



立法會秘書處 法律事務部
LEGISLATIVE COUNCIL SECRETARIAT
LEGAL SERVICE DIVISION

來函檔號 YOUR REF :
本函檔號 OUR REF : LS/S/16/09-10
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By Fax (2147 3165)

18 February 2010

Mr Alan LO
Prin AS (Security) C
Security Bureau
6th Floor,
Main and East Wings,
Central Government Offices,
Hong Kong

Dear Mr LO,

Prisons (Amendment) Order 2010 (L.N. 13 of 2010)
Immigration (Places of Detention) (Amendment) Order 2010 (L.N. 14 of 2010)
Immigration (Treatment of Detainees) (Amendment) Order 2010
(L.N. 15 of 2010)
Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2010
(L.N. 16 of 2010)

I am scrutinizing the legal and drafting aspects of the above Orders. It would assist Members if you could clarify the following matters.

L.N. 14 and L.N. 15

Section 2(1) of the Immigration (Places of Detention) (Amendment) Order 2010 (L.N. 14) amends Schedule 3 to the Immigration (Places of Detention) Order (Cap. 115 sub. leg. B) (the Places of Detention Order) by repealing items 2, 3, 6, 7, 15, 16, 17, 18, 19, 20 and 22. Moreover, section 3(1) of the Immigration (Treatment of Detainees) (Amendment) Order 2010 (L.N. 15) amends Schedule 2 to the Immigration (Treatment of Detainees) Order (Cap. 115 sub. leg. E) (the Treatment of Detainees Order) by repealing items 4, 5, 6, 7, 8, 9 and 10. According to paragraph 4 of the Legislative Council Brief (File Ref. SBCR 10/2091/94), the New Horizons Vietnamese Refugee Departure Centre (i.e. item 16 of Schedule 3 to the Places of Detention Order and item 5 of Schedule 2 to the Treatment of Detainees

Order) was closed in 1998 and the custodial wards of two hospitals (i.e. items 17 and 18 of Schedule 3 to the Places of Detention Order and items 6 and 7 of Schedule 2 to the Treatment of Detainees Order) are currently managed by the Correctional Services Department. Please provide the reasons for repealing the other items in L.N. 14 and L.N. 15 as stated above.

L.N. 15

It is noted that rules 222 to 235 of the Prison Rules (Cap. 234 sub. leg. A) (the Prison Rules) are detailed provisions relating to visits of prisons by visiting justices. For instance, rule 222(1) provides that two visiting justices shall visit each prison at least once a fortnight. Rule 228(1) further provides that visiting justices shall hear and investigate any complaint which any prisoner may desire to make to them. However, the new rule 16 of Schedule 1 to the Treatment of Detainees Order (as added by section 2(4) of L.N. 15), which relates to visits of persons detained under the Immigration Ordinance (Cap. 115) by justices of the peace, seems to be drafted in relatively general terms when compared with similar provisions under the Prison Rules. For instance, it does not provide for the number of visiting justices on each visit and the frequency of visits. Moreover, it provides for visiting justices to visit "detainees" (as opposed to "prison" under rule 222(1) of the Prison Rules). There are also no provisions on hearing and investigating detainees' complaints by visiting justices under the new rule 16. Please provide the reasons for the differences between the provisions relating to visiting justices in the Prison Rules and the new rule 16 of Schedule 1 to the Treatment of Detainees Order.

The above Orders will be considered by the House Committee at its meeting on 26 February 2010. I would appreciate it if you could let me have your reply (in both Chinese and English and with soft copy to Miss Joey LEE at jmylee@legco.gov.hk) by close of play on 22 February 2010.

Yours sincerely,



(Timothy TSO)
Assistant Legal Adviser

c.c. DoJ (Attn.: Miss Elaine NG, Govt Counsel (By Fax: 2869 1302))

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