

立法會
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Paper for the House Committee meeting on 22 June 2001

**Report of the Subcommittee on
Dangerous Drugs, Independent Commission Against Corruption and
Police Force (Amendment) Ordinance 2000 (68 of 2000)
(Commencement) Notice 2001**

Purpose

This paper reports on the deliberations of the Subcommittee on Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Ordinance 2000 (68 of 2000) (Commencement) Notice 2001.

The Commencement Notice

2. The Commencement Notice appoints 1 July 2001 as the day on which the Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Ordinance 2000 (the Ordinance) shall come into operation. The Ordinance makes provisions in respect of the taking of intimate and non-intimate samples from individuals and was passed by the Legislative Council at the meeting of 26 June 2000.

The Subcommittee

3. When the Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Bill 1999 was scrutinised by the then Bills Committee in the last legislative session, the Administration had undertaken to issue guidelines on the taking of intimate and non-intimate samples from individuals before the Ordinance became operative. At the meeting of the House Committee on 25 May 2001, Members agreed that a subcommittee be formed to study the Commencement Notice and the

internal guidelines drawn up by the Police and the ICAC on the taking of samples. The membership list of the Subcommittee is in **Appendix**.

4. To allow sufficient time for the Subcommittee to examine in detail these internal guidelines, the Chairman of the Subcommittee moved a motion at the Council meeting on 13 June 2001 to extend the scrutiny period of the subsidiary legislation to the Council meeting of 27 June 2001. The motion was passed by the Council.

5. Hon James TO Kun-sun was elected Chairman of the Subcommittee. The Subcommittee has held two meetings with the Administration.

Deliberations of the Subcommittee

6. The main deliberations of the Subcommittee are summarised below.

Training

7. In preparation for the implementation of the Ordinance, the Subcommittee notes that around 60 Police officers will be trained for the taking of samples from individuals to ensure that samples are taken in accordance with the provisions in the Ordinance. So far, about 30 Police officers have received the relevant training provided by the Government Laboratory. The training covers, among other things, the taking of samples from crime scenes, the taking of intimate and non-intimate samples from individuals, and the safeguards against contamination of samples taken. A certificate will be issued to a Police officer who has successfully completed the training. In the case of the ICAC, 12 officers have received the relevant training in respect of the taking of non-intimate samples.

8. The Subcommittee also notes that five professional staff and four technical staff of the Government Laboratory have been trained for the purpose of administering the DNA database.

9. Regarding members' question on whether the number of trained Police officers would be adequate for the purpose of implementation of the Ordinance, the Administration informed members that more Police officers will be trained when the need arises.

Police's Internal Guidelines on Sample Taking for DNA Comparison

10. The Subcommittee has examined in detail the Police's Internal Guidelines on Sample Taking for DNA Comparison. The Subcommittee notes that the Guidelines set out, among other things, the procedures for taking intimate and non-intimate samples from suspects, procedures for taking non-intimate samples from convicted persons, procedures for taking non-intimate samples from volunteers, limitations on the use of

samples and results of forensic analysis, administration of the DNA database, the retention and disposal of samples and records, guidelines for Police officers to attend crime scenes, guidelines for taking samples requiring the use of force, guidelines for video-taping the taking of samples, and the relevant forms to be used.

11. The Subcommittee notes that in the case of taking an intimate sample from a mentally retarded suspect of 18 years or above, the Police should ensure the presence of the parent or guardian or an appropriate disinterested adult during the whole process. Members have sought clarification on the meaning of "an appropriate disinterested adult". Some members have also expressed concern about the safeguards to a mentally retarded suspect when a parent or guardian of the suspect is not present during the sample taking process.

12. The Administration has explained that an appropriate disinterested adult is one who is not concerned in the case in question. He can be a social worker, a relative of the suspect, or a volunteer on a list of non-government organisations maintained by the Police for providing assistance to mentally retarded persons, but not a Police officer. The Administration has assured members that there are already sufficient safeguards in the Ordinance. The taking of an intimate sample from a person requires the authorisation of a Police officer of or above the rank of superintendent, the consent of the person, and the approval of a magistrate. The authorising Police officer may only give such an authorisation if he has reasonable grounds to believe that the sample will tend to confirm or disprove the commission of the serious arrestable offence by that person. In addition, an intimate sample other than urine may only be taken from a person by a registered medical practitioner or a registered dentist as appropriate.

13. Members have made a few suggestions on the drafting of the Guidelines at the first meeting of the Subcommittee. The Administration has incorporated most of these suggestions in its revisions to the Guidelines.

ICAC's Internal Guidelines on the Taking of Non-intimate Sample

14. The Subcommittee has also examined in detail the ICAC's Internal Guidelines on the Taking of Non-intimate Sample which in general follow those of the Police. The Subcommittee notes that the Guidelines set out, among other things, the procedures for taking non-intimate samples from suspects, procedures for non-intimate samples to be taken from convicted persons by the Police, how to handle requests from persons who volunteer to give non-intimate samples, limitations on the use of samples and results of forensic analysis, the retention and disposal of samples and records, guidelines for attending crime scenes, and the relevant forms to be used.

15. The Administration has agreed to consider a member's suggestion on refining the drafting of the guidelines in relation to the video-recording of the process of taking non-intimate sample of a female subject by a trained officer not of the same sex,

notwithstanding the guidelines already lay down that an officer of the same sex should be present.

Recommendation

16. The Subcommittee recommends that the Commencement Notice be supported.

Advice Sought

17. Members are invited to support the recommendation of the Subcommittee in paragraph 16 above.

Council Business Division 2
Legislative Council Secretariat
18 June 2001

Subcommittee on
Dangerous Drugs, Independent Commission Against Corruption
and Police Force (Amendment) Ordinance 2000
(68 of 2000) (Commencement) Notice 2001

Membership list

Chairman	Hon James TO Kun-sun
Members	Hon LAU Kong-wah Hon Ambrose LAU Hon-chuen, JP Hon Emily LAU Wai-hing, JP Hon Michael MAK Kwok-fung

(Total : 5 Members)

Clerk	Mrs Sharon TONG LEE Yin-ping
Legal Adviser	Mr LEE Yu-sung
Date	4 June 2001