

立法會
Legislative Council

LC Paper No. CB(2) 2215/00-01
(These minutes have been seen by
the Administration)

Ref : CB2/SS/12/00

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 Thursday, 14 June 2001 at 4:30 pm
in Conference Room B of the Legislative Council Building

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

Mr Daniel SO
Acting Assistant Director
Independent Commission Against Corruption

Mr NG Wai-ming
Head of Drug Investigation Group
Customs and Excise Department

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

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Mr Raymond LAM
Senior Assistant Secretary (2)5

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As the Chairman was absent due to sickness, Mr Ambrose LAU was elected Acting Chairman for the meeting.

I. Meeting with the Administration
(LC Paper No. CB(2) 1812/00-01)

The Police's Internal Guidelines on the Taking of Samples for DNA Comparison (the Police's Guidelines)

2. At the invitation of the Acting Chairman, Principal Assistant Secretary for Security E (PAS(S)E) briefed members on the amendments to the Police's Guidelines.

3. As regards the seeking of consent from a suspect for the taking of an intimate sample, Mr Michael MAK expressed concern that it was practically difficult to obtain a valid consent from a severely mentally retarded suspect.

4. PAS(S)E responded that there were already sufficient safeguards in the Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Ordinance 2000 (the Ordinance). The taking of an intimate sample from a person required the authorisation of a Police officer of or above the rank of superintendent and the consent of the suspect. It also required reasonable grounds for believing that the sample would tend to confirm or disprove the commission of an offence by that suspect. She added that there were specific provisions in the Criminal

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Procedure Ordinance (CPO) (Cap. 221) on the procedures in respect of vulnerable witnesses. The requirements in paragraph 2.24 of the Police's Guidelines were in line with the Police's established guidelines and procedures for handling mentally retarded persons.

5. Miss Emily LAU expressed concern that paragraph 2.24 of the Police's Guidelines as presently drafted might not reflect all requirements applicable to the taking of a non-intimate sample from a mentally retarded suspect of 18 years old or above. She questioned how consent could be given by a mentally retarded suspect who was incapable of doing so. She considered that the paragraph should be revised to spell out in clearer terms the requirements in respect of persons who were slightly mentally retarded and those who were severely mentally retarded.

6. PAS(S)E responded that besides specific provisions in CPO on vulnerable witnesses, there were also guidelines on the questioning of suspects, which were gazetted in 1992, for law enforcement officers. She stressed that Police officers had received sufficient training and were fully aware of the guidelines and procedures for handling mentally retarded persons. They were also fully aware that any consent obtained from a suspect should be valid and able to stand legal challenge in court. Chief Superintendent of Police (Crime Support) (CSP(CS)) confirmed that Police officers had received sufficient training in handling mentally retarded persons and were aware that a consent should be able to stand legal challenge in court.

7. Referring to paragraph 2.24 of the Police's Guidelines, Mr LAU Kong-wah asked why Police officers were advised, in the taking of an intimate sample from a mentally retarded suspect of 18 years old or above, to obtain consent from the suspect's parent or guardian, whereas the sample taking process was to be witnessed by the suspect's parent, guardian or an appropriate disinterested adult. He considered that the scope of "an appropriate disinterested adult" was too wide. He expressed concern about the safeguards to a mentally retarded suspect when the parent or guardian of the suspect was not present during the sample taking process, especially where the suspect had difficulty in expression or communication with other persons. He considered that the sample taking process should be conducted in the presence of either the suspect's parent or guardian.

8. CSP(CS) responded that an appropriate disinterested adult was one who was not concerned in the case in question. He could be a social worker, a relative of the suspect, or a volunteer on a list of non-government organisations (NGOs) maintained by the Police for providing assistance to mentally retarded persons, but not a Police officer or civil servant. He assured members that there were already sufficient safeguards, such as the requirements in respect of the consent of the suspect and the approval of a magistrate, in the Ordinance. In addition, an intimate sample had to be taken by a registered medical practitioner or a registered dentist as appropriate.

9. PAS(S)E said that it was already the practice of the Police in seeking the assistance of an appropriate disinterested adult in other cases, such as those in which

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children were involved. As the parent or guardian of a mentally retarded suspect might not be available for witnessing the sample taking process, the presence of an appropriate disinterested adult under such circumstances would better safeguard the interests of the suspect.

10. Miss Emily LAU questioned how the interests of a mentally retarded suspect could be safeguarded if consent was only obtained from the suspect and the sample taking process was only witnessed by a disinterested adult. Mr LAU Kong-wah opined that the "appropriate disinterested adult" should be narrowed down to a professional.

11. PAS(S)E reiterated that the taking of an intimate sample from a person required the authorisation of a Police officer of or above the rank of superintendent, the consent of the suspect and the approval of a magistrate. The authorising Police officer could give such an authorisation if he had reasonable grounds to believe that the sample would tend to confirm or disprove the commission of a serious arrestable offence by the suspect. An intimate sample other than urine could only be taken by a registered medical practitioner or a registered dentist as appropriate. Such professionals had to comply with their respective codes of practice, under which consent from the suspect was required before a sample was taken. In response to Mr LAU Kong-wah's question about the list of volunteers maintained by the Police, PAS(S)E explained that the names of volunteers were provided to the Police by NGOs. Such volunteers had received training for providing assistance to mentally retarded persons.

The Independent Commission Against Corruption's (ICAC's) Internal Guidelines on the Taking of Non-intimate Samples

12. At the invitation of the Acting Chairman, Acting Assistant Director of ICAC (AD(Atg)/ICAC) briefed members on ICAC's Internal Guidelines on the Taking of Non-intimate Samples (ICAC's Guidelines). He informed members that 12 officers of ICAC had received the relevant training in respect of the taking of non-intimate samples.

13. In response to the Acting Chairman's question about the difference between the Police's Guidelines and ICAC's Guidelines, PAS(S)E explained that the two guidelines were consistent in respect of areas in the Ordinance where the same power was conferred to officers of the Police and ICAC, including procedures for taking non-intimate samples from suspects and the retention and disposal of samples and records. However, the scope of samples taken by ICAC was narrower than that of the Police.

14. In response to Miss Emily LAU's question about paragraph 12 of Chapter 1 of ICAC's Guidelines, AD(Atg)/ICAC explained that in the case of a female suspect, the non-intimate sample should as far as possible be taken by an officer of the same sex who had received the relevant training. If a trained officer of the same sex was not available, an untrained officer of the same sex must be present to ensure that the whole process was conducted properly.

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15. Miss Emily LAU expressed concern that paragraph 13(g) of Chapter 1 of ICAC's Guidelines only advised officers to consider recording the sample taking process in the case of a female subject whose sample was not taken by an officer of the same sex. She considered that it should be included in paragraph 12 of ICAC's Guidelines as a requirement that the sample taking process should be video-recorded. AD(Atg)/ICAC agreed to consider the suggestion.

16. In response to Miss Emily LAU's question about paragraphs 4 and 5 of Chapter 3 of ICAC's Guidelines, PAS(S)E explained that the paragraphs set out the typical arrangements between different law enforcement agencies.

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17. Miss Emily LAU requested ICAC to provide the Subcommittee with its revised Guidelines. The Acting Chairman requested the Administration to also provide a written response to the concerns expressed by Mr LAU Kong-wah.

(*Post-meeting note* : The Administration's response was circulated to members vide LC Paper No. CB(2) 1925/00-01 on 22 June 2001.)

II. Way forward

18. The Acting Chairman concluded that the Subcommittee supported the Notice. A verbal report would be made to the House Committee at its meeting on 15 June 2001, followed by a written report. Members noted that the deadline for giving notice of amendments to the Notice was 19 June 2001.

19. There being no other business, the meeting ended at 5:15 pm.

Legislative Council Secretariat

24 August 2001