

立法會
Legislative Council

LC Paper No. CB(2)2822/07-08

(These minutes have been seen
by the Administration)

Ref : CB2/PL/SE/1

Panel on Security

Minutes of meeting
held on Tuesday, 8 July 2008, at 10:30 am
in Conference Room A of the Legislative Council Building

- Members present** : Hon LAU Kong-wah, JP (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Dr Hon LUI Ming-wah, SBS, JP
Hon Margaret NG
Hon WONG Yung-kan, SBS, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Daniel LAM Wai-keung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung
Hon CHIM Pui-chung
- Members attending** : Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon Ronny TONG Ka-wah, SC
- Members absent** : Hon Albert HO Chun-yan
Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
- Public Officers attending** : Item III

Ms Manda CHAN
Principal Assistant Secretary for Security A

Mr YUEN Ming-fai, Richard, JP
Commissioner of Customs and Excise

Mr CHOW Kwong, C.D.S.M., C.M.S.M.
Assistant Commissioner (Boundary and Ports)
Customs and Excise Department

Mr TAM Yiu-keung, C.M.S.M.
Assistant Commissioner (Intelligence and Investigation)
Customs and Excise Department

Item IV

Mr Paul CHENG
Principal Assistant Secretary for Security B

Mr LEE Sheung
Assistant Commissioner of Correctional Services
(Rehabilitation)

Ms Eva KWONG
Senior Clinical Psychologist
Correctional Services Department

Item V

Mrs Apollonia LIU
Principal Assistant Secretary for Security E

Miss Linda LEUNG
Assistant Secretary for Security

Mr NG Sai-kuen
Chief Superintendent of Police (Crime HQ)(Crime Wing)

Mr LAM Man-wing
Senior Superintendent of Police (HQ Group)(Crime Wing)

Miss Agnes CHAN
Senior Government Counsel
Department of Justice

Item VI

Mrs Apollonia LIU
Principal Assistant Secretary for Security

Mr Kennon TAM
Assistant Secretary for Security

Mr YU Mun-wah
Acting Assistant Commissioner of Police (Support)

Mr TSE Sau-kong
Acting Senior Superintendent of Police (Support Branch)
(Support Wing)

Mr TSANG Fan-kwok
Senior Inspector of Police (General) 4 (Support Branch)

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

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

Miss Josephine SO
Council Secretary (2) 1

Miss Helen DIN
Legislative Assistant (2) 1

Action

I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)2482/07-08)

The minutes of the meeting held on 10 April 2008 were confirmed.

II. Information papers issued since the last meeting

(LC Paper Nos. CB(2)2252/07-08(01), CB(2)2267/07-08(01) and CB(2)2374/07-08(01))

2. Members noted that the following papers had been issued since the last meeting -

- (a) Submission from a member of the public on legislation relating to vice establishments;
- (b) Paper provided by the Administration on the recent incident at the Castle Peak Bay Immigration Centre at the end of May 2008 where some immigration detainees refused to collect meals; and

Action

- (c) Further information provided by the Administration on two cases of Marine Police officers dropping their guns in 2007.

III. Anti-smuggling work of the Customs and Excise Department
(LC Paper No. CB(2)2481/07-08(01))

3. Commissioner of Customs and Excise (C of C&E) briefed members on the latest smuggling situation in Hong Kong and the enforcement strategies deployed by the Customs and Excise Department (C&ED), as outlined in the Administration's paper. C of C&E advised that the number of smuggling cases detected in the last five years indicated that the smuggling situation was generally under control. In particular, there had been a downward trend in respect of smuggling cases involving syndicates and organised activities, from 306 cases in 2003 to 185 cases in 2007. During the first half of 2008, 107 organised smuggling cases were detected.

4. Citing a recent case where a tourist who brought in a small amount of meat for self-consumption was prosecuted by the law enforcement department concerned for importation of meat without an import licence, the Deputy Chairman asked whether discretionary enforcement action could be taken if travellers who brought in small quantities of meat/poultry for non-commercial use after going on sightseeing or business trips, etc. agreed to dispose of the meat intercepted.

5. C of C&E said that the authorities for control of food and live animal import were Food and Environmental Hygiene Department (FEHD) and Agriculture, Fisheries and Conservation Department (AFCD) respectively. The role of C&ED was gatekeeping. Under existing arrangements, passengers intercepted by C&ED for having brought in such controlled articles were referred to the respective authorities for follow-up investigation and prosecution as appropriate. To alert the public and passengers to prohibited articles and goods which were subject to import and export control, C&ED would work with departments concerned to enhance publicity at various control points by, for example, displaying more posters at conspicuous locations and reminding passengers who had brought in such controlled articles to use the Red Channel and make a customs declaration. At present, for passengers who did not enjoy any duty free concessions, if they brought in a small amount of cigarettes, they might choose to surrender the cigarettes or pay the appropriate duties plus a licence fee after making a declaration at the Red Channel. For cases involving meat, they would be referred to FEHD for handling.

6. To facilitate passengers' understanding of the existing control systems, the Deputy Chairman encouraged C&ED to draw up a detailed list of controlled articles for display at various control points and step up publicity on the law governing the importation of food, poultry and live animals. He hoped that C&ED would forward all relevant information and evidence to the law enforcement authorities so that the latter could fully consider the cases before

Action

deciding on whether prosecution actions should be taken against passengers who attempted to bring in such controlled articles. C of C&E replied in the affirmative. He added that at present all smuggling cases involving importation of meat/poultry, animals/plants, endangered species, etc. would be referred to FEHD and AFCD, together with the relevant data and information, right after the cases were reported.

7. Ms Audrey EU expressed concern over the recent spread of avian influenza virus by infected chickens coming from non-registered chicken farms on the Mainland and smuggled into the territory by cross-boundary private vehicles. She asked about the difficulties encountered by law enforcement departments in tackling the problem of smuggling of live chickens, and whether it was due to manpower shortage in C&ED or FEHD. She also sought information on the percentage of vehicles carrying live chickens in the total number of cross-boundary vehicles selected for detailed search and investigation at various boundary control points.

8. In response, C of C&E made the following points -

- (a) C&ED was responsible for enforcement of the provisions of the Import and Export Ordinance (Cap. 60), which required all goods imported into or exported from Hong Kong to be declared at the control points. The objective was to prevent smuggling of unmanifested cargo and contraband;
- (b) on public health and food safety, FEHD was responsible for monitoring food imports, with support from C&ED and AFCD;
- (c) to facilitate control and monitoring, import of certain types of food, including live chicken, fish and vegetables, was required to go through the Man Kam To Control Point, whenever road transport was used. At the control point, Customs officers were responsible for checking and collecting cargo manifests submitted by the goods vehicle drivers. Where necessary, the officers would perform vehicle and cargo inspection to prevent smuggling of unmanifested cargo and contraband. Goods vehicles with certain food consignments were required to present relevant public health and food safety control documents and were subject to sampling and testing by FEHD officers;
- (d) there was no evidence showing that there was frequent occurrence of large-scale smuggling activities involving live chickens across the boundary. From 2007, C&ED, in collaboration with the Police, detected three cases of smuggled live chickens by sea. There were another two cases of smuggled live chickens which were seized by FEHD and AFCD. The last case of smuggling of live chickens occurred in January 2008; and

Action

- (e) the Administration attached great importance to anti-smuggling work in respect of food and poultry smuggled across the boundary. A Task Force against Smuggling of Food and Animals (the Task Force), comprising officers from C&ED, FEHD, AFCD and the Police, was formed in December 2007 to coordinate with departmental efforts in deterring and detecting the smuggling of food and live animals into Hong Kong. The Task Force, through FEHD, had been maintaining close liaison and communication with the live poultry trade to strengthen its intelligence gathering capability. The relevant enforcement departments had successfully cracked down a few cases of smuggling of live chickens in early 2008. To control the problem of food and poultry smuggling, the Task Force had drawn up a series of measures, including enhanced inspections of passengers, vessels and vehicles at boundary control points.

9. Ms Emily LAU was very concerned about the effectiveness of measures taken by the Administration to alleviate the public health threat posed by live poultry sold at retail outlets. She said that although the Director of Food and Environmental Hygiene had made the Food Business (Amendment) Regulation 2008 to require that no live poultry should be kept overnight at retail outlets, the risk of avian influenza outbreaks could remain high if law enforcement actions taken by the departments concerned failed to combat smuggling of live chickens from non-registered chicken farms on the Mainland.

10. C of C&E cited a case involving smuggling of hen eggs to explain the reasons for adopting an intelligence-led strategy in combating smuggling of food and poultry. C of C&E advised that C&ED had maintained close contacts with the industry for information on smuggling activities and had followed up those cases reported by the industry claiming that chickens were smuggled into Hong Kong by cross-boundary trucks. In the first six months of 2008, about 3 000 detailed searches and investigations had been conducted on suspicious vehicles crossing the boundary and yet, no signs of smuggling activities had been found. Apart from taking vigorous enforcement actions at the land boundary control points, C&ED also took enforcement actions at sea jointly with the Police and the Marine Department, and enhanced inspections of cargo vessels suspected of involvement in smuggling activities.

11. Mr WONG Yung-kan expressed concern about the smuggling of undercooked chickens (拖水雞). To his knowledge, some people smuggled in undercooked or partially cooked poultry/meat across the boundary. He held the view that the Administration should clearly define the terms "live" and "cooked", and make it clear to the public that importation of undercooked or partially cooked poultry and poultry meat without an import licence or a health certificate was illegal. Mr WONG was also concerned about the problem where fishing vessels were widely used by the fishing industry for carrying goods. He considered that the Government should promptly review the definition of "fishing vessel" to plug the loophole in the present licensing

Action

system. He also suggested that fishing permits should be issued only to those bona-fide fishermen.

12. C of C&E reiterated that FEHD and the Centre for Food Safety (CFS) were responsible for food safety matters. He further advised that the import of game, meat and poultry was currently regulated under the Imported Game, Meat and Poultry Regulation (Cap. 132AK) and the Import and Export (General) Regulations (Cap. 60A), which required certain types of food, including live chicken, imported into Hong Kong to be accompanied by an official health certificate which certified that the food concerned was fit for human consumption, and an import licence issued by FEHD. In view of the high potential health risk posed by live chickens, the import controls on live chicken were more stringent. FEHD officers at the control points were well trained and could distinguish whether the imported poultry was raw, partially cooked or fully cooked. Noting members' concerns about the smuggling of undercooked chickens, C of C&E undertook to convey members' concern to FEHD and consider what further actions could be taken to step up surveillance and enforcement operations against smuggling of chickens. As regards the problem of fishermen using fishing vessels to carry goods, C&ED would follow up with the Marine Department on members' suggestion to review the licensing system.

13. Dr LUI Ming-wah enquired about the feasibility of applying information technology (IT) in tracing live chickens imported from the Guangdong Province. He suggested that the Administration should consider using the Radio Frequency Identification (RFID) technology and/or the Global Positioning System (GPS) in tracing live poultry, as these technologies had been used extensively in a number of overseas countries.

Admin

14. C of C&E responded that he would convey Dr LUI's suggestion to FEHD and CFS for consideration. The Chairman requested that the Administration should explore the feasibility of applying RFID technology to enhance poultry traceability, and revert to the Panel before the end of this legislative session.

(Post-meeting note : The requested information was circulated to members vide LC Paper No. CB(2)2666/07-08 on 21 July 2008.)

15. Mr LEUNG Kwok-hung considered that the Hong Kong Special Administrative Region Government should work in collaboration with the Mainland authorities on measures to tackle food smuggling, in particular, smuggling activities involving live chickens. In addition, C&ED should discuss the strategy and take enforcement actions jointly with FEHD.

16. C of C&E responded that in view of the close geographical proximity and the huge daily flow of passengers and vehicles between Hong Kong and the Mainland, combating cross-boundary smuggling activities was a common objective of C&ED and the Mainland customs authorities. C&ED had been

Action

maintaining close liaison and cooperation with the General Customs Administration (GAC) of the Mainland. Regular meetings were held with GAC and the Shenzhen customs authorities to exchange intelligence and tackle any new trend of smuggling activities. Besides, C&ED and FEHD also worked closely in concerted enforcement actions to deter and clamp down on cross-boundary smuggling activities.

17. Responding to Ms Audrey EU's enquiry, C of C&E explained that the Import and Export Ordinance (Cap. 60) required all goods imported into or exported from Hong Kong to be declared at the control points. It also required that the manifest should contain the particulars of the goods. To ensure food safety, the Administration had adopted a registered farm system which required all live poultry supplied to Hong Kong from the Mainland to come from registered farms, mainly in the Guangdong Province. In this regard, all consignments of live chickens should be accompanied by an official health certificate confirming the source of the poultry.

Admin

18. Ms Audrey EU requested the Administration to provide information on the division of responsibilities between government departments in customs and public health clearance of food imported from the Mainland at Man Kam To Boundary Control Point. C of C&E agreed.

(Post-meeting note : The requested information was circulated to members vide LC Paper No. CB(2)2666/07-08 on 21 July 2008.)

IV. Latest development in the provision of rehabilitation services by the Correctional Services Department

(LC Paper Nos. CB(2)2481/07-08(02) and (03))

19. Mr LEUNG Kwok-hung expressed concern about the problems of inadequate penal places and archaic facilities in penal institutions. He recalled what he had observed during the Panel visit to Lai Chi Kok Reception Centre, and cast doubt as to whether the problems of archaic facilities and inadequate penal places had adversely affected the provision of education and vocational training for inmates. He enquired about the Administration's plan to address the problems of overcrowding and outdated facilities in penal institutions.

20. Principal Assistant Secretary for Security B (PAS(S)B) and Assistant Commissioner of Correctional Services (Rehabilitation) (AC/CS(R)) advised that -

- (a) the Administration had long-term prison development plan to address the problem of prison overcrowding;
- (b) in order to relieve the overcrowding in some penal institutions and to upgrade the outdated facilities, the Correctional Services Department (CSD) had taken steps to launch a series of smaller-

Action

scale projects that could be achieved relatively quickly to meet the immediate demand. Among others, an extension block was added to the Lai Chi Kok Reception Centre to provide 144 additional penal places for adult males;

- (c) in the longer run, the redevelopment of existing correctional institutions, for example the Lo Wu Correctional Institution and the Chi Ma Wan prison area, would provide an opportunity to relieve the overcrowding problem and to upgrade the facilities for rehabilitative services in penal institutions; and
- (d) CSD established in January 1998 a new Rehabilitation Division for better coordination of rehabilitative policies and programme development. The Division had since then strived to strengthen CSD's rehabilitative services and programmes for offenders.

21. Mr LEUNG Kwok-hung held the view that the problem of prison overcrowding had side effects on rehabilitation services provided for offenders. He suggested that the Administration should consider building additional minimum security prisons and applying non-custodial sentencing options currently used in some overseas countries, such as home detention and electronic monitoring, to resolve the overcrowding problem of maximum security prisons.

22. Noting that 95% of young offenders discharged under supervision had successfully secured gainful employment within one month of their discharge, Ms Margaret NG enquired about the number of young offenders who had stayed in the employment, and the average period of their employment. AC/CS(R) said the Administration would provide members with the requested information after the meeting.

Admin

23. Ms Margaret NG noted with concern that only a small number of adult prisoners were provided with a chance to receive full-time or part-time market-oriented vocational training at various penal institutions, she asked whether the Administration had any plans to expand the schemes to cover more offenders.

24. AC/CS(R) responded that CSD currently provided a total of 220 full-time, market-oriented vocational training places for adult prisoners. On top of full-time vocational training, CSD had secured the support of the Employees Retraining Board (ERB) in providing part-time vocational training for adult prisoners. In 2008-2009, a total of 15 part-time training courses funded by ERB were conducted at various penal institutions. Together with other part-time training opportunities provided by CSD, more than 550 part-time training places were available to adult prisoners in 2008-2009. To ensure course quality, CSD regularly reviewed the content of the training programmes. AC/CS(R) cited the course on cleaning and related services as an example to illustrate their work on enhancing the quality of vocational training for offenders.

Action

25. Ms Emily LAU noted from the Administration's paper that the Chinese term "罪犯" was used. She sought clarification about its difference with the term "在囚人士". Regarding the vocational training currently available for offenders, she asked about the percentage of offenders in the overall penal population who could receive training at various penal institutions. She also expressed concern about the feedback of inmates/prisoners on the training courses, and suggested that CSD should conduct user satisfaction survey to ascertain whether the training courses/programmes were useful and of value to the offenders.

26. AC/CS(R) responded that while the Chinese term "罪犯" was commonly used in local legislation, CSD would prefer using "在囚人士". Concerning the provision of vocational training, AC/CS(R) advised that CSD provided vocational training for adult prisoners to enhance their employability by running accredited and market-oriented vocational training. 12% of some 6 000 eligible adult prisoners with remaining sentences of three months to two years were receiving full-time or part-time vocational training at various penal institutions. The rate of over-enrollment was about 20% to 30%. CSD would take into account all relevant factors, such as rehabilitative needs of offenders and their imprisonment term, in determining an adult prisoner's application for the courses.

27. Ms Emily LAU expressed dissatisfaction with the small number of prisoners receiving vocational training at various penal institutions. She hoped that the Government could increase the number of training places. Noting that CSD would conduct a full review of the Risks and Needs Assessment and Management Protocol for Offenders (the Protocol) in 2011, Ms LAU suggested that the Administration should include CSD's work in the provision of rehabilitative services in the review, with a view to enhancing the vocational training opportunities for offenders.

28. AC/CS(R) responded that the Protocol was a systematic assessment tool of prisoners' custodial and re-offending risks and rehabilitative needs to facilitate their safe detention and CSD's provision of matching rehabilitative programmes. The review to be conducted in 2011 would focus on rehabilitative programme matching and cover seven specific domains as referred to in paragraphs 5 and 6 of the Administration's paper. In reaffirming the existing policy that CSD would continue to take a step-by-step approach to implement the Protocol and evaluate its effectiveness through regular reviews, AC/CS(R) said that the Administration would also review from time to time the adequacy and quality of the vocational training provided for offenders in order to enhance offenders' employability after discharge.

29. In response to the Chairman's enquiry on the reason for the small number of adult prisoners enrolling in vocational training provided by CSD, AC/CS(R) said that there were different reasons that led to the existing enrollment rate. For example, some of the prisoners had already acquired the

Action

skills needed for them to make a living after discharge, thus making it unnecessary for them to enrol in any courses provided by CSD. Another reason was that some did not have the determination and preparedness for training.

Admin

30. The Chairman echoed with Ms Emily LAU that the Administration should conduct a comprehensive review of CSD's work in the provision of rehabilitative services, with a view to strengthening CSD's rehabilitative services and programmes for offenders. He requested the Administration to revert to the Panel on the outcome of the review no later than July 2009.

31. Mr LEUNG Yiu-chung shared the view that the Administration should consider applying non-custodial sentencing options, such as home detention with electronic monitoring, to prisoners sentenced to short-term imprisonment. He asked whether the Administration had undertaken a study to examine the feasibility of applying in Hong Kong some of the non-custodial options currently available in overseas countries.

32. AC/CS(R) said that the Administration had studied the issue and conducted several reviews with a view to exploring the feasibility of applying non-custodial sentencing options, including the use of electronic monitoring. Based on the findings of the reviews, the Administration considered that electronic monitoring was not suitable for Hong Kong, given the technical difficulties involved in implementing the option. In addition, the compact living environment in Hong Kong also limited the effectiveness of electronic monitoring.

33. Mr LEUNG Yiu-chung considered that among the measures to help inmates/prisoners reintegrate into the society, none was more effective than the Government and employers taking the lead to employ rehabilitated offenders. He hoped that the Administration could prove to the public that ex-offenders were not discriminated when seeking employment in the civil service. He asked about the number of ex-offenders holding government posts at the moment.

34. PAS(S)B responded that as an employer, the Government upheld the principle of equal opportunity. In this connection, it would not discriminate against an ex-offender for job openings in the civil service. It was always the practice of the Government to select the most suitable person for a job, taking into account his qualification and experience. PAS(S)B further said that the Administration had, since January 2004, removed the requirement of disclosing criminal records in government post application form. As it was Government policy that civil servants should have a high standard of integrity, the recruiting departments would decide whether integrity check should be conducted on candidates whom they initially considered to be suitable for appointment, having regard to the job nature and the departments' operational requirements. PAS(S)B stressed that an applicant would not be declined of a job merely because of his criminal record. As all application forms were destroyed after

Action

the conclusion of the recruitment exercise, the Administration did not have information on the number of ex-offenders holding government posts.

35. The Deputy Chairman shared the view that the Administration should take the lead to employ rehabilitated offenders. He considered that ex-offenders could be deployed to handle non-sensitive duties. The Civil Service Bureau (CSB) should draw up a list of those government posts which could be taken up by ex-offenders. The Chairman echoed his view and requested the Security Bureau to coordinate with CSB to provide the Panel with statistics in July 2009, setting out the number of applications received from ex-offenders in this period, with a breakdown by policy bureaux/government departments and ranks, and the success rate of offenders getting a job in the civil service. PAS(S)B agreed.

Admin

36. Responding to Dr LUI Ming-wah's enquiry on the feasibility of applying home detention with electronic monitoring, AC/CS(R) said that -

- (a) the Administration had regularly reviewed its penal policy, including the use of non-custodial measures as alternatives to imprisonment;
- (b) as home detention with electronic monitoring was widely adopted in countries such as Australia, Canada and the United States for offenders having committed minor offences, the Administration had considered the possibility of applying such option in Hong Kong. So far, three rounds of studies had been made on the new technologies related to electronic monitoring, with the latest one conducted in 2005; and
- (c) in deciding whether or not to adopt electronic monitoring, the effectiveness of the measure in monitoring the location and movement of offenders should be considered. The findings of the studies had, however, revealed that the electronic monitoring devices were not 100% reliable given the compact living environment in Hong Kong, and there might be problems such as communication failures or signal interference. The option was therefore considered not suitable for Hong Kong because of technical difficulties or security threats to the community.

37. Mr LEUNG Kwok-hung and Mr LEUNG Yiu-chung remained of the view that the Administration should consider introducing non-custodial measures, such as home detention and electronic monitoring, since these options could resolve the existing problem of overcrowding in penal institutions and better address the rehabilitative needs of offenders.

Admin

38. The Chairman requested the Administration to take note of members' views and review whether electronic monitoring could be adopted in Hong Kong. He suggested that the Administration should conduct a separate study to

Action

examine the issue, and requested that a report on the study be submitted to the Panel in July 2009.

39. Regarding the vocational training provided for offenders, Dr LUI Ming-wah asked whether certificate of competence would be issued to prisoner-trainees upon their successful completion of the course.

40. AC/CS(R) said that the vocational training provided for offenders mainly focused on the development of skills which would enable them to make a living in the future. Arrangement would be made for them to sit for public examinations and trade tests conducted by accredited bodies, e.g. the Construction Industry Training Authority and the Vocational Training Council.

V. Review of legislation relating to "one-woman brothel"

(LC Paper Nos. CB(2)2481/07-08(04) and CB(2)2541/07-08(01))

41. Principal Assistant Secretary for Security E (PAS(S)E) briefed Members on the existing legislation relating to "one sex worker apartment" and the Administration's response to issues raised in the submissions to the Panel on the subject. On the communication with sex worker groups to enhance the safety of sex workers, she informed Members that since 1 May 2008, -

- (b) the Police had had three meetings with sex workers and concern groups to discuss issues relating to the prevention of crime;
- (c) the Crime Prevention Bureau of the Police had disseminated crime-related information to sex workers on 13 occasions to enhance their vigilance; and
- (d) the telephone hotlines set up by the Police in individual districts for sex workers had so far received 25 calls.

42. Regarding the cases referred to in the submission from Zi Teng, PAS(S)E said that there were stringent guidelines for Police officers undertaking undercover operations against vice activities. She said that the subjects of some of the cases referred to in the submission had already filed their complaints with the Complaints Against Police Office (CAPO) and the cases were under investigation. CAPO had also been asked to examine whether any of the other cases referred to in the submission required follow-up.

43. Ms Margaret NG considered that the Administration had not really conducted a review on legislation relating to "one sex worker apartment". Although paragraph 2 of the Administration's paper stated that existing legislation was intended for combating organised prostitution activities, she considered that there was not any relationship between organised prostitution activities and the number of sex workers working in an apartment. She asked

Action

whether it would be in breach of the Crimes Ordinance (Cap. 200) for two sex workers to work in one apartment.

44. Senior Government Counsel responded that the crime referred to in sections 143 or 144 of the Crimes Ordinance needed not be of an organised nature. Referring to section 117(3) of the Crimes Ordinance, she said that a premise would be a vice establishment if -

- (a) it was used wholly or mainly for the organising or arranging of prostitution; or
- (b) it was used wholly or mainly by two or more persons for the purposes of prostitution.

45. PAS(S)E said that the current legislation, which allowed individual sex workers to operate on their own in the form of "one sex worker apartments" while criminalising vice operation involving two or more sex workers, struck a reasonable balance among various relevant considerations.

46. Referring to the last sentence in paragraph 6 of the Administration's paper, the Deputy Chairman asked how vice establishments operating in the guise of "one sex worker apartment" were controlled by criminal syndicates.

47. Chief Superintendent of Police (Crime HQ)(Crime Wing) (CSP) responded that organised prostitution activities were traditionally found at places of public entertainment. With the Police stepping up its enforcement in such places in recent years, some criminal syndicates were found to operate vice establishments in the guise of "one sex worker apartments". He added that a sex worker working alone in an "one sex worker apartment" was not in breach of the law. However, the relevant law enforcement departments needed to visit such apartments to ensure that there were no underage persons, overstayers or visitors working in such apartments. Information gathered by the Police indicated that there were more than 1 500 "one sex worker apartments" in Hong Kong and about 80% of them were operating without breaching the law.

48. The Deputy Chairman said that there were allegations that an undercover Police officer had asked a sex worker in an "one sex worker apartment" to call upon the sex worker operating next door to provide sex service together in the same apartment so that the Police officer could prosecute the sex workers. He asked whether such incitement was allowed under the Police's internal guidelines. Mr LEE Cheuk-yan added that some sex workers were reported to provide massage service at the request of undercover Police officers and were then prosecuted for operating a massage establishment without a licence.

49. CSP responded that there were stringent guidelines prohibiting Police officers from enticing others to commit crime. Evidence gathered under such a

Action

situation would also not be admissible in court. He stressed that the Police would seriously investigate into cases of enticing acts of Police officers that were brought to their attention.

50. Ms Emily LAU said that according to the submission from Zi Teng, overseas experience indicated that decriminalising sex work would better balance the interest of sex workers and those of other members of the community. She considered that although the decriminalisation of sex work was a controversial issue, the Security Bureau should take the lead to study overseas experience and conduct a review and consultation on the issue. Mr LEUNG Kwok-hung added that in order to ensure the personal safety of sex workers, existing legislation should be amended to allow two sex workers to work in one apartment. Mr LEE Cheuk-yan considered that the relaxation of legislation to allow the operation of "two sex worker apartment" should not bring about an increase in organised prostitution activities.

51. PAS(S)E responded that any proposal to amend the existing prostitution-related laws should be carefully considered from various social and policy perspectives, and not solely from the perspective of law and order. She stressed that the Administration was willing to listen to the views of Members and the views of different sectors of the community. The Administration considered that the existing legislation had struck a reasonable balance, taking account of the human rights and privacy of sex workers, the well-being of other members of the community as well as the prevailing moral values of the community. The Administration did not see a need to conduct such a review at this stage. In response to the further enquiry of Ms Emily Lau, PAS(S)E advised that as some of the matters concerned were beyond the ambit of Security Bureau, the Bureau had no plan to take the lead in conducting the proposed review.

52. Referring to the submission from Zi Teng, Ms Emily LAU queried why the Police officers of some Police districts were still found adopting a poor attitude towards sex workers, although the Police officers of some Police districts had improved their attitude towards sex workers.

53. CSP responded that concerns relating to the attitude of certain Police officers towards sex workers had been discussed among very senior members of the Force Management, and Regional Commanders participating in the discussion had brought the message to the attention of frontline Police officers. He said that the Police was examining how to enhance training with a view to further improving the attitude of Police officers towards sex workers.

54. Mr LEUNG Yiu-chung asked whether the Police had investigated the cases referred to in the submission from Zi Teng where Police officers were alleged to have incited two sex workers to provide sex service in one apartment. He also asked about the number of prosecutions in respect of two sex workers providing sex service in one apartment in the previous year and the rate of successful prosecution in such cases. The Chairman added that the

Action

Administration should also provide statistics on cases of two sex workers providing sex service in one apartment in the previous year.

Admin

55. CSP agreed to gather the required statistics. He said that he was not aware of any report about Police officers enticing two sex workers to provide sex service in one apartment.

56. Referring to the submission from Zi Teng, the Deputy Chairman asked whether the personnel of other government departments were allowed to enter premises with the Police in anti-vice operations.

57. CSP responded that in the case concerned, intelligence indicated that there were vice activities involving underage persons and visitors in a number of rooms in the premises concerned. The Police had thus launched a joint operation with the relevant government departments, including the Buildings Department, the Electrical and Mechanical Services Department and the Home Affairs Department which had to inspect various aspects of the premises. Among the premises concerned, seven apartments were found partitioned into 48 cubicles. He said that the launching of a joint operation was intended to minimise inconvenience to residents. The Police officers concerned had explained to the residents concerned the need for the personnel of different government departments to inspect their cubicles. 10 of such cubicles had been inspected and none of the residents concerned had raised any objection.

58. The Deputy Chairman said that although the Police was empowered to enter the premises under the Protection of Children and Juveniles Ordinance (Cap. 213), the personnel of other government departments should not enter the premises at the same time unless consent was given by the residents concerned. PAS(S)E responded that the personnel of the government departments concerned were empowered under different ordinances to enter premises. In this case, as the residents concerned had given consent to the entry of such personnel, it had not been necessary to invoke such powers.

Admin

59. Ms Emily LAU requested the Security Bureau to consider taking the lead to review, in conjunction with other relevant bureaux, legislation relating to "one sex worker apartment" and provide the Panel with a response.

VI. Police's guidelines on the handling of searches of detainees

(LC Paper Nos. CB(2)2439/07-08(01) and CB(2)2241/07-08(01))

60. Mr LEUNG Kwok-hung said that the new arrangements for searches of detainees by the Police were even worse than the old ones in that they allowed Police officers to humiliate detainees without contravening the guidelines. He expressed concern that the mandatory requirement that a detainee would be searched again upon his return to a temporary holding area (THA) or detention cell would allow subsequent searches to be arbitrarily conducted on a detainee.

Action

His view was shared by Mr LEUNG Yiu-chung, Mr LEE Cheuk-yan and the Deputy Chairman.

61. PAS(S)E responded that the reasons for temporary removal of a detainee from a THA or detention cell had to be recorded in the Police's Communal Information System (CIS). This provided a strong safeguard against possible abuse of the movement procedure by moving a detainee in and out of a THA or detention cell purely to increase the number of searches conducted on the detainee.

62. Acting Assistant Commissioner of Police (Support) (ACP(SUP)(Atg)) said that it would be very difficult for a Police officer to be totally certain that a detainee did not get hold of any items during the period of removal from the THA or detention cell with which the detainee could use to harm himself or others. To fulfil the Police's duty of care to detainees and to ensure the safety of others who might be in contact with the detainee, it was necessary for the Police to search a detainee again upon his return to a THA or detention cell. The Duty Officer (DO) had a duty to ensure, having regard to the circumstances on a case-by-case basis, that the scope of search was reasonable and proportionate to the circumstances.

63. Mr Ronny TONG said that the new arrangements would provide the Police with more power to conduct strip searches on detainees. He queried whether the new guidelines contained provisions on the rights and dignity of a detainee. He considered that there should be an independent mechanism for monitoring searches involving complete removal of clothing. For example, such a search should be conducted in the presence of a third party, such as a lawyer or Justice of the Peace, to prevent possible abuse of power by Police officers. His view was shared by Ms Emily LAU.

64. PAS(S)E responded that paragraph 10 of Police General Order (PGO) 49-04 provided, among others, that every search should be conducted with proper regard to the privacy and dignity of the detainee. Searches of detainees were never to be used as a punitive measure. Multiple safeguards had been built into the new arrangements to prevent possible abuse. In particular, before a search was carried out, the detainee should be informed that he might raise any concerns about the search to a DO, and any concerns raised by the detainee would be considered by the DO who would duly document the concerns in CIS and reconsider the scope of the search. The DO's decision and justifications would be conveyed to the detainee and recorded in CIS.

65. Mr LEE Cheuk-yan expressed concern that the new arrangements, which required a search to be conducted on all persons to be detained, would widen the Police's power to conduct searches on detainees.

66. PAS(S)E responded that before the new arrangements were implemented, the relevant PGO also required a search to be conducted on a person to be detained and the extent to which the search was to be determined

Action

by a DO having regard to the prevailing circumstances. She said that the Police had a duty of care to detainees and a duty to ensure the safety of others who might come into contact with them. The new arrangements required the scope of search to be determined by a DO on a case-by-case basis, based upon the prevailing circumstances. The DO's decision and his reasoning had to be recorded in CIS.

67. Mr LEE Cheuk-yan said that there was a recent case where a search involving complete removal of clothing was conducted on a domestic helper in her employer's bedroom. He asked whether a search involving complete removal of clothing could be conducted anywhere under the new arrangements.

68. PAS(S)E responded that the case, which involved the conduct of search outside a Police station, was being followed up by CAPO. She added that while the new search arrangements under discussion were applicable to the search of detainees inside Police stations, Police officers would also need to conduct body searches in other contexts outside Police stations. A search involving removal of underwear could be conducted in a place outside a Police station, if the location could offer equal privacy to the person being searched and if the person being searched and the Police officers concerned so agreed. The manner that the search should be conducted would be similar to that for detainees. The person being searched could also request that the search be conducted in a Police station if he/she so wished.

69. Mr LEUNG Yiu-chung considered that the Police should explore the possibility of acquisition of equipment to assist Police officers in the conduct of searches, with a view to minimising the need for searches involving complete removal of clothing.

70. ACP(SUP)(Atg) responded that 120 handheld metal detectors had recently been procured by the Police to assist Police officers in conducting searches on detainees at 66 police premises with detention facilities. He also emphasised that while metal detectors could be helpful to Police officers, they could not substitute physical search as metal detectors could only detect metal substances.

71. Referring to the Custody Search Form under the new arrangements, Ms Emily LAU said that the description of the contents of the form as rights of the detainee to be searched was misleading. She considered that the rights of a detainee should be spelt out clearly and fully in the form. ACP(SUP)(Atg) agreed to consider the suggestion.

Admin

72. Ms Emily LAU and Mr LEUNG Kwok-hung expressed concern that under the new arrangements, the scope of search on a detainee was to be determined by a DO. Ms LAU considered that a more senior ranking officer, such as the most senior officer in a Police station, should be responsible for authorising any search involving complete removal of clothing.

Action

73. The Deputy Chairman said that the new arrangements would not provide better protection for the privacy, human rights and dignity of detainees. He considered that whether a search should be conducted on a detainee should be determined on a case-by-case basis having regard to the prevailing circumstances. The scope of search should be no more than what was rational and proportionate. A search involving complete removal of clothing should at least be approved by a Police officer at the rank of Senior Inspector of Police or above.

Admin

74. Members agreed that the Subcommittee on Police's Handling of Search of Detainees (the Subcommittee) should be activated. The Deputy Chairman, Ms Margaret NG and Ms Audrey EU indicated that they would join the Subcommittee. The Chairman requested the Administration to provide a response to the issues raised at the meeting to the Subcommittee.

75. The meeting ended at 1:40 pm.

Council Business Division 2
Legislative Council Secretariat
26 September 2008