

香港特別行政區政府
保安局



The Government of the
Hong Kong Special Administrative Region
Security Bureau

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Dear Mr Ip

**Immigration (Places of Detention) (Amendment) Order 2018
(L.N. 109)**

**Immigration Service (Designated Places) (Amendment) Order 2018
(L.N. 110)**

Thank you for your letter of 6 June 2018. With reference to the matters raised in the letter, the Security Bureau's response is as follows.

Background

According to section 35(1) of the Immigration Ordinance (Cap.115), save as otherwise provided in that Ordinance, persons required or authorized to be detained by or under the Ordinance may be detained in such places as the Secretary for Security may by order direct. The places specified in Schedules 1, 2 and 3 to the Immigration (Places of Detention) Order (Cap. 115B) are the places at which those persons may be so detained. The places of detention set out in Schedule 3 include, for example, areas occupied or used by the Immigration Department (ImmD) for detention purposes within the Hong Kong Airport Building, the River Trade Terminal, Tuen Mun, and the Clearance Area of the Shenzhen Bay Port Hong Kong Port Area.

Separately, under section 13A(2)(a) of the Immigration Service Ordinance (Cap. 331), where an arrested person is taken to an office of the Immigration Service, he may be detained at that office of the Service or at a **designated place**, if any member of the Service of or above the rank of Chief Immigration Officer considers it necessary for the purposes of inquiries. Under section 13A(9) of that Ordinance, the Secretary for Security may, by order published in the Gazette, designate any place as a designated place for the purposes of that section. The Immigration Service (Designated Places) Order (Cap. 331B) sets out such designated places, including, for example, any police station and areas occupied or used by the ImmD for detention purposes within the Hong Kong Airport Building, the River Trade Terminal, Tuen Mun, and the Clearance Area of the Shenzhen Bay Port Hong Kong Port Area.

As mentioned in paragraph 3 of the relevant Legislative Council (LegCo) Brief (LegCo Brief), as in other control points, ImmD needs to set up detention quarters at the West Kowloon Station Port (WKS Port) for its daily immigration control and law enforcement upon commissioning of the WKS Port. For this purpose, Schedule 3 to Cap. 115B and the Schedule to Cap. 331B have to be amended by adding “[t]he area within the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (other than the West Kowloon Station Mainland Port Area) that is set aside as detention quarters for use by the Immigration Department”.

Meaning of “West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link” and “West Kowloon Station Mainland Port Area”

The amendments are technical in nature. The Government introduced similar amendments before the establishment of other new control points (such as the Hong Kong Port of the Hong Kong-Zhuhai-Macao Bridge). As mentioned above, at present, the items set out in Schedule 3 to Cap. 115B and the Schedule to Cap. 311B refer to places like “Hong Kong Airport Building”, “River Trade Terminal, Tuen Mun” and “Clearance Area of the Shenzhen Bay Port Hong Kong Port Area”, as mentioned above. The identities and locations of such places can be ascertained according to the ordinary meaning of the descriptions in the relevant contexts. The Schedules concerned do not contain definitions by way of reference to other legislation.

Similarly, we consider that “West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link” and “West Kowloon Station Mainland Port Area” can be clearly understood according to their ordinary meaning without the need to define them by reference to other legislation.

Commencement Date

The above pieces of subsidiary legislation are made in anticipation of ImmD's need in daily enforcement upon the commissioning of the WKS Port. Under section 28(3) of the Interpretation and General Clauses Ordinance (Cap. 1), if no provision is made in subsidiary legislation for its commencement, it comes into operation on the date of its publication in the Gazette. In normal circumstances, the Government's practice is to allow, wherever possible, the full negative vetting period under section 34 of Cap. 1 (i.e. generally 28 days + 21 days) to run its course before bringing subsidiary legislation into operation. However, there are some past occasions where the relevant subsidiary legislation, due to operational needs, had to commence before expiry of the full negative vetting period.

As far as the two pieces of subsidiary legislation are concerned, their first 28-day vetting period will end on 4 July, subject to an extension of such a period to the date of the first LegCo sitting of the next LegCo session. As explained in our LegCo Brief, the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link is anticipated to be commissioned in September 2018. ImmD has to set up detention quarters upon commissioning of the WKS Port for use in its daily immigration control and law enforcement. The two pieces of subsidiary legislation have to come into operation on the commencement date of the Ordinance enacted by the Legislative Council through the passage of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill, in order to meet the operational needs upon commissioning of the WKS Port.



(Parson Lam)
for Secretary for Security