

立法會
Legislative Council

LC Paper No. CB(2) 834/01-02
(These minutes have been seen
by the Administration)

Ref : CB2/PL/SE/1

LegCo Panel on Security

**Minutes of meeting held on Thursday, 6 December 2001
at 2:30 pm in the Chamber of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon LAU Kong-wah (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon CHEUNG Man-kwong
Hon WONG Yung-kan
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon IP Kwok-him, JP
Hon Audrey EU Yuet-mee, SC, JP

Members attending : Hon Cyd HO Sau-lan
Hon CHAN Kwok-keung
Hon SIN Chung-kai
Hon Andrew CHENG Kar-foo
Hon LEUNG Fu-wah, MH, JP

Members absent : Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, JP

Public Officers attending : Item III

Mr Michael WONG
Deputy Secretary for Security 3

Mr Alan CHU
Principal Assistant Secretary for Security D

Mr K C CHOW
Assistant Director of Immigration
(Information Systems)

Mr C H CHEUNG
Principal Immigration Officer (Information Systems)

Mr Albert LAI
Chief Systems Manager
Immigration Department

Mr CHOW Oi-tung
Head of Control Points Command
Customs and Excise Department

Item IV

Miss Eliza YAU
Principal Assistant Secretary for Security E

Mr Rick CHAN
Assistant Secretary for Security E3

Mr Ian Robert MACKNESS
Chief Superintendent of Police (Crime)(Support)

Miss CHU Ming-po, Shirley
Superintendent of Police (Crime)(Support)

Mrs DO PANG Wai-yee
Principal Assistant Secretary for Education and Manpower 4

Item V

Mr Eddy YAU
Principal Assistant Secretary for Home Affairs

Ms Miranda YEAP
Assistant Secretary for Home Affairs

Ms Mimi LEE
Principal Assistant Secretary for Security (Narcotics)

Ms Winnie SO
Assistant Director of Food and Environmental Hygiene

Mr WONG Siu-wing
Senior Superintendent of Food and Environmental Hygiene

Mr P R MORGAN
Senior Superintendent of Police

Mr MO Kim-ming
Assistant Director of Buildings

Mr LAU Kwai-shan
Chief Officer of Fire Services

Mr WONG Chung-sing
Divisional Officer of Fire Services

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

Staff in attendance : Mr Raymond LAM
Senior Assistant Secretary (2)5

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I. Confirmation of minutes of meeting held on 1 November 2001 and matters arising
(LC Paper Nos. CB(2) 549/01-02 and 547/01-02(01))

The minutes of the meeting held on 1 November 2001 were confirmed.

List of follow-up actions required of the Administration

2. Members noted the list of follow-up actions required of the Administration.

II. Date of next meeting and items for discussion
(LC Paper No. CB(2) 547/01-02(02))

3. Members agreed that the regular meeting in January 2002 be rescheduled for 17 January 2002 at 10:45 am to discuss the following items -

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- (a) Crime situation in 2001;
- (b) Report on the review of the Methadone Treatment Programme; and
- (c) Progress of the development of paramedic ambulance service.

4. Members also agreed that the Administration be requested to provide information papers on the following two items, which were proposed by the Administration, before deciding whether the items should be discussed at the meeting on 17 January 2002 -

- (a) New Territories South Regional Police Headquarters and operational base at Tsuen Wan; and
- (b) Procurement of Two Mobile X-ray Vehicle Scanners for the Ship Search and Cargo Command, Customs and Excise Department.

5. Members also agreed that the Police be requested to organise the following for the Panel -

- (a) a visit to the new Tactical Training Complex in the Police Training School; and
- (b) an in-camera briefing on the triad situation in Hong Kong, the control of firearms and the situation in respect of the loss of firearms of Police officers.

III. Implementation of projects of an updated Information Systems Strategy in the Immigration Department – updated implementation plan
(LC Paper No. CB(2) 547/01-02(03))

6. At the invitation of the Chairman, Deputy Secretary for Security 3 (DS for S3) briefed Members on the updated implementation plan in respect of the updated Information Systems Strategy (ISS-2) of the Immigration Department (ImmD). He said that the Administration would seek funding approval from the Finance Committee for the implementation of core projects relating to the Information Technology Infrastructure Upgrade Programme and the Immigration Control Automation System (ICAS) Enhancement Programme under Phase I of ISS-2.

7. Mr LAU Kong-wah welcomed the updated implementation plan for ISS-2. He asked about the reduction in immigration and customs clearance time when the pertinent automated systems of ImmD and Customs and Excise Department (C&ED) were in place in 2004. He also asked how the automated passenger and vehicle clearance systems would operate.

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8. DS for S3 responded that the implementation of the automated immigration clearance systems would not result in substantial reduction in immigration clearance time for the clearance process per se. However, it would enable more immigration counters to be opened without a corresponding increase in immigration manpower. The waiting time of passengers at the control points would thus be reduced. As regards customs clearance on passengers, he said that a passenger would usually be inspected randomly or when it was considered necessary. The customs clearance of an unladen goods vehicle was about 20 seconds, while that for a laden goods vehicle was about 45 seconds. He pointed out that the customs clearance time for vehicles should be reduced by two to three seconds when the Automatic Vehicle Recognition System (AVRS) came into operation in phases starting from March 2002.

9. DS for S3 informed Members that C&ED had launched a trial scheme on the Land Cargo Advance Clearance System (LCACS) at the Lok Ma Chau Control Point. Under the scheme, vehicular clearance time would be shortened by advance submission and processing of cargo manifest. Head of Control Points Command, C&ED added that they were also examining the feasibility of introducing road manifest through electronic data interface. The feasibility study was expected to be completed by February 2002.

10. Assistant Director of Immigration (Information Systems) (AD of Imm(IS)) added that both the automated passenger and vehicle clearance systems would involve the use of smart identity (ID) cards to be introduced in mid-2003. He continued that since October 2001, a "One-Stop-Shop" arrangement had been on trial at the Lok Ma Chau Control Point. Under the arrangement, customs and immigration officers were co-located in one kiosk to conduct customs and immigration clearance simultaneously for vehicles. It should bring about reduction in vehicle clearance time at boundary control points. He remarked that the time needed for immigration clearance of vehicles was generally shorter than that for customs clearance.

11. Mr IP Kwok-him asked whether AVRS, which would be mainly used for goods vehicles, would also be used for private cars. He also asked whether there were measures to facilitate vehicle and passenger clearance at boundary control points before the automated clearance systems came into operation in 2004.

12. DS for S3 responded that AVRS would be used for private cars in addition to goods vehicles. He added that a trial scheme of "One-Stop-Shop" arrangement had been launched from 1 October 2001 at the Lok Ma Chau Control Point and a conclusion on the trial was expected shortly. He assured Members that the manpower at boundary control points would be flexibly deployed to reduce the waiting time for clearance.

13. AD of Imm(IS) added that the clearance time would usually be short for a private car in which there was only a driver who was a permanent resident of Hong

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Kong. However, many passengers of private cars were holders of travel documents issued by the Mainland. As such travel documents were not machine-readable, the processing time was longer requiring manual input of relevant data into the computer system.

14. Mr IP Kwok-him asked whether additional manpower would be deployed at boundary control points. DS for S3 responded that ImmD had created 117 new posts at the Lo Wu Control Point in the current financial year. It would further strengthen the manpower at that control point in the next financial year. ImmD also intended to introduce new machine-readable Re-entry Permits to facilitate clearance at boundary control points. He undertook to provide Members with information on the measures pursued or being pursued to facilitate the clearance of cross-boundary passengers and vehicles before the automated vehicle and passenger clearance systems came into operation. The Chairman requested the Administration to also provide updated cross-boundary statistics in respect of passengers and vehicles after the terrorist attacks on 11 September 2001. DS for S3 agreed. He said that for the first nine months of 2001 the increases in passenger throughput at the Lo Wu Control Point was 2.8% and the passenger and vehicle throughputs at the Lok Ma Chau Boundary Control Point were 13.3% and 5% respectively. These indicated that the increases had slowed down substantially in comparison with previous years.

(Post-meeting note : The information provided by the Administration was circulated to members vide LC Paper No. CB(2) 672/01-02 on 12 December 2001.)

15. Mr LEUNG Fu-wah asked why the implementation of automated vehicle clearance could be advanced by two years. DS for S3 said that the original implementation plan had been drawn up in a very cautious manner. In response to Members' request at the last meeting, the implementation timetable had been expedited as far as possible. He added that the implementation of Data Warehousing had however been deferred with the advancement of the automated vehicle clearance system.

16. In response to Mr LEUNG Fu-wah's question about the implications of deferring the implementation of Data Warehousing, AD of Imm(IS) said that it was a new management information system that would provide user-friendly access to information held in ImmD databases. It would assist the management of ImmD in decision-making as well as acquisition and deployment of resources. Implementation of this new system could be deferred because it was not a pre-requisite for implementation of other ISS-2 systems and the old management information system, albeit less capable, was still functioning.

17. The Chairman said that after the Data Warehousing system was put into use, the management of ImmD might need to examine whether there was room for further improvement of ImmD's systems and operations.

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18. Referring to paragraphs 4 and 5 of the Administration's paper, Mr LEUNG Fu-wah asked how the surplus in manpower would be absorbed by the Administration.

19. AD of Imm(IS) responded that the implementation of the first ISS had brought about substantial productivity gains that enabled the deletion of 613 posts already. The implementation of ISS-2 would enable 425 posts to be deleted. Among the 425 posts, some 60% were posts of the general and common grades that could be redeployed within the Administration. The remaining 40% were immigration service posts and would be redeployed within ImmD to meet other operational needs such as manning new control points scheduled for opening in 2005-06 and 2006-07. He said that the deletion of 425 posts would occur progressively from 2005-06 onwards.

20. Mr LEUNG Fu-wah commented that the need for additional manpower at new boundary control points reflected that the annual saving would be less than the \$174 million referred to in the Administration's paper. DS for S3 responded that the annual saving of \$174 million referred to that arising from the deletion of 425 posts. Even without the implementation of ISS-2 and the resulting deletion of 425 posts, additional manpower would still be needed with the opening of new boundary control points. He added that with the opening of new boundary control points, the need for retrenchment of manpower should not arise.

21. The Chairman said that many government departments might face the problem of manpower surplus after the introduction of automated systems. He said that the issue might have to be addressed from a manpower perspective.

22. Mrs Selina CHOW asked whether there were plans under ISS-2 to expedite the clearance of perishable food, which could only be delivered to Hong Kong through one boundary control point. DS for S3 undertook to liaise with the relevant bureaux and government departments and provide a written response.

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23. Mr LAU Kong-wah expressed concern that the timing for additional manpower arising from the opening of new boundary control points in 2006-07 might not match with the deletion of posts resulting from the introduction of automated clearance systems in 2004-05.

24. AD of Imm(IS) responded that although the automated clearance systems would be introduced in late 2004, the replacement of smart ID cards would be implemented in phases over a period of about four years. As some passengers might not be familiar with the new system when it was first introduced and some passengers might be accompanied by relatives or friends not holding smart ID cards, it was anticipated that the major deletion of posts arising from the implementation of the automated clearance systems would not occur until 2006-07.

IV. Proposed legislation for the prevention of child pornography

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(LC Paper Nos. CB(2) 547/01-02(04) and CB(2) 410/01-02)

25. At the invitation of the Chairman, Principal Assistant Secretary for Security E (PAS(S)E) briefed Members on the Administration's legislative proposal for combating child pornography and child sex tourism.

26. Mr CHEUNG Man-kwong expressed support for the introduction of legislative measures for combating child pornography. He expressed concern that the procurement offence as referred to in paragraph 18 of the Administration's paper was only applicable to procurement acts in Hong Kong but not to those outside Hong Kong. He considered that this would create a loophole allowing an offender to produce child pornography in a place outside Hong Kong and importing the product into Hong Kong legally.

27. PAS(S)E responded that under the proposed legislation, the possession, production, distribution and advertisement of child pornography that indecently depicted a person aged under 16 pornographically, as defined in the Administration's proposal, would be an offence regardless of whether the procuring act was conducted in or outside Hong Kong. As regards child pornography depicting a person aged between 16 and 18 pornographically, it would not be an offence if the person concerned was procured outside Hong Kong, as the offence had no extra-territorial effect. However, this might result in an increase in the production cost. Furthermore, if it was found that the procurement act originated from Hong Kong, the procurer might be prosecuted, and the producer might be charged for aiding and abetting the procurement offence. She added that a company which imported a film might request the supplier to provide proof about the age of actors.

28. The Chairman asked whether the censorship guidelines related to child pornography would be revised. He also asked whether actions would be taken against a company or person who imported a film containing child pornography and repeatedly claimed that an actor in the film was not less than 16 years of age.

29. PAS(S)E responded that according to paragraph 36(a) of the Censorship Guidelines for Censors 1999, the detailed or gratuitous depiction of a child who was, or who was apparently, under the age of 16 years and engaged in sexual activity should not be permitted in any film. This prohibition was in line with the Administration's legislative proposal. The latter would also criminalise the production, distribution, advertising and possession of such depictions. As already included in the Prevention of Child Pornography Bill (the 1999 Bill) published in the Gazette in 1999, merely claiming that the person being pornographically depicted was not less than 16 years of age was not a defence.

30. Mr CHEUNG Man-kwong expressed concern that the use of the words "looks like" in the proposed definition of child pornography was too vague and might lead to difficulties in enforcement. Ms Audrey EU said that it might be difficult for a defendant to prove that the person concerned did not look like a person under the age

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of 16. She asked about the statutory defence available.

31. PAS(S)E responded that the burden of proving that a person looked like one under the age of 16 was on the prosecution. In order to prove that the person in question looked like a person under the age of 16, the prosecution could, among other things -

- (a) seek to locate the child concerned;
- (b) identify documentary proof about the age of the child; and
- (c) seek the views of a specialist in paediatrics on the age of the child.

32. PAS(S)E added that if a child of a younger age, say under 13 years, was depicted in the pornographic material, usually it should be quite obvious to reasonable adult persons that the depicted child looked like under the age of 16 even without paragraph 31(a) to (c) above.

33. Ms Audrey EU asked whether heavier punishment should be imposed on child pornography offences where the child concerned was under 13 years of age. She also asked whether the coverage of the proposed legislation should be widened to cover paintings and sound records.

34. PAS(S)E agreed that children under 13 years of age were obviously targets of protection. However, children aged between 13 and 16 years were usually in secondary school. They were learning to become less dependent on their parents or guardian and started to have their own friends. Therefore, it was proposed that the law should make it clear that they were equally protected as younger children to deter potential abusers.

35. PAS(S)E also clarified that paintings that depicted children who did not look like real persons were not covered by the proposed legislation. She added that the issue of whether sound records should be covered in the proposed legislation had been discussed at length within the Administration before the 1999 Bill was introduced. The proposal was not adopted owing to the difficulty in obtaining evidence.

36. While expressing support for the introduction of legislation to combat child pornography, Mr Andrew CHENG considered that the proposed two-tier definition for pornographic depiction involving children was unclear and might lead to difficulties in prosecution. To his knowledge, a two-tier definition for child pornography was not found in the Canada and the United States (US), where the age of 18 was used as a dividing line.

37. PAS(S)E responded that as children under the age of 16 were considered more vulnerable, they might not be able to make independent decisions and give informed consent. The Administration therefore considered that the level of protection for

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children under 16 should be higher than those aged between 16 and 18.

38. Mr Andrew CHENG said that the proposed maximum penalty of a fine of \$1 million and imprisonment of five years for the possession of child pornography might be too heavy from a human rights point of view. He asked whether consideration would be given to making possession of child pornography an offence only if it was intended for commercial purpose. He further said that a person might receive an electronic mail through the Internet without knowledge that the contents were child pornography. He added that the expression "looks like" was not found in the relevant legislation of Canada.

39. PAS(S)E responded that the proposed legislation would provide statutory defences for a person charged to establish that he had not seen the child pornography and did not know, nor did he have any reasonable cause to suspect, the material to be child pornography. She said that the definition of child pornography under the 1999 Bill, which was drawn up with reference to the relevant legislation of the United Kingdom (UK), was criticised as unclear. The revised definition of child pornography had been drawn up with reference to the definitions in similar legislation in Australia, Canada and US. In Australia, a child meant a person who was or looked like a person under the age of 16 and the definition had a wider scope. In Canada and US, the definitions of child pornography were more specific and a child meant a person who was or looked like a person under the age of 18. The definition adopted by Canada included the use of the expression "that shows a person who is or is depicted as being under the age of 18 and is engaged in or depicted as engaged in explicit sexual activity". She added that the Supreme Court of Canada had pointed out in the Sharpe Case that -

- (a) child pornography promoted cognitive distortions of paedophiles that having sex with children was normal behaviour;
- (b) child pornography fuelled fantasies that incited offenders to offend;
- (c) child pornography was used for grooming and seducing victims; and
- (d) children were abused in the production of child pornography involving real children.

The Supreme Court of Canada thus concluded that criminalising possession might reduce the market for child pornography and the abuse of children, and therefore, justified. The Administration had taken these considerations into account in preparing its latest proposal.

40. On the local front, PAS(S)E referred to two recent appeal cases related to the possession of obscene materials for the purpose of publication. Child pornography was involved in both cases. In one of the cases, the judge had stated that only the sickest persons would be interested in such pornographic materials depicting children

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and that the maximum sentence of three years' imprisonment for such possession was insufficient and should be reviewed.

41. On the human rights issues, PAS(S)E recalled that in the recent consultation exercise, a concern group on the rights of children had opined that the prevention of child pornography was a part of the protection of human rights. The Administration had considered other human rights concerns and believed that the proposed legislation had struck a balance between offering adequate protection to children and refraining from unnecessary infringement of freedom of expression.

42. As a Bills Committee would likely be formed to study the bill on prevention of child pornography when introduced into the Council, Mr Andrew CHENG asked the Administration to provide information on the deliberations of the relevant committees that scrutinised the relevant legislative proposal in Canada to facilitate Members' understanding of the merits and shortcomings of the definition adopted by Canada. The Chairman suggested that the Administration should provide more information about the difference between defining a child as a person under 16 and 18 years of age.

Adm

43. Referring to the difference in statutory defence between the 1999 Bill and the revised legislative proposal, Mr LAU Kong-wah asked why the statutory defence in the revised legislative proposal would not contain the news reporting purpose referred to in the 1999 Bill, while other defences including artistic merit, genuine family purpose and acts that served public good were added. He pointed out that as different persons might have different views about whether an article was of artistic merit, this statutory defence might be easily abused by defendants.

44. PAS(S)E responded that the statutory defences referred to in the LegCo Brief for the 1999 Bill were examples rather than the actual provisions in legislation. As there were criticisms that the defence clause in the 1999 Bill was inappropriate, the Administration had taken the opportunity to set out the statutory defence in clearer and more specific terms. She said that the reference to genuine family purpose would be incorporated in the defence provision in view that many pregnant women displayed posters of babies in the nude in their bedrooms and some parents took nude photos of their own babies. She further said that acts that served public good would cover those which served genuine news reporting purpose. The defence of artistic merit was also provided as a statutory defence under the Control of Obscene and Indecent Articles Ordinance (Cap. 390) (COIAO). In response to the Chairman, PAS(S)E said that according to information available to her, artistic merit had not been presented as a defence before the court since COIAO came into operation.

45. Miss Cyd HO expressed support for the introduction of legislative measures to combat child pornography. She asked whether a film or photograph would fall within the definition of child pornography if a person who was aged over 18 and appeared to be engaged in explicit sexual conduct was made to look like a person aged under 16. She added that legislation on child pornography should be more stringent and artistic merit should not be included as a statutory defence.

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46. PAS(S)E responded that the proposed legislation aimed at protecting children as well as preventing and checking any proliferation of paedophilic activities. A producer had to ensure that a person aged over 18 to be engaged in explicit sexual conduct would not look like a person aged below 16. She considered it important to avoid conveying to children the false message that engagement of children in such conduct was acceptable. In response to Miss Cyd HO's comment that the expression "looks like" might result in difficulties in law enforcement, PAS(S)E said that the burden of proof would be on the prosecution, which had to prove that a person in question looked like a person aged under 16.

Adm

47. At the request of the Chairman and Mr CHEUNG Man-kwong, PAS(S)E agreed to provide information on the experience of overseas countries in prosecutions against child pornography, especially those related to the expression "looks like".

48. The Chairman concluded that while different concerns had been expressed by Members, there was a consensus view that children should be protected from child pornography. He said that the details of the legislative proposal might be studied by a Bills Committee.

V. Proposed regulation of dance parties under the Places of Public Entertainment Ordinance (Cap. 172)
(LC Paper No. CB(2) 547/01-02(05))

49. At the invitation of the Chairman, Principal Assistant Secretary for Security (Narcotics) (PAS(S)(N)) briefed Members on the Administration's revised proposal for licensing dance parties under the Places of Public Entertainment (PPE) Ordinance (Cap. 172). She informed Members that dance party organisers had been consulted on the revised proposal and had not made any comments.

50. Mrs Selina CHOW asked why it was necessary to take 40 to 50 days for the issue of a PPE licence. She considered this inconsistent with the Administration's pledge of providing efficient service.

51. Assistant Director of Food and Environmental Hygiene (AD of FEH) responded that upon the receipt of an application, the Food and Environmental Hygiene Department, which was responsible for the issue of PPE licence, would consult the Buildings and Fire Services Departments respectively on the safety aspects. She said that a PPE licence would normally be issued around 30 days from the date of application. Principal Assistant Secretary for Home Affairs added that the Administration was considering the establishment of a central licensing agency to provide centralised licensing service. The issuing of PPE licence would be examined in the exercise.

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52. In response to Mrs Selina CHOW's question about the fee for a PPE licence, AD of FEH said that the fee would be slightly more than \$1,000 for a temporary licence valid for one month.

53. In response to the Chairman's question about the number of rave parties where the number of participants were less than 200, PAS(S)(N) said that the number of participants of rave parties ranged from 500 to 1 000. Even rave parties of a smaller scale also had about 200 participants. The revised threshold of 200, which was drawn up having regard to views expressed, was therefore an appropriate one.

54. Mrs Selina CHOW considered that the Administration should further shorten the time needed for the issuing of a PPE licence. The Chairman said that the issue could be further discussed by the Bills Committee which might be formed to examine the proposed legislation.

55. The meeting ended at 4:37 pm.

Council Business Division 2
Legislative Council Secretariat
9 January 2002