

立法會
Legislative Council

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(These minutes have been seen by
the Administration)

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

**Minutes of meeting
held on Monday, 4 June 2001 at 4:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Ambrose LAU Hon-chuen, JP
Hon Emily LAU Wai-hing, JP
Hon Michael MAK Kwok-fung

Member absent : Hon LAU Kong-wah

Public Officers attending : Miss Eliza YAU
Principal Assistant Secretary for Security E

Miss Angela LEE
Assistant Secretary for Security E

Mr I R MACKNESS
Chief Superintendent of Police (Crime Support)

Dr C M LAU
Chief Chemist

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Mr Raymond LAM
Senior Assistant Secretary (2)5

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I. Election of Chairman

Mr James TO was elected Chairman of the Subcommittee.

II. Meeting with the Administration

(LC Paper Nos. CB(2) 1262/00-01 and LS 101/00-01)

General issues

2. Principal Assistant Secretary for Security E (PAS(S)E) informed members that after the Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Ordinance 2000 (the Ordinance) was passed, two levels of working groups were formed to implement the Ordinance. One was of a steering nature and was responsible for overseeing the implementation time-table as well as ensuring that the Police's internal guidelines on the taking of samples were consistent with the provisions in the Ordinance. The other one was responsible for operational arrangements. Training of Police officers on the taking of samples had commenced and a DNA database was being developed.

3. The Chairman asked about the number of Police officers who would receive training and the contents of the training course.

4. Chief Superintendent of Police (Crime Support) (CSP(CS)) responded that around 60 Police officers distributed among the five regions of the Police and 27 Police officers stationed in courts would receive training provided by the Government Laboratory. A certificate would be issued to Police officers who successfully completed the training. As referred to in paragraph 2.10(b) of the Police's Internal Guidelines on Sample Taking for DNA Comparison (the Guidelines), a non-intimate sample might only be taken by a Police officer or a public officer of the Government Laboratory who had received training for the purpose. The Police hoped that there would be at least three trained officers for sample-taking in each region after the training was completed.

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5. Chief Chemist (CC) added that the five-day training course covered areas such as basic introduction to DNA, exhibits likely to contain DNA samples, the taking of samples from crime scenes and individuals, the packaging of samples, precautions against the contamination of samples and some practical exercises. He informed members that five professional staff and four technical staff of the Government Laboratory had received training for the purpose of administering the DNA database.

6. In response to the Chairman's question about whether training would be provided by the Government Laboratory on an ongoing basis, CC said that the Police officers to be trained were divided into three classes. Training of these Police officers covered the taking of buccal swaps. Where necessary, further training could be organised for Police officers.

7. The Chairman asked whether the number of trained Police officers would be adequate for the taking of buccal swaps from suspects. CSP(CS) responded that an estimate based on 1999 statistics indicated that about 5 000 samples would be taken from suspects in a year, representing an average of 15 samples per day. The number of Police officers to be trained would be adequate for the taking of buccal swaps. More Police officers would be trained when the need arose.

8. In response to Miss Emily LAU's question about the percentage of Scene of Crime Officers (SOCOs) to be trained, CSP(CS) responded that all SOCOs would receive training under the current training programme.

9. The Chairman asked about the concerns of the Bills Committee on Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Bill 1999 (the Bills Committee) that were relevant to the Guidelines. PAS(S)E responded that the Bills Committee's concerns were related to training, procedures for the taking of samples, the volunteering of samples and recording the reasons for suspecting that a person from whom a non-intimate sample was to be taken had committed a serious arrestable offence.

10. In response to Miss Emily LAU's question about the publicity for the requirements in the Ordinance, PAS(S)E said that a press statement would be issued on 1 July 2001 when the Ordinance came into force. The Police would provide a notice, which covered various aspects including a suspect's rights, for signing by a suspect before a sample was taken. The Police was also considering producing a small booklet on the major provisions of the Ordinance to be made available to the public at Police stations. Miss Emily LAU considered that the Administration should strengthen its publicity efforts. The Chairman suggested that the Administration should consider ways to enhance the understanding of members of the Law Society of Hong Kong on the requirements of the Ordinance and the Police's procedures and guidelines for taking samples. PAS(S)E agreed to consider how liaison with the Law Society in this regard could be strengthened.

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Police's Internal Guidelines on Sample Taking for DNA Comparison

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11. In response to Miss Emily LAU's question about paragraph 2.12 of the Guidelines, PAS(S)E said that the first part of the paragraph reflected the requirements in the Ordinance, while the remaining part of the paragraph was drawn up in response to the Bills Committee's concerns.

12. Regarding the procedures for taking non-intimate samples from volunteers, PAS(S)E explained that the remark in paragraph 4.1 of the Guidelines, which stated that under no circumstances should a person under the age of 18 volunteer to give a non-intimate sample to the Police, reflected the requirement in the Ordinance.

13. In response to Miss Emily LAU's question about the remark in paragraph 4.3, PAS(S)E explained that it sought to clarify requirements in the law so that enquiries from individual Police officers would not be necessary.

14. The Chairman pointed out that while paragraph 4.4 had sought to address the Bills Committee's concerns, it should be made clear that solicitation or appeal for volunteering of samples was not allowed both from individuals and groups of persons. Assistant Secretary for Security E (AS(S)E) responded that the paragraph had made it clear that solicitation or appeal for volunteering of samples was not allowed under any circumstances. PAS(S)E added that the Ordinance also provided that a person could withdraw at any time his authorization for providing a volunteered sample. Miss Emily LAU suggested that in line with the drafting of paragraph 2.12, paragraph 4.4 should also state that officers engaged in solicitation or appeal for the volunteering of samples might be subject to disciplinary or criminal proceedings. The Chairman considered that paragraph 4.4 could be revised to set out that any solicitation or appeal for volunteering of samples in order to bypass the requirements in paragraph 2.12 would be regarded by the Commissioner of Police as a very serious matter.

15. Referring to the notice form in page 60 of the Guidelines, Miss Emily LAU suggested that the Chinese text of the second paragraph be refined to bring its meaning in line with that of the English text. The Chairman said that the paragraph should be revised along the line that an intimate sample should not be taken without the suspect's consent. PAS(S)E responded that such a requirement had already been set out in paragraph 2.15 of the Guidelines. Nevertheless, she would consider members' suggestions.

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16. Referring to paragraph 2.6 of the Guidelines, Miss Emily LAU said that the requirements in the paragraph should be made known to the public. She suggested that spaces for recording the name, rank and post of the Police officer who authorised the taking of a non-intimate sample from a suspect should be provided in the notice form. PAS(S)E agreed to consider the suggestion.

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17. Referring to paragraph 2.24 of the Guidelines, Miss Emily LAU asked why it was not mandatory for consent to be obtained from the parent or guardian of a mentally retarded suspect of 18 years or above from whom an intimate sample was to be taken. Mr Michael MAK added that the meaning of "盡可能" and "確保" in the Chinese text

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of the paragraph seemed to be in conflict. He said that it would be practically very difficult to obtain consent from a severely mentally retarded person. He also asked about examples of "an appropriate disinterested adult" as referred to in the paragraph. The Chairman said that such a person could be a social worker.

18. PAS(S)E responded that requirements in the paragraph was consistent with the Police's established practice in respect of mentally retarded persons. AS(S)E added that it was a requirement in the Ordinance that consent should be obtained from a suspect before an intimate sample was taken. The paragraph sought to provide further safeguard by seeking, in addition to the suspect's consent, the consent of the parent or guardian concerned as far as practicable. It further required that where the parent or guardian could not be present when an intimate sample was taken, the process should be carried out in the presence of a third party.

19. Referring to paragraph 2.26(d) of the Guidelines, Miss Emily LAU asked about the circumstances under which an intimate sample would be required.

20. CC responded that if the repeated taking of buccal swab could not produce a full DNA profile, an intimate sample would be considered. PAS(S)E said that some intimate samples were unrelated to DNA, for example, a dental impression or a sample of hair other than head hair. CSP(CS) said that in most cases, an intimate sample would be taken by the Police only on advice of the Government Laboratory. It was unlikely that intimate samples would be taken frequently. AS(S)E added that a urine sample, which was an intimate sample, would usually be taken by officers of the Customs and Excise Service in the investigation of drug-related offences. In response to Miss Emily LAU's question about the estimated number of intimate samples to be taken per year by the Customs and Excise Department under the Ordinance, PAS(S)E undertook to provide a written reply.

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21. Miss Emily LAU considered that paragraph 2.26(d) of the Guidelines should be revised to set out clearly that an intimate sample could be taken by the Police only at the recommendation of the Government Laboratory.

22. PAS(S)E responded that it was inappropriate to do so, as an authorising officer under the Ordinance was a Police officer while the role of the Government Laboratory would only be an advisory one. She added that it was already set out in paragraph 2.26(d) of the Guidelines that only if a non-intimate sample could not serve the desired purpose would an intimate sample be considered. The Chairman and Miss Emily LAU suggested that the Administration should consider incorporating at the beginning of the Guidelines a provision that the taking of a non-intimate sample should be adequate in most cases.

23. In response to the Chairman's question about paragraph 2.14 of the Guidelines, PAS(S)E explained that the serious arrestable offences as referred to in Annex A to the Guidelines had been drawn up after having regard to the views expressed by the Bills Committee. There were some serious arrestable offences, such as theft and dangerous drugs-related offences, that were not included in the list.

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24. The Chairman considered that it should be set out in the Guidelines that a sample of hair other than head hair should not be taken unless really necessary. Such a sample should be taken with care to avoid causing pain to a suspect.

25. PAS(S)E responded that as explained by the Administration at previous meetings of the Bills Committee, a sample of hair would be taken by way of cutting rather than pulling. CSP(CS) added that according to paragraph 2.27(c) of the Guidelines, intimate samples other than urine and dental impressions could only be taken by a registered medical practitioner.

26. The Chairman asked whether the Independent Commission Against Corruption's (ICAC's) internal guidelines on the taking of samples from suspects were same as those of the Police. PAS(S)E responded that ICAC's internal guidelines were still being drafted. AS(S)E added that the ICAC's internal guidelines in general followed those of the Police, except that they did not contain procedures for taking intimate samples and samples from volunteers. The Chairman requested the Administration to provide members with ICAC's internal guidelines as soon as possible.

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III. Date of next meeting

27. Members agreed that the next meeting be scheduled for 14 June 2001 at 4:30 pm to continue discussion with the Administration. They also agreed that the Chairman would move a motion to extend the scrutiny period of the Notice to the Council meeting on 27 June 2001.

28. There being no other business, the meeting ended at 6:15 pm.

Legislative Council Secretariat
4 September 2001