

**立法會**  
***Legislative Council***

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(These minutes have been seen by  
the Administration and cleared with  
the Chairman)

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**Bills Committee on  
Dangerous Drugs, Independent Commission Against Corruption  
and Police Force (Amendment) Bill 1999**

**Minutes of meeting  
held on Friday, 2 June 2000 at 8:30 am  
in Conference Room B of the Legislative Council Building**

**Members present** : Hon James TO Kun-sun (Chairman)  
Hon Albert HO Chun-yan  
Hon Mrs Selina CHOW LIANG Shuk-ye, JP  
Hon CHENG Kai-nam, JP  
Hon Emily LAU Wai-hing, JP

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

Miss Angela LEE  
Assistant Secretary for Security E

Mr J M H BICKNELL  
Chief Superintendent of Police, Crime Support  
Hong Kong Police Force

Dr LAW Man-ye, Betty  
Senior Chemist (Biochemical Sciences B)

Ms Carmen CHU  
Senior Government Counsel

Mr NG Wai-ming  
Group Head (Drug Investigation)  
Customs Drug Investigation Bureau  
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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**I. Meeting with the Administration**  
(LC Paper No. CB(2)2201/99-00(01))

At the invitation of the Chairman, Group Head (Drug Investigation) of the Customs Drug Investigation Bureau (GH(DI)/CDIB) briefed members on the existing practices and procedures of the Customs and Excise Department (C&ED) in taking sample for the investigation of dangerous drugs offences.

2. Miss Emily LAU asked about the Administration's latest position on the need of obtaining judicial authorization for taking urine samples from a suspect who had already given consent, which was discussed at the previous meeting. GH(DI)/CDIB responded that the spirit of judicial authorization was to protect the rights of a suspect through the independent judgement of a third party. Principal Assistant Secretary for Security E (PAS(S)E) said that as the taking of a urine sample would require reasonable grounds for suspecting the involvement of a suspect in a serious arrestable offence, the requirement of judicial authorization would help to protect the rights of suspects by ensuring a fair and reasonable judgement of C&E officers.

3. Miss Emily LAU expressed concern that the proposed judicial authorization would lengthen the detention time of suspects. PAS(S)E said that the proposal would probably result in a suspect being detained for a few more hours. The Chairman expressed concern that the seeking of judicial authorization might cause a suspect to be detained for a period much more than a few hours. Senior Assistant Legal Adviser (SALA) said that to his knowledge, there were magistrates on duty outside office hours to deal with applications for search warrants and others. When asked whether the drug content of a urine sample might decrease with the passage of time, GH(DI)/CDIB said that the drug content of a urine sample would only increase with time if the drug

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was concealed in the body of the suspect. Chief Superintendent of Police (Crime Support) (CSP(CS)) confirmed that there were magistrates available at all times.

4. Miss Emily LAU questioned how the rights of a suspect who had already given consent for the taking of a urine sample could be better protected through the requirement of judicial authorization. She said that she had consulted the issue with the Hong Kong Human Rights Monitor, which also considered that judicial authorization should not be required if consent had been given by a suspect. Mrs Selina CHOW said that it might be more appropriate to protect a suspect's rights through internal guidelines rather than the requirement of judicial authorization. PAS(S)E responded that in examining applications for judicial authorization, a magistrate could examine whether urine tests were frequently focussed on some particular persons and whether there were substantial increase in the taking of urine samples in a particular year. CSP(CS) added that as the taking of a urine sample was very personal and private, he considered it appropriate to be monitored by the Judiciary.

5. Miss Emily LAU asked whether the Judiciary had been consulted on the requirement in the Bill of judicial authorization for the taking of a urine sample from a person who had given consent. PAS(S)E said that the Judiciary had been generally consulted on the requirement of judicial authorization in respect of taking intimate and non-intimate samples and had agreed to the proposals in the Bill.

6. Miss Emily LAU asked whether judicial authorization was required from suspects who had given consent for the taking of urine samples in overseas countries. GH(DI)/CDIB said that he did not have information on such requirement in overseas countries. Mr CHENG Kai-nam said that the requirement of judicial authorization for taking urine samples from suspects who had given consent should be considered only if it was reasonable and required in other countries.

7. The Chairman said that it was very difficult for a magistrate to assess whether there were reasonable grounds to suspect a person's involvement in a serious arrestable offence. He said that the detention of a person for a longer time was a deprivation of the person's rights. He said that if the Administration maintained its position on the issue, members might wish to move Committee Stage amendments (CSAs) on the issue.

8. Miss Emily LAU asked whether C&ED anticipated any practical problems in the enforcement of the proposal in the Bill. GH(DI)/CDIB said that the existing operations of C&ED in respect of the taking of urine samples had been operating smoothly. After the passing of the proposed legislation, C&ED would comply with the new legislative requirements, while trying its best to maintain an expedient service that ensured the protection of human rights.

9. PAS(S)E said that the requirement of judicial authorization for the taking of

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urine samples originated from the classification of a urine sample as an intimate sample and the requirement as proposed by the Law Reform Commission of judicial authorization for the taking of all types of intimate samples to safeguard the rights of a person from whom a sample was taken. Miss Emily LAU said that the problem might be resolved if samples were classified in accordance with their intrusiveness. She considered that overseas experience in this respect should be examined. PAS(S)E responded that the current method of classification was adopted since they better reflected the differences of the two categories of samples in terms of intrusiveness, privacy, the consent of a suspect and intimacy. SALA said that LRC had stated in its report that judicial authorization could be waived in urgent cases.

10. Mr Albert HO asked whether there would be any legal issue or criticism by the United Nations if Part II of the Bill was not passed. PAS(S)E responded that the Administration had not received such kind of view.

11. Noting that the entire process of taking a urine sample had to be witnessed by a C&E officer, members generally considered that the process of taking a urine sample was very intrusive. In view of this, members generally accepted that judicial authorization should be required for the taking of a urine sample even where consent had been given by a suspect. The Chairman said that the issue might be reviewed if many complaints were received after the proposed legislation came into force. He hoped that the process of seeking judicial authorization would be expedited. GH(DI)/CDIB assured members that C&E officers would seek to expedite the process as far as possible.

12. Members then continued to examine the Bill clause-by-clause.

*Part II - Amendments to the Dangerous Drugs Ordinance (DDO)*

*Proposed section 54AB (Use and disposal of urine samples and information derived from analysis)*

13. PAS(S)E informed members that technical amendments would be made to the proposed section 54AB(1) of DDO by adding the words "access to, disclose and" before the word "use". Technical amendments would also be moved to the proposed section 54AB(6) of DDO to provide that a sample would be destroyed only if there was no other charge under DDO against the person concerned.

14. Referring to the proposed section 54AB(5) of DDO, the Chairman asked about the rank of C&E officers who could extend the deadline for the destruction of a sample. GH(DI)/CDIB responded that such an extension had to be approved by an officer of the rank of Chief Superintendent of C&E Service or above, which was broadly equivalent to a police officer at the rank of Chief Superintendent or above.

*Proposed section 54AC( Amendment of Seventh Schedule) and Clause 3 (Schedule added)*

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15. Referring to paragraph 4 of the proposed Seventh Schedule of DDO, Miss Emily LAU asked whether a suspect would be detained for at least three days if an inter partes hearing was to be held. She asked whether a suspect could be released on bail under such a situation. GH(DI)/CDIB responded that it would be very dangerous to a suspect if drugs were concealed inside his body for three days. Under such circumstances, a suspect would have been transferred to a hospital for radiological and internal examination by a medical practitioner or nurse under section 52(1A) of DDO. Miss Emily LAU said that paragraph 4 of the proposed Seventh Schedule should be amended if it would not be applied in practice. She added that magistrates should also be made aware of such practical considerations. The Chairman said that the notice period of three days was a general notice period applied to all inter partes hearings. A change of the notice period might have to be considered in association with the notice period for other inter partes hearings. He suggested that "or any period as specified by a magistrate" might be added after the notice period of not less than three days.

16. The Chairman asked whether an application for judicial authorization could be withdrawn. PAS(S)E said that such a withdrawal was permissible under the Bill. Senior Government Counsel (SGC) added that as a general rule, an application for judicial authorization could be withdrawn if the withdrawal would not result in disadvantage to any party.

*Part III - Amendments to Independent Commission Against Corruption Ordinance*

*Clause 4 - Sections added*

*Proposed section 10E(Taking of non-intimate samples)*

17. PAS(S)E informed members that the Administration would move CSAs to redefine a head hair sample as a non-intimate sample and a sample of hair other than head hair as an intimate sample. CSAs would also be moved to redefine serious arrestable offences as offences where a person could be sentenced to an imprisonment term of not less than seven years or specified sexual and violent offences with a maximum imprisonment term of five or six years.

18. The Chairman asked whether the use of the English term "DNA" in the Chinese version of the Bill would be inappropriate. SGC said that the Administration had considered the issue in the drafting of the Bill. It was adopted as people were generally more used to the term "DNA" than the Chinese counterpart "脫氧核糖核酸". She added that there were similar examples in other legislation of Hong Kong.

19. The Chairman asked how a sample would be taken from the nail of a suspect. Senior Chemist (Biochemical Sciences B) (SC(BSB)) said that such a sample would be taken by scraping or cutting the nail of a suspect. Scraping would not be made with the use of sharp objects and therefore no harm would be caused to the cell tissue under the nail. The Chairman considered that it should be set out in the Bill that the taking

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of a sample from a nail should not be taken in a manner that harmed a person's cell tissue under the nail.

20. Miss Emily LAU asked whether the Administration maintained its position on the classification of intimate and non-intimate samples. PAS(S)E responded that the current method of classification was appropriate. Using the classification of categories I and II samples might not reflect the differences of the two categories of samples in terms of intrusiveness, privacy and intimacy. A change of the proposed method of classification was therefore unnecessary. The Chairman concluded that the Administration maintained its stance on the issue but some members had different views on the issue. He said that he was inclined to use the level of intrusiveness to classify samples. However, he had no strong views on the issue if the Administration maintained its stance.

*Part IV - Amendments to the Police Force Ordinance (PFO)*

*Clause 6 - Sections added*

*Proposed section 59A (Intimate samples)*

21. Members noted that the term "appropriate consent" in the proposed section 59A(1)(b) of PFO was defined in clause 5 of the Bill.

22. Referring to the proposed section 59A(4)(e) of PFO, Miss Emily LAU asked whether the Administration would amend the use of DNA information for the investigation of any offence to any serious arrestable offence, as requested by members at previous meetings. PAS(S)E said that if DNA information was useful for the detection of crime, its application should not be restricted.

23. Referring to the proposed section 59(6) of PFO, Mr Albert HO asked whether the taking of a buccal swab should be made by a person of the same sex as the suspect. The Chairman clarified that the proposed section was related to the taking of an intimate sample, which had to be taken by a registered medical practitioner. A buccal swab was a non-intimate sample, which was separately dealt with under the proposed section 59C of PFO.

*Proposed section 59B (Magistrate's approval for the taking of intimate samples)*

24. Members noted that under the proposed section, the authorization given by an authorizing officer and the consent of a suspect had to be sought before a magistrate's approval for the taking of intimate samples could be sought.

*Proposed section 59C (Non-intimate samples)*

25. The Chairman asked why the proposed section 59C(1) of PFO referred to the investigation of any offence while the proposed section 59C(2) referred to any serious

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arrestable offence. SALA said that the proposed section 59C(1) and 59C(2) of PFO had to be read together. Although the proposed section 59C(1) referred to the investigation of any offence, the taking of a non-intimate sample could be authorized by an authorizing officer only in accordance with the requirement of suspecting the person's involvement in a serious arrestable offence.

26. The Chairman considered that the term "any offence" in the proposed section 59C(1) of PFO should be amended to "any serious arrestable offence". Mrs Selina CHOW considered that "any offence" should be amended as "an offence". SGC said that from a legal point of view, there was no difference between the meaning of "any offence" and "an offence". CSP(CS) said that "any offence" was only the offence that triggered off the process of investigation. Mrs CHOW said that amending "any offence" to "any serious arrestable offence" might restrict the investigation to serious arrestable offence from the beginning of the investigation.

27. In response to the Chairman's question about whether the drafting of the proposed section 59C(1) of PFO would widen the scope to any offence, SALA said that the drafting of the provision was neutral and should not have such an effect.

28. Referring to the proposed section 59C(7) of PFO, the Chairman asked why minimum force was not used in place of reasonable force. SGC said that the drafting of the provision was consistent with the wordings adopted in the Interpretation and General Clauses Ordinance (Cap. 1). SALA said that reasonable force would mean the same because it meant minimum force to achieve the purpose in the circumstances. Mr Albert HO asked whether reasonable force would be exercised by a police officer of the same sex as a suspect. CSP(CS) responded that according to the internal guidelines of the Police, the use of reasonable force would be made by a police officer of the same sex as a suspect. He said that the internal guidelines of the Police on detention, which were very strict, would be applicable under such circumstances. SALA said that from the drafting point of view, there might be practical difficulties to include all procedural requirements in the Bill. SC(BSB) said that there might be difficulties in enforcing the requirement, as there were currently no female forensic pathologists. Miss Emily LAU considered that the taking of a sample from the private part of a person should be carried out by a medical practitioner of the same sex.

## **II. Date of next meeting**

29. Members agreed that two further meetings be scheduled for 12 June 2000 at 8:30 am and 13 June 2000 at 10:45 am to continue discussion with the Administration.

30. There being no other business, the meeting ended at 10:40 am.

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Legislative Council Secretariat  
12 September 2000