

立法會
Legislative Council

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(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 Monday, 15 May 2000 at 10:45 am
in Conference Room A of the Legislative Council Building**

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

Mr SHAM Ka-fai
Acting Chief Investigator
Independent Commission Against Corruption

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) 1978/99-00(01))

Newspaper cuttings about citizens in a small town in Australia volunteering to provide their samples for DNA analysis to assist the investigation of a rape case

Referring to the newspaper cuttings provided by the Administration about citizens in a small town in Australia volunteering to provide their samples for DNA analysis to assist the investigation of a rape case, Miss Emily LAU said that appealing to people to volunteer their samples might be inappropriate from a human rights perspective. Principal Assistant Secretary for Security E (PAS(S)E) responded that the Administration would not appeal to the public to volunteer their sample for DNA analysis. Such an appeal was not applicable to a place like Hong Kong where there was dense population and high mobility.

Clause-by-clause examination of the Bill

2. Members then proceeded to examine the Bill clause-by-clause.

Part I - Preliminary

Clause 1 (Short title and commencement)

3. Referring to clause 1(2) of the Bill, the Chairman asked whether the drafting of

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clause 1(2) would permit different parts of the Bill to commence on different dates. Senior Assistant Legal Adviser (SALA) advised that under the Interpretation and General Clauses Ordinance (Cap. 1), a power to fix commencement date included a power to fix different provisions of an Ordinance to commence on different dates. It was not necessary to expressly provide for the commencement of different parts of an Ordinance on different dates.

4. PAS(S)E informed members that as some parts of the Bill would necessitate the establishment of guidelines, it would be necessary for different parts of the proposed legislation to come into force on different dates.

5. Miss Emily LAU asked about the earliest commencement date of the proposed legislation. She considered it important that wide publicity should be launched before the proposals in the Bill were implemented. PAS(S)E responded that some months would be needed for preparation work on commencement of different provisions. The actual length of time would depend on the Bill finally passed by the Legislative Council (LegCo). She said that adequate publicity would be launched before the proposals in the Bill took effect. Miss LAU suggested and members agreed that the issue of publicity of the proposals in the Bill should be followed up by the Panel on Security of the next LegCo term.

Clerk

6. SALA said that all commencement notices for Ordinances were made as subsidiary legislation, which was subject to scrutiny by LegCo within 28 days after the meeting at which it was laid before LegCo. The scrutiny period could be extended by one LegCo meeting, and LegCo had the power to amend or repeal any subsidiary legislation.

*Part II - Amendments to the Dangerous Drugs Ordinance
Clauses 2(Sections added) and 3(Schedule added)*

7. Members agreed that examination of the clauses would be deferred until a later meeting when a representative of the Customs and Excise Department was present.

*Part III - Amendments to the Independent Commission Against Corruption (ICAC)
Ordinance*

Clause 4(Sections added)

Proposed section 10E - Taking of non-intimate samples

8. Miss Emily LAU asked whether the Administration would consider redefining the terms "體內樣本" and "非體內樣本". She said that as a buccal swab had to be taken from inside the mouth of a person, it should not be regarded as a "非體內樣本". PAS(S)E responded that the Administration had looked into the issue and considered the possibilities such as redefining intimate and non-intimate samples as category I and II samples. This was found to be inappropriate, as it would be difficult to understand what category I or II covered. Redefining the samples as intrusive and non-intrusive

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were also inappropriate since different people might have different perception of intrusiveness, and it was more appropriate to use the terms for describing procedures rather than samples. The Administration had also considered the possibility of retaining the English terms "intimate sample" and "non-intimate sample" while revising their Chinese counterparts. However, no appropriate Chinese counterparts could be identified.

9. SALA said that he had also looked into the issue and considered alternatives such as "私隱性" and "非私隱性" for the Chinese counterparts. However, no appropriate terms could be identified. As regards the drawbacks of redefining intimate and non-intimate samples as category I and II samples, he said that it would be necessary to look into the definitions of category I and II before one could understand what the two categories were.

Adm

10. Miss Emily LAU said that she was inclined to use the classification of category I and II samples in place of intimate samples and non-intimate samples, as it would be misleading to classify a buccal swab as "非體內樣本". PAS(S)E agreed to look into the suggestion and reflect the Administration's decision in its proposed Committee Stage amendments.

11. The Chairman said that ICAC officers should only investigate offences under section 10 of the ICAC Ordinance (Cap. 204) or corruption-related offences. The proposed section 10E(1) of the ICAC Ordinance as presently drafted seemed to expand the power of ICAC officers to investigate any offence. SALA advised that the picture would be clear when reading the provisions together. It was provided in the proposed section 10E(1)(b) of the ICAC Ordinance that the taking of a non-intimate sample from a suspect should be authorized by an officer of the rank of a Senior Commission Against Corruption Officer or above in accordance with the requirements set out in the proposed section 10E(2) of the ICAC Ordinance, such as reasonable grounds for suspecting the involvement of the suspect in a serious arrestable offence. He added that under the proposed section 10E(8) of the ICAC Ordinance, serious arrestable offence meant an offence for which a person might be arrested under section 10 of the Ordinance and for which a person might under or by virtue of any law be sentenced to imprisonment of not less than five years.

12. The Chairman suggested that the Administration should consider amending "an offence" in the proposed section 10E(1) of the ICAC Ordinance to "section 10 offence or corruption-related offence". SALA drew members' attention that if such an amendment was to be made, similar amendments would also have to be made to the relevant provisions in the Dangerous Drugs Ordinance (Cap. 134).

13. Miss Emily LAU asked what constituted reasonable grounds in the proposed section 10E(2) of the ICAC Ordinance. Principal Investigator of ICAC (PI/ICAC) said that the reasonable grounds as referred to in the provision included evidence,

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intelligence, information and complaints. However, anonymous complaints were not regarded as reasonable grounds. The Chairman suggested that the term "involvement" in the proposed section should be amended to "committing". SALA said that if the amendment was to be made, similar amendments would also need to be made to other parts of the Bill.

14. The Chairman expressed concern that the proposed section 10E(2)(b) of the ICAC Ordinance as presently drafted might allow a non-intimate sample to be taken from a person merely for the purpose of disproving his involvement in a serious arrestable offence. He said that as the reasonable grounds for suspecting a person's involvement in a serious arrestable offence would not be disclosed, it was more appropriate to set out in the Bill that a non-intimate sample would be taken for DNA analysis only if other alternatives for investigation had been exhausted. PAS(S)E responded that as DNA analysis was a very useful investigation tool, it was inappropriate to restrict the use of such a tool. Acting Chief Investigator of ICAC (CI/ICAC(Atg)) added that the use of DNA analysis would usually apply to cases in which exhibits were seized from a crime scene. Commercial crime cases usually involved the examination of documents and records. The use of DNA analysis in such cases was thus unlikely.

15. Miss Emily LAU said that there seemed to be no provision in the proposed amendments to the ICAC Ordinance for a person to volunteer his sample for DNA analysis. SALA said that there was no provision which empowered ICAC to accept the volunteering of samples in the Bill.

16. The Chairman expressed concern that the provision for volunteering of samples might be abused, as a person might be detained until he was willing to volunteer his sample. He said that law enforcement officers might be inclined to force suspects to volunteer their samples simply for convenience in the course of investigation. He considered that the volunteering of sample by a person in detention should not be accepted. He added that if a sample was to be taken during the detention of a person, the sample taking process should be video-recorded or carried out before an independent person such as a Justice of the Peace.

17. Senior Government Counsel (SGC) said that any person, including a suspect, could volunteer his sample for DNA analysis under the proposed section 59F of the Police Force Ordinance (Cap. 232) (PFO). Although a person could only volunteer his sample under the proposed section, the DNA information derived therefrom would be stored in a DNA database, to which both the Police and ICAC could access in the investigation of any offence. PI/ICAC envisaged that there would be very few cases involving the volunteering of samples. He said that even if there was a request for volunteering of samples, it could be carried out in accordance with the proposed section 59F of PFO. Senior Chemist (Biochemical Sciences B) said that if a detained person included an imprisoned person, then it would not be feasible to implement schemes similar to the Innocence Project presently being conducted in the USA.

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Adm 18. The Chairman requested the Administration to consider amending the proposed section 59F of PFO to the effect that any person other than those in custody could give non-intimate samples voluntarily.

Adm 19. Referring to the proposed section 10E(3) of the ICAC Ordinance, the Chairman asked about the circumstances under which oral authorization would be given for the taking of a non-intimate sample. Chief Superintendent of Police (Crime Support) (CSP(CS)) responded that oral authorization might be given when authorization was required outside office hours, such as in mid-night. The Chairman asked the Administration to expressly spell out in the Bill that oral authorization could be given in cases of emergency or under urgent circumstances. CSP(CS) agreed to consider the suggestion.

20. Referring to the proposed section 10E(4)(c) of the ICAC Ordinance, Miss Emily LAU asked how an officer could prove to the suspect that an authorization had been given, especially when it was an oral one. She considered that an authorization should be given in writing. The Chairman asked whether a suspect could be informed of the reasons for suspecting his involvement in a serious arrestable offence. CSP(CS) said that it would be inappropriate to do so since it might result in an argument with the suspect on whether the authorizing officer had reasonable grounds. Disclosing information about investigation details might enable a suspect to destroy evidence or tip off his accomplices. He stressed that checks and balances had already been established for the taking of non-intimate samples from suspects. PI/ICAC said that a suspect would usually be informed of the offence of which he was suspected to have committed.

Adm 21. The Chairman requested the Administration to consider providing in the Bill that if an oral authorization had been given, the suspect should be informed of the name of the authorizing officer who had given such an authorization. Where an authorization had been given in writing, a copy of the authorization should be provided to the suspect.

Adm 22. Miss Emily LAU asked about the meaning of "reasonable force" in the proposed section 10E(4)(e) of the ICAC Ordinance. CI/ICAC(Ag) said that it was the amount of force adequate for sample taking. CSP(CS) added that as was the case with the Police, it was the minimum amount of force necessary for taking a sample. Miss LAU asked whether such an amount of force would be used even if it could cause harm to a suspect. The Chairman added that if a suspect struggled very hard, the use of reasonable force might cause harm to a suspect. He considered that the process of sample taking should be video-recorded. PI/ICAC agreed to consider the suggestion. He said that video-recording the process should not be a problem with ICAC. PAS(S)E said that owing to limitation of resources, the Police would have difficulties in video-recording all sample taking processes. She said that the issue might be considered again when relevant proposed amendments to PFO were discussed.

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Clerk 23. As regards the investigation of any offence as referred to in the proposed section 10E(4)(f) of the ICAC Ordinance, PAS(S)E informed members that the Administration was looking into the issue. Miss Emily LAU requested the Secretariat to prepare a list of outstanding issues raised by members at previous meetings.

24. Referring to the proposed section 10E(5) of the ICAC Ordinance, the Chairman said that the consent given by a suspect for the taking of his non-intimate sample should not be accepted if the suspect was in detention. PAS(S)E clarified that the provision referred to the taking of a non-intimate sample from a suspect, which differed from the taking of a volunteered sample. SGC added that the requirements set out in the proposed section 10E(1) and 10E(2) of the ICAC Ordinance had to be met before the non-intimate sample could be taken.

25. Referring to the proposed section 10E(6) of the ICAC Ordinance, Miss Emily LAU asked whether a registered medical practitioner would take a non-intimate sample from a suspect if consent was not given by the suspect. PAS(S)E said that a registered medical practitioner would not take a blood sample from a suspect if consent was not given. As regards the taking of a non-intimate sample, a registered medical practitioner would exercise his judgment in deciding when the sample should be taken. She said that it was permissible under the Bill for a trained officer to take a non-intimate sample. PI/ICAC added that a non-intimate sample would usually be taken by a trained officer of the ICAC. SC(BSB) added that a non-intimate sample would usually be taken by a registered medical practitioner when intimate samples were also taken from the suspect.

26. Referring to the proposed section 10E(7) of the ICAC Ordinance, the Chairman said that the term "force" should be amended to "minimum force". SALA said that from the legal point of view, the phrase "such force as is reasonably necessary" had already implied the use of minimum force.

27. Regarding the definition of intimate and non-intimates samples in the proposed section 10E(8) of the ICAC Ordinance, PAS(S)E informed members that the Administration would move Committee Stage amendments to redefine a hair sample as a non-intimate sample, and a sample of hair other than head hair as an intimate sample. As regards members' suggestion at a previous meeting to restrict the taking of a sample of head hair by cutting, the Administration considered it inappropriate as it could not cover situations where a combing of hair was required. SC(BSB) added that a combing of hair would be needed when it was necessary to examine whether tiny traces of glass could be found on the hair.

II. Date of next meeting

28. Members noted that the next meeting had been scheduled for 22 May 2000 at

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10:45 am to continue discussion with the Administration.

29. There being no other business, the meeting ended at 12:55 pm.

Legislative Council Secretariat

19 July 2000