

**立法會**  
**Legislative Council**

LC Paper No. CB(2) 156/00-01

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

Ref : CB2/BC/29/98

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

**Minutes of meeting  
held on Friday, 9 June 2000 at 10:45 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

**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**

The Chairman sought members' views on whether they supported the resumption of Second Reading debate on the Bill. He said that if members supported the resumption of Second Reading debate on the Bill at the Council meeting on 26 June 2000, the deadline for giving notice of resumption would be 10 June 2000 and the deadline for giving notice of Committee Stage amendments (CSAs) would be 16 June 2000. Members generally expressed support for the resumption of Second Reading debate on the Bill at the Council meeting on 26 June 2000. The Chairman said that if the Bill would not be binding on the State, he might have to reconsider whether to support the Bill.

Clause-by-clause examination of the Bill

2. Members continued to examine the Bill clause-by-clause.

*Proposed section 59E (Non-intimate samples of swabs from the mouths of convicted persons)*

3. Mr CHENG Kai-nam asked whether the Administration would consider amending the proposed section 59E(2)(d) of the Police Force Ordinance (Cap. 232) (PFO) to set out clearly that a person from whom a sample was taken was entitled to assess to information derived from the sample. The Chairman said that the current drafting of the provision did not reflect such a right. Principal Assistant Secretary for Security E (PAS(S)E) undertook to consider the suggestion. Senior Government Counsel (SGC) said that the use of the phrase "the person may make a request" in the proposed provision already reflected that the person concerned had the right to make a request. Nevertheless, consideration could be given to setting out clearly that the person was entitled to access to information derived from the sample.

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derived from a sample to be made to a police officer of or above the rank of superintendent rather than to the Police. SGC responded that specifying a request to be made only to a police officer of or above the rank of superintendent set out clearly the rank of the person to whom the request was to be made.

5. The Chairman suggested that the proposed section 59E(2)(d) of PFO be amended to expressly provide that a person from whom a sample was taken had the right to request for access to information derived from the sample, while drawing up internal procedures within the Police to specify that such a request had to be processed by a police officer of or above the rank of superintendent.

*Proposed section 59F (Non-intimate samples given voluntarily)*

6. Miss Emily LAU said that the information paper provided by the Administration on overseas legislation did not contain information on whether there were legislative provisions on the volunteering of samples. PAS(S)E said that such provisions could be found in the legislation of the United States and the Australia. SGC said that such provisions could also be found in the legislation of New Zealand.

7. The Chairman asked whether there were procedural safeguards on the volunteering of samples in the legislation of overseas countries. PAS(S)E responded that while the Administration could look for such information, there might not be sufficient time for identifying such information, as the procedural safeguards might not be set out in legislation.

8. The Chairman asked about the Administration's position on his suggestion at a previous meeting that the volunteering of a sample should not be accepted from a person held in detention. He expressed concern that a detained person might be forced to volunteer his sample. He suggested that consideration be given to requiring judicial authorization for the volunteering of samples. PAS(S)E responded that prohibiting the volunteering of a sample from a detained person might be unfair. She said that a police officer of the rank of superintendent or above had the responsibility to ensure that the volunteering was a genuine one. A person who volunteered his sample also had the right to withdraw his authorization at any time. He could also inform the court that his authorization had not been made voluntarily and withdraw his authorization. Once the authorization was withdrawn, the DNA information could not be presented as evidence. SGC added that the proposed section 59H(7) of PFO had provided for the destruction as soon as practicable of a sample and the information derived therefrom after a volunteer had withdrawn his authorization. Senior Assistant Legal Adviser (SALA) pointed out that under the common law, any evidence could be presented to the court as long as it was relevant to the case.

9. Mrs Selina CHOW considered that it would be unfair to prohibit a detained person from volunteering his sample for proving his innocence. As the purpose of

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providing for the volunteering of samples was to provide a short-cut, requiring judicial authorization for the volunteering of samples might result in inconvenience.

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10. The Chairman requested the Administration to consider setting out clearly that DNA information should not be used between the time the volunteer withdrew his authorization and the time of destruction of the sample. He also requested the Administration to provide annual statistics on the respective numbers of detained and non-detained persons who volunteered their samples after the Bill was passed. He also suggested that the Administration should provide in the proposed section 59F of PFO that a person who volunteered his sample should be informed of a list of matters, including how the sample would be used, his right to request for access to the information, and his right to withdraw the authorization. PAS(S)E agreed to consider the suggestions.

11. Miss Emily LAU requested the Administration to undertake that it would not appeal to people to volunteer their samples. The Chairman said that the Administration should make such an undertaking at the resumption of Second Reading debate on the Bill. PAS(S)E said that the request was being discussed with the Secretary for Security.

*Proposed sections 59G (DNA database) and 59H (Disposal of samples and records, etc.)*

12. Referring to the proposed section 59G(2)(iv) of PFO, Mr CHENG Kai-nam asked whether the phrase "administering the DNA database" was clear enough from a legal point of view. PAS(S)E responded that the Administration had undertaken at a previous meeting to narrow down the specified use of the DNA database for the purpose of administering the DNA database. It would move a CSA to this effect at the resumption of Second Reading debate on the Bill.

13. The Chairman asked whether the proposed section 59G of PFO could adequately deal with the tampering of samples and DNA information. PAS(S)E responded that existing legislation against perverting the course of justice could adequately deal with the tampering of samples and DNA information. She added that the tampering of a sample would necessitate access to the database, which was dealt with under the proposed section 59G(2)(a) of PFO. In this connection, SALA said that "tampering" might not necessarily involve "access into the database".

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14. The Chairman asked whether criminal damage could be made to information stored in a computer. SALA said that there was legislation against causing damage to information stored in a computer. The Chairman requested the Administration to examine whether existing legislation against damage to information stored in a computer could adequately deal with the tampering of information in the DNA database.

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15. Referring to the proposed section 59G(1) of PFO, the Chairman said that the DNA database should be maintained by the Government Chemist (GC) on behalf of the Government of the Hong Kong Special Administrative Region (HKSARG) or the Privacy Commissioner for Personal Data (Privacy Commissioner) rather than on behalf of the Commissioner of Police (CP). Mrs Selina CHOW said that the proposed section 59H of PFO set out the authority and responsibility of CP over the DNA database. Amending CP to HKSARG might render the provision too vague in respect of responsibilities over the DNA database.

16. SALA said that if reference to CP was deleted from the proposed section 59G, the references to CP in the proposed section 59H would also need to be deleted. Mrs Selina CHOW said that under such a situation, the responsibilities set out in the proposed section 59H of PFO would then become those of GC, which would be inappropriate as the provisions were related to combating crime. Mr Albert HO shared the same view. He said that this would impose substantial responsibility on GC, who was not responsible for the implementation of policies. He considered that GC should maintain an impartial role. If CP abused its power and prohibited access to the DNA database, the issue could be dealt with by legal proceedings. He considered it acceptable for CP to be responsible for the DNA database. The Chairman said that although he would not seek to move any CSA in this respect, he would state in his speech during the Seconding Reading debate on the Bill that this arrangement was undesirable.

17. Miss Emily LAU asked about the Administration's position on the Privacy Commissioner's suggestion of adding a provision to the Bill to prohibit the use of samples and information derived therefrom between the time of deciding not to charge the person and the time of destruction of the sample. SGC responded that the Administration was considering CSAs to set out that no person should use the sample or results in any proceedings after it was decided that a person from whom the sample was taken would not be charged with any offence.

18. In response to the Chairman's question about the internal procedures within the Administration to ensure notifying the Government Laboratory of the court's decision and the usual time between the court's decision and the time of destruction of a sample, Chief Superintendent of Police (Crime Support) said that administrative guidelines would be drawn up to ensure that the Police would notify the Government Laboratory within a few hours after being notified of the court's decision. Senior Chemist (Biochemical Sciences B) said that presently, the Government Laboratory and the Police were planning on performing such type of reconciliation once a day. PAS(S)E added that the Administration would review the arrangements after the Bill was passed.

*Proposed section 59I (Amendment of Schedule 2)*

19. The Chairman questioned why the Chief Executive (CE) in Council was to be

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provided with the power to amend Schedule 2. He said that Schedule 2 contained procedures which should be set out in the principal legislation. SGC said that such a provision was also found in many legislation. She added that any amendment by CE in Council would have to be made by subsidiary legislation which was subject to vetting by negative procedures by the Legislative Council.

20. Miss Emily LAU asked whether it would be possible for CE in Council to amend the principal legislation through the amendment of Schedule 2. SALA said that the Bill did not empower CE in Council to amend the principal legislation through such an amendment.

21. The Chairman requested the Administration to consider amending the proposed section 59I to provide that any order to amend the Schedule should be made by resolution of the Legislative Council. PAS(S)E agreed to consider the suggestion.

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**II. Date of next meeting**

22. Members noted that further meetings had been scheduled for 12 June 2000 at 8:30 am and 13 June 2000 at 10:45 am to continue discussion with the Administration. They agreed that a further meeting be scheduled for 15 June 2000 at 10:45 am to continue discussion with the Administration.

*(Post-meeting note : The meeting on 12 June 2000 was subsequently cancelled due to black rainstorm warning.)*

23. There being no other business, the meeting ended at 12:48 pm.

Legislative Council Secretariat  
12 September 2000