

政府總部  
香港下亞厘畢道



GOVERNMENT SECRETARIAT

LOWER ALBERT ROAD  
HONG KONG

本函檔號 OUR REF: L/M to SBCR 10/2091/94  
來函檔號 YOUR REF: LS/S/16-09-10  
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22 February 2010

By Fax (2877 5029)

Mr. Timothy TSO  
Assistant Legal Adviser  
Legislative Council Secretariat – Legal Service Division

Dear Mr. TSO,

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

Thank you for your letter dated 18 February 2010.

### Repeal of Obsolete Items

Items 2, 3, 6, 7, 15, 19, 20 and 22 of Schedule 3 to the Immigration (Places of Detention) Order (Cap. 115 sub. leg. B) and items 4, 8, 9 and 10 of Schedule 2 to the Immigration (Treatment of Detainees) Order (Cap. 115 sub. leg. E) are repealed, since the relevant facilities referred to in the said Orders are all closed down or no longer used for the detention of immigration detainees.

### Visits by Justices of the Peace


The Castle Peak Bay Immigration Centre (CIC) is currently specified as a “prison” in the Prisons Order (Cap. 234 sub. leg. B). As such, the Correctional Services Department (CSD) has been relying on the Prison Rules

(Cap. 234 sub. leg. A) in managing the CIC. As a matter of fact, persons put under CSD's custody are primarily convicted and sentenced prisoners or prisoners awaiting trial. As such, the Prison Rules may appear prescriptive and restrictive in dealing with inmates' eligibility for basic provisions, e.g. food and clothing, as well as matters like complaint avenues.

Immigration detainees are not convicted or sentenced prisoners but are persons detained for immigration investigation or pending removal under the Immigration Ordinance (Cap. 115). We will not add to the Immigration (Treatment of Detainees) Order such provisions or restrictions in the Prison Rules that are considered not absolutely necessary for the effective management of CIC after the Immigration Department (ImmD) takes over in April 2010. Unlike the Prison Rules, the Immigration (Treatment of Detainees) Order does not contain, for example, provisions on matters such as examination of detainees' urine or searches of body cavities.

Having said that, we see the need for and have proposed a provision on visits by the Justice Peace (JPs), namely the new rule 16 proposed to be added to Schedule 1 to the Immigration (Treatment of Detainees) Order. The new rule provides for the key arrangements for JP visits: for example, the Superintendent must provide facilities to enable JPs to visit the CIC detainees and satisfy themselves that the detainees are held in accordance with the law; visiting JPs must be permitted to visit detainees *at all reasonable times and for reasonable periods*; the visiting JPs must record their observations; any adverse observations must be brought to the attention of the Director of Immigration or Deputy Director of Immigration as soon as practicable; etc. Other arrangements will by and large follow the current practice (e.g. two JPs will be invited to visit CIC at least once a fortnight) and will be set out in ImmD's CIC Operation Manual. Furthermore, providing for visit of "detainees", instead of visit of the "Centre [prison]", will help ensure that the visiting JPs are able to communicate with the detainees. Indeed, nothing would have stopped a detainee for lodging a complaint to a visiting JP. At the same time, if a visiting JP finds anything improper, he could make such further enquiries as he considers necessary.

Yours sincerely,



(Alan Lo)

for Secretary for Security

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