

L.N. 99 of 2023

Immigration (Treatment of Detainees) (Amendment) Order 2023

(Made by the Chief Executive under section 35(1) of the Immigration Ordinance (Cap. 115) after consultation with the Executive Council)

1. Commencement

This Order comes into operation on 1 November 2023.

2. Immigration (Treatment of Detainees) Order amended

The Immigration (Treatment of Detainees) Order (Cap. 115 sub. leg. E) is amended as set out in section 3.

3. Schedule 1 amended (rules)

(1) Schedule 1, before rule 1—

Add

“Part 1

Preliminary”.

(2) Schedule 1, rule 1—

Add in alphabetical order

“*registered medical practitioner* (註冊醫生) has the meaning given by section 2(1) of the Medical Registration Ordinance (Cap. 161);

registered nurse (註冊護士) has the meaning given by section 2(1) of the Nurses Registration Ordinance (Cap. 164);”.

- (3) Schedule 1, before rule 1A—

Add

“Part 2

General Provisions”.

- (4) Schedule 1, rule 2(1)—

Repeal

“him”

Substitute

“the Superintendent (*authorized officer*)”.

- (5) Schedule 1, rule 2(4)—

Repeal

“No”

Substitute

“Subject to subrule (7), no”.

- (6) Schedule 1, after rule 2(4)—

Add

“(5) The rectum, vagina, nostrils, ears or any other external orifice of a detainee must not be searched under subrule (1) unless the Superintendent or authorized officer reasonably considers it necessary in the interests of the discipline of the Centre.

(6) To the extent that a search is one conducted in reliance on subrule (5)—

(a) subrule (4) does not apply; and

- (b) subject to subrule (7), the search must be conducted by a registered medical practitioner or registered nurse of the same sex under the direction of the Superintendent or authorized officer.
- (7) If the detainee concerned consents, a requirement under this rule that a person who may conduct a search must be one who is of the same sex may be disregarded.”.
- (7) Schedule 1, rule 5—
- Repeal**
“medical officer”
- Substitute**
“registered medical practitioner”.
- (8) Schedule 1, after rule 5—
- Add**

“5A. Detainees’ urine for examination

- (1) The Superintendent, or an officer authorized by the Superintendent (*authorized officer*), may require a detainee to submit, within a reasonable period, a specimen of the detainee’s urine for examination and analysis.
- (2) Moreover, a registered medical practitioner or registered nurse may also, under the direction of the Superintendent or authorized officer, impose the requirement on a detainee.”.

- (9) Schedule 1, rule 6—

Repeal

“medical officer”

Substitute

“registered medical practitioner”.

- (10) Schedule 1, rule 6A(2)—

Repeal

“medical officer” (wherever appearing)

Substitute

“registered medical practitioner”.

- (11) Schedule 1, before rule 13—

Add

“Part 3

Discipline and Control of Detainees”.

- (12) Schedule 1, rule 13, heading—

Repeal

“**Confinement of detainees**”

Substitute

“**Offences against discipline**”.

- (13) Schedule 1, rule 13(1)—

Repeal everything before paragraph (a)

Substitute

“(1) For the purposes of these rules, a detainee commits an offence against discipline if the detainee—”.

- (14) Schedule 1, rule 13(1)(d)—

Repeal

“or”.

- (15) Schedule 1, rule 13(1)—

Repeal everything after paragraph (d)

Substitute

- “(e) uses threatening, abusive or insulting words, or behaves in a manner that expresses a threat, abuse or insult;
- (f) communicates with another detainee for an improper purpose;
- (g) communicates with another detainee when prohibited from doing so in the interests of the discipline of the Centre;
- (h) has in the detainee’s possession—
- (i) any article that the detainee is not authorized to have; or
 - (ii) a greater quantity of any article than that the detainee is authorized to have;
- (i) without authorization gives any article to, or receives any article from, any person;
- (j) makes false and malicious allegations against an officer;
- (k) loses or, without reasonable excuse, damages or destroys any Government property;
- (l) is found to have, without reasonable excuse, traces of a dangerous drug as defined by section 2(1) of the Dangerous Drugs Ordinance (Cap. 134) in a specimen of the detainee’s urine;

- (m) fights with any person;
- (n) obstructs an officer in the execution of the officer's duty; or
- (o) does any of the following—
 - (i) attempts to commit an offence against discipline specified in any other paragraph of this subrule;
 - (ii) incites another person to commit such an offence;
 - (iii) assists another person in committing, or attempting to commit, such an offence.”.

(16) Schedule 1, rule 13—

Repeal subrule (2).

(17) Schedule 1, after rule 13—

Add

“13A. Segregation of detainee against whom report is made

A detainee who has been reported for an alleged offence against discipline must be kept apart from other detainees pending a determination made under rule 13B(2).

13B. Powers of Superintendent in relation to offences against discipline

- (1) The Superintendent may interrogate any person if the Superintendent has reason to believe that a detainee is committing or has committed an offence against discipline.
- (2) The Superintendent may determine whether a detainee has committed an offence against discipline.

- (3) If the Superintendent determines under subrule (2) that a detainee has committed an offence against discipline, the Superintendent may order that either or both of the following actions be taken as punishments of the detainee—
 - (a) issuing a caution to the detainee;
 - (b) subject to rule 13E, separately confining the detainee for a period not exceeding 28 days.

13C. Appeal

- (1) A detainee who is aggrieved by an order made under rule 13B(3) (*punishment order*) may, within 48 hours after the issue of the punishment order, notify the Superintendent that the detainee wishes to appeal to the Director against the punishment order.
- (2) If the Superintendent is notified under subrule (1) in respect of the punishment order, the Superintendent—
 - (a) must, as soon as practicable after being so notified, notify the Director that the detainee wishes to appeal to the Director against the punishment order; and
 - (b) must stay execution of the punishment order pending the hearing of the appeal.
- (3) An appeal against the punishment order may include an appeal against the relevant determination made under rule 13B(2).
- (4) On hearing the appeal, the Director must determine the appeal and may—
 - (a) cancel, vary or confirm the punishment order; or

(b) subject to subrule (5), substitute for the order any other punishment order.

- (5) The Director must not substitute a punishment order with a greater punishment for the punishment order unless the Director first gives the detainee an opportunity of showing cause why the punishment should not be increased.

13D. Separate confinement in interests of detainee or good order

- (1) Subject to subrule (2) and rule 13E, the Superintendent may order a detainee to be separately confined if the Superintendent considers that the detainee's being so confined is desirable in the interests of the detainee or good order in the Centre, or both.
- (2) No detainee may be ordered under subrule (1) to be separately confined for more than 7 days unless the detainee consents to such a confinement.

13E. Medical certificate that detainee is fit for separate confinement

A detainee must not be separately confined unless a registered medical practitioner has certified in writing that the detainee is in a fit condition of health to be so confined.”.

- (18) Schedule 1, before rule 15—

Add

“Part 4

Miscellaneous”.

Immigration (Treatment of Detainees) (Amendment) Order 2023

L.N. 99 of 2023

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John KC LEE
Chief Executive

20 June 2023

Explanatory Note

Schedule 1 to the Immigration (Treatment of Detainees) Order (Cap. 115 sub. leg. E) (*principal Order*) contains rules on the treatment of persons detained in a detention centre specified in Schedule 2 to the principal Order.

2. This Order amends that Schedule 1 to—
- (a) add certain new provisions relating to the search of, and urine examination for, detainees;
 - (b) add certain new offences against discipline;
 - (c) confer certain powers on the Superintendent in relation to offences against discipline, including the power to issue punishment orders;
 - (d) provide for the appeal against such punishment orders;
 - (e) add certain new provisions relating to the separate confinement of detainees; and
 - (f) reorganize that Schedule.