD’s management. The replacement, i.e. the Immigration (Places of Detention) (Amendment) Order 2010 specifies CIC as a “place of detention” to be managed by ImmD, thus enabling the continued accommodation in CIC of persons required or authorized to be detained by or under the Immigration Ordinance. The Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2010 provides for the continued exemption from the smoking ban for the designated smoking areas in CIC. Lastly, the Immigration (Treatment of Detainees) (Amendment) Order 2010 provides that the Immigration (Treatment of Detainees) Order shall apply to CIC. It also adds two provisions. One is to allow detainees to smoke in the designated areas and the other to allow Justices of the Peace (JPs) to visit detainees.

The Legislative Council subsequently set up a Subcommittee to scrutinize the four amendment orders. In the course of scrutiny, the Subcommittee proposed that the provisions in the Immigration Service (Treatment of Detained Persons) Order, currently applicable to the Ma Tau Kok Detention Centre (MTKDC), should also be made to apply to CIC in the form of subsidiary legislation. We accepted the proposal of the Subcommittee.

I wish to reiterate that MTKDC is for short-term detention of persons pending charges or trial. These persons are normally detained for less than 48 hours. On the other hand, persons detained in CIC are in general released prisoners, illegal immigrants or overstayers pending removal. The

functions of, as well as the kind of detainees at, the two centres are basically different. Nevertheless, we understand Members' concern over the statutory protection for detainees and accept Members' view.

President, today I move that all applicable provisions in the Immigration Service (Treatment of Detained Persons) Order be added to the Immigration (Treatment of Detainees) Order. They will set out the treatment of CIC detainees, including the arrangements regarding the notification to relatives, communication with legal advisers, food and drink, etc. As we pointed out to the Subcommittee earlier, in addition to the protection provided under the subsidiary legislation, the CIC Operational Manual will set out clearly the detailed arrangements regarding detainees' treatment. The contents of the Operational Manual will be made available for reference by the detainees and the general public, unless their disclosure should be withheld on security ground or because they relate to CIC's internal operations.

I sincerely thank all Members of the Subcommittee for their valuable views and for their support for the amendment resolution. I hereby also call upon other Members' support to the amendments.

Thank you, President.

- END -