

LCQ4: Visiting persons in custody

Following is a question by the Hon Leung Yiu-chung and a reply by the Acting Secretary for Security, Mr Sonny Au, in the Legislative Council today (November 21):

I notice that in recent years, the Correctional Services Department (CSD) has changed the arrangements for Members of this Council to visit persons in custody to perform official duties. In the past, a Member, irrespective of whether in the company of other persons (such as the Member's assistant or a legal adviser of the person in custody), may visit a person in custody not in the hearing of CSD officers. At present, if a Member is accompanied by other persons in a visit to a person in custody, CSD officers will keep the door of the visit room open and even sit in on the visit and record the conversation in writing. In the past year or so, I have enquired for a number of times in writing about the reasons for the changes in the arrangements, but CSD has so far not made an official reply on the grounds that it needs to consult the Department of Justice. In this connection, will the Government inform this Council:

(1) since when the arrangements of CSD officers sitting in on official visits and recording the conversation in writing have been implemented; of the uses of such records and their retention period, as well as the rank of the officers responsible for inspecting the contents of the records;

(2) of the justifications and the legal basis for CSD officers to sit in on official visits and the guidelines those officers have to observe; as some Members have relayed that there are differences in the arrangements for handling official visits by various correctional institutions, of the reasons for that and the measures to ensure that the relevant arrangements are consistent; and

(3) whether CSD will review the arrangements for official visits and reinstate the practice whereby Members and accompanying persons may visit persons in custody not in the hearing of CSD officers, so as to protect the privacy of persons in custody and safeguard their right to confidential legal advice?

Reply:

President,

The Correctional Services Department (CSD) is committed to providing a secure, safe, humane, decent and healthy custodial environment for persons in custody (PICs). In view of security considerations and the need for maintaining discipline and order in the prisons, the Prison Rules (Cap 234A) contain provisions regulating PICs' communication with parties outside of prisons. The CSD is responsible for handling various visits in accordance with the law or relevant principles. No persons, unless specified by the law,

shall visit a PIC except by special authority of the Commissioner of Correctional Services.

My replies to the Member's questions are as follows:

(1) and (2) For such purposes as assisting the rehabilitation of PICs or facilitating legal proceedings, the CSD allows PICs to receive visits by specified categories of persons under suitable restrictions. The Prison Rules stipulate that a PIC may receive visits by relatives and friends, police officers, officers of the Court and his/her legal adviser. Relevant provisions are as follows:

(i) Under Rule 48 of the Prison Rules, relatives and friends may visit a PIC twice a month and no more than three persons shall be allowed at one time. The visits shall be limited to 30 minutes on each occasion and conducted in the presence of a CSD officer;

(ii) Under Rule 49 of the Prison Rules, any police officer may visit PICs for the purpose of identification parades or inquiring into reported or reasonably suspected offences;

(iii) Under Rule 50 of the Prison Rules, officers of the Court, with competent warrants or orders for serving writs or other legal process on persons within the prison, shall be admitted into the prison for that purpose; and

(iv) Under Rule 52(1) of the Prison Rules, reasonable facilities shall be allowed for the legal adviser of a PIC who is party to legal proceedings, civil or criminal, to interview the PIC with reference to those proceedings in the sight but not in the hearing of a CSD officer.

Visits by relatives and friends are video and sound recorded and conducted in the presence of a CSD officer. These arrangements are mainly for prison security and crime prevention, for instance, against self-harm behaviour committed by PICs due to emotional outburst, conversation about unlawful matters like jailbreak or disruption to discipline and order in prisons, etc. CSD officers are duty bound to follow up appropriately where necessary. Visits by police officers, officers of the Court and legal advisers may be conducted in the sight but not in the hearing of a CSD officer and without restrictions on time and frequency.

Regarding visits by legal advisers, the CSD and the Law Society of Hong Kong have in place an established mechanism for specific arrangements, where a legal adviser is required to produce valid documents issued by his/her law firm as a proof of his/her representation for the PIC prior to interviewing the person, and that the interview is to discuss the relevant legal proceedings, therefore fulfilling the requirements under section 52(1) of the Prison Rules. Upon ascertaining the purpose of visit, the CSD will arrange for the interview to be conducted not in the hearing of a CSD officer.

No special arrangement has been set out in the Prison Rules on visiting

PICs by Members of the Legislative Council. However, the Commissioner of Correctional Services may exercise discretion under the law to permit PICs to receive visits by Members of the Legislative Council. The CSD has all along taken into account the provisions in Rule 47C of the Prison Rules which stipulate that CSD officers shall not read letters from PICs to specified persons, i.e. the Chief Executive, Members of the Executive Council, Members of the Legislative Council, District Council Members, visiting Justices of the Peace, the Ombudsman and the Commissioner of the Independent Commission Against Corruption, or letters from specified persons to PICs. Thus, the CSD has exercised discretion and extended the principle of handling letters of specified persons to the visits to PICs by specified persons, including Members of the Legislative Council, and devised administrative arrangements to facilitate such official visits. No restrictions are imposed on the time and the frequency of such visits. They will be conducted in official visit rooms not in the hearing of a CSD officer. These arrangements for visits by specified persons are less stringent than those for visits by relatives and friends. Any specified person who needs to visit a PIC to perform official duties has to make an application to the CSD in advance to confirm that he/she has a genuine need to perform official duties. If approval is given, the CSD will notify the specified person in writing, stating that the approval is granted on the basis of his/her capacity as a specified person and that CSD is satisfied that there is a genuine need for he/she to perform official duties.

Nevertheless, where a specified person conducts the visit in the company of one or more persons, the specified person must first confirm that the presence and the company of the accompanying persons is necessary. The CSD may exercise discretion when giving approval. If approval is granted, no restrictions are imposed on the time and the frequency of such visits. The visits will be conducted in official visit rooms. Yet, as the accompanying persons are not specified persons, the visit will be conducted in the sight and hearing of a CSD officer. These arrangements for visits by a specified person with accompanying persons are still less stringent than those for visits by relatives and friends.

Having regard to the security and operational needs of prison, where a visit is conducted in the sight and hearing of a CSD officer, the officer may keep a record as appropriate and where necessary. After the visit, the CSD officer at the scene will report to the institutional management and the record will be destroyed immediately after the reporting.

(3) The CSD respects the privacy of PICs, but the operation of prisons is subject to the statutory restrictions stated in parts (1) and (2) above. It is also necessary for the CSD to maintain the security, discipline and order of prisons. The CSD will continue to protect the privacy and legitimate rights of PICs while ensuring good management and security of the prisons in accordance with the law and relevant rules of Hong Kong and in a professional manner.