

立法會
Legislative Council

LC Paper No. CB(2) 157/00-01

(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 Tuesday, 13 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 Emily LAU Wai-hing, JP
- Member absent** : Hon CHENG Kai-nam, 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

Clause-by-clause examination of the Bill

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

Proposed section 59I (Amendment of Schedule 2)

2. The Chairman recalled that he had requested the Administration to consider amending the proposed section 59I of the Police Force Ordinance (Cap. 232) (PFO) to provide that any amendment by the Chief Executive (CE) in Council to Schedule 2 to PFO should be made by resolution of the Legislative Council (LegCo). He asked about the Administration's position on the issue.

3. Principal Assistant Secretary for Security E (PAS(S)E) said that the Administration had looked into the suggestion with the Department of Justice. As Schedule 2 was mainly concerned with procedures, it was appropriate for any amendment by CE in Council to the Schedule to be made by subsidiary legislation subject to negative vetting by LegCo.

4. The Chairman said that the passing of a resolution of LegCo would require a majority of Members present, while the passage of a motion or amendment to a subsidiary legislation subject to the negative vetting procedure would be more difficult in that it required a majority vote of Members returned by functional constituencies as well as Members returned by geographical constituencies. Under the current relationship between LegCo and the Administration, he would prefer all amendments to schedules to legislation to be made by resolution of LegCo. He had made such a suggestion in respect of all recent Bills and the Administration had adopted his

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suggestions in most cases. Miss Emily LAU shared the Chairman's views. Mrs Selina CHOW added that the suggestion should not create any particular difficulty to the Administration. PAS(S)E agreed to reconsider the suggestion.

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Clause 7 (Oath or Declaration of Office)

5. Members made no particular comments about the clause.

Clause 8 (Schedule added)

6. Referring to the requirement in paragraph 4 of proposed Schedule 2 that any order for an inter partes hearing to consider an application for the taking of intimate samples should be given not less than three days before the hearing date, the Chairman expressed concern that the notice period might be too long. He asked whether the notice period requirement was also found with other applications to magistrates.

7. PAS(S)E said that the notice period might become too short if it was less than three days. Senior Government Counsel (SGC) added that in the drafting of the provision, reference should have been made to the usual requirements on notice periods in respect of other applications to magistrates. Senior Assistant Legal Adviser (SALA) advised that the time requirement should be determined by reference to the time needed for the parties concerned to appoint legal representatives. He pointed out that under the proposed requirement, a suspect might have to be detained for three days if he was not granted bailed.

8. Mrs Selina CHOW asked whether a sample would be affected by a detention period of three days. Senior Chemist (Biochemical Sciences B) (SC(BSB)) said that a control intimate sample would be unaffected within a period of three days. However, it might be affected if it was a sample from a private part or taken from a person's body orifice other than the mouth. However, such type of sample, which was usually taken in relation to sexual offences, was seldom taken. SGC added that as the taking of an intimate sample would require the consent of the suspect concerned, the suspect would usually be bailed after he had given consent.

9. The Chairman expressed doubt about whether it was necessary for an inter partes hearing to be held to consider an application for taking of intimate samples if consent had been given by the suspect for taking intimate samples.

10. The Chairman suggested that the Administration should consider amending the proposed Schedule to the effect that the magistrate might direct the period before which the order for hearing should be served. He requested the Administration to provide members with samples of search warrants to facilitate members' understanding of how the proposed Form 1 and Form 2 would operate. PAS(S)E agreed to consider the suggestions.

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Draft Committee Stage amendments (CSAs) to be moved by the Administration
(LC Paper No. CB(2) 2262/99-00(01))

11. Members noted the Administration's paper on draft CSAs (I) and a paper tabled at the meeting on further draft CSAs (II) to be moved by the Administration.

(Post-meeting note : The paper tabled at the meeting was subsequently issued to members vide LC Paper No. CB(2) 2337/99-00(01) on 14 June 2000.)

12. PAS(S)E briefed members on the draft CSAs to be moved by the Administration.

Proposed amendments to clause 2

13. As regards the proposed amendments to the proposed section 54AB(1) of the Dangerous Drugs Ordinance (Cap. 134) (DDO), members agreed that the words "dispose of," should be added after "access to," in the proposed section. They agreed that similar additions would be made in respect of the proposed amendments to the relevant provisions in the Independent Commission Against Corruption (ICAC) Ordinance and PFO.

Proposed amendments to clause 4

14. Referring to the proposed amendments to the proposed section 10E(3) of the ICAC Ordinance, the Chairman asked whether a copy of the written authorization would be provided to the suspect concerned. PAS(S)E responded that although a copy of the written authorization would be provided, the reasons for the authorization would not be provided as the disclosure of such information might affect the course of investigation and allow the suspect to tip off other persons. The suspect would however be informed of the main reason for taking a non-intimate sample.

15. The Chairman said that there was an inconsistency in that the reasons for authorization would be provided to a suspect in the taking of an intimate sample but not in the taking of a non-intimate sample. SGC said that consent from a suspect was required in the taking of an intimate sample, but not in the taking of a non-intimate sample. PAS(S)E stressed that even in the case of taking an intimate sample, information which might affect the course of investigation would not be disclosed to the suspect concerned.

16. The Chairman asked whether a suspect would be given access to information contained in the proposed Form 1 in the event of an inter partes hearing. He said that if too little information was provided to a suspect, it would be very difficult to hold an inter partes hearing. CSP(CS) said that Form 1 was intended for reference by a magistrate. The reasons for the authorization would be recorded and maintained by the Police. If an application for taking a sample was brought to the court, all the facts

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would be disclosed and made available to the defence. He added that the Administration had undertaken at a previous meeting to provide a copy of the written authorization to the person concerned, or inform the person of the name of the authorizing officer if authorization was given orally.

17. On the proposed amendments to the definition of a non-intimate sample, members agreed that the term "head hair" was clear enough in referring to the hair on the head of a person.

18. Referring to the proposed amendments to the proposed subsection (c) of the definition of a non-intimate sample, Mr Albert HO asked why only the mouth but not the orifice of the ear was excluded in the proposed subsection. SC(BSB) responded that the orifice of the ear was more vulnerable to injury than the mouth.

19. As regards the proposed subsection (e) of the definition of a non-intimate sample, SC(BSB) informed members that it referred to the impression of a person's ear, arm or knee. The impression of a person's arm could indicate the characteristics of a person's watch and the pattern of fibre worn by the person.

20. The Chairman considered that the taking of the impression of a face would be very intrusive. SC(BSB) responded that the proposed subsection was not mainly intended for the taking an impression of a face, which was usually made by taking a photograph. PAS(S)E suggested and members agreed that a CSA would be moved to exclude an impression of a face from the definition of an non-intimate sample.

21. Referring to the proposed amendments to the proposed section 59H(4) of PFO, the Chairman expressed concern that a sample would not be destroyed even if there was still a charge against a suspect for a very minor offence. PAS(S)E agreed to consider amending the proposed section 59H(4)(b) from "there is no charge against the person" to "there is no charge against the person in relation to an offence which renders the retention of the sample necessary".

Adm

Administration's response on the estimated number of samples to be taken each year
(LC Paper No. CB(2) 2298/99-00(02))

22. At the invitation of the Chairman, PAS(S)E briefed members on the estimated number of samples to be taken each year.

23. The Chairman expressed concern about the proposal in the Bill that a buccal swab would be taken from persons convicted of a serious arrestable offence regardless of the sentence. He considered that a buccal swab should only be taken from persons convicted of a serious arrestable offence and consequently imprisoned. Alternatively, the threshold adopted in the Rehabilitation of Offenders Ordinance (Cap. 297) could be used, in which case a buccal swab would not be taken from persons fined for less than \$10,000 or not imprisoned. He preferred the option of using imprisonment term as

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the threshold. Mrs Selina CHOW however considered that the decision of whether to take a buccal swab should be based on whether a person was convicted of a serious arrestable offence. PAS(S)E said that experience indicated that the actual sentence did not necessarily or fully reflect the seriousness of the crime committed.

24. The Chairman expressed concern that there was no time limit on the taking of a buccal swab from a person convicted of a serious arrestable offence. In this connection, PAS(S)E said that a CSA would be moved to set out that the taking of a buccal swab from a person convicted of a serious arrestable offence would only be allowed 12 months within the time of conviction.

25. Referring to paragraph 6 of the Administration's paper, the Chairman asked whether it was the Administration's intention to take non-intimate samples from all persons convicted of serious arrestable offences. PAS(S)E responded that the Administration had no such intention. It would follow the criteria set out in paragraph 6 of the Administration's paper in determining whether a non-intimate sample would be taken. Mrs Selina CHOW requested the Administration to explain the criteria for taking such samples in its speech during the resumption of Second Reading on the Bill. Miss Emily LAU added that the Administration should also quote the statistics referred to in the Administration's paper in explaining the criteria.

Adm

26. The Chairman requested the Administration to provide statistics on the number of buccal swabs taken from persons to LegCo Panel on Security on a regular basis.

Adm

The Administration's response to outstanding issues raised at previous meetings of the Bills Committee
(LC Paper No. CB(2) 2298/99-00(01))

27. Members noted the Administration's response in respect of the proposed thresholds for taking non-intimate samples from convicted persons and storage of the relevant DNA information as set out in paragraph 2 of the Administration's paper.

28. Referring to paragraph 19 of the Administration's paper, Mr Albert HO said that he maintained the view that the Bill should provide for the use of forensic examination results for the purpose of coroner's inquest or inquiry. PAS(S)E agreed to follow-up the suggestion with the coroner.

Adm

II. Date of next meeting

29. Members noted that the next meeting had been scheduled for 15 June 2000 at 10:45 am to continue discussion with the Administration. They agreed that a further meeting be scheduled for 16 June 2000 at 8:30 am to continue discussion with the

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Administration.

30. The Chairman said that he would work with SALA on the CSAs that would possibly be moved by the Bills Committee.

31. There being no other business, the meeting ended at 1:00 pm.

Legislative Council Secretariat

14 September 2000