

立法會
Legislative Council

LC Paper No. CB(2) 158/00-01

(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 Thursday, 15 June 2000 at 10:45 am
in Conference Room B of the Legislative Council Building**

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

Member absent : Hon Albert HO Chun-yan

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

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

Action

I. Meeting with the Administration

Draft Committee Stage amendments (CSAs) (III) to be moved by the Administration
(LC Paper No. CB(2) 2368/99-00(01))

At the invitation of the Chairman, Principal Assistant Secretary for Security E (PAS(S)E) briefed members on the latest draft CSAs to be moved by the Administration.

2. The Chairman said that as the Administration had undertaken to state the criteria for taking non-intimate samples from persons convicted of serious arrestable offences, to provide the Legislative Council (LegCo) with annual statistics on the number of convicted persons from whom non-intimate samples were taken, and to confine the taking of such samples to a period of 12 months within the time of conviction, he would not move CSAs in respect of the taking of non-intimate samples from convicted persons.

3. Miss Emily LAU requested the Secretariat to prepare a list of issues undertaken by the Administration at previous meetings to be stated in the speech of the Secretary for Security during the resumption of Second Reading debate on the Bill.

4. PAS(S)E informed members that the Chinese version of the CSAs were still under preparation. Members agreed that examination of the Chinese version of the CSAs would be left to Senior Government Counsel (SGC) and Senior Assistant Legal Adviser (SALA).

Samples of search warrants
(LC Paper No. CB(2) 2368/99-00(02))

5. Members noted three samples of search warrants provided by the

Clerk

Action

Administration in response to members' request at the previous meeting.

6. Miss Emily LAU asked whether information in the search warrants were made available to suspects. Chief Superintendent of Police (Crime Support) (CSP(CS)) said that such information was not made available to the suspects at that stage. However, the information would be kept on record and made available to the defence when the case was brought to the court.

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

7. PAS(S)E briefed members on the Administration's response to outstanding issues raised at previous meetings. Members noted that paragraph 2 of the paper had been discussed at the previous meeting.

Consultation of organizations concerning the welfare of prisoners and ex-prisoners on the Bill

8. PAS(S)E informed members that the proposal in the Bill were mainly based on the recommendations of an Interdepartmental Working Group on the Law Reform Commission (LRC) Report on Arrest. Public comment was invited on the Working Group's recommendations in late 1996. Although more than 10 submissions were received, no views were submitted by organizations of prisoners or ex-prisoners.

9. Miss Emily LAU said that the public might not understand the proposals at the time of consultation. The Chairman said that the LegCo Panel on Security had considered the issue as well as made visits in relation to the issue and not much views were expressed. He envisaged that there should not be any strong views among prisoner and ex-prisoners, especially given that the taking of non-intimate samples from convicted persons would be restricted to a period of 12 months within the time of conviction. Mrs Selina CHOW added that she had not heard of any strong objection among the community to the proposals in the Bill.

Issue of video recording the sample taking process

10. The Chairman questioned why video recording could not be made of the sample taking process, given that the taking of admission statements was video-recorded. He strongly felt that law enforcement officers should video-record the process of taking non-consent samples as far as practicable.

11. PAS(S)E said that there were samples, such as that under the nail of a suspect, that had to be taken as soon as possible. She had discussed members' suggestion with the law enforcement agencies and the Independent Commission Against Corruption (ICAC) had expressed reservations about the suggestion. She undertook to further discuss the suggestion with ICAC.

Action

Adm

12. CSP(CS) said that there were practical difficulties with the implementation of the suggestion, as not all Police stations had video-recording facilities. Nevertheless, he agreed to issue internal guidelines to require police officers to video-record the process of taking samples as far as practicable and in appropriate circumstances. PAS(S)E added that urgency of cases and the time-sensitivity of samples would also have to be taken into account.

13. In response to Miss Emily LAU's question about whether additional resources would be provided for the installation of video-recording facilities in Police stations, PAS(S)E said that the number of video interview rooms in Police stations had already been substantially increased. There were currently no plans to provide additional resources for the construction of more video interview rooms.

14. Miss Emily LAU asked the Administration to provide respective statistics on the number of samples taken from persons who gave and did not give consent, and the number of sample-taking processes video-recorded. The Chairman added that reference could also be made to statistics provided by the Independent Police Complaints Council.

Issue of providing explicitly in the Bill to empower the taking of samples by medical practitioners and dentists

15. Miss Emily LAU asked whether the taking of non-intimate samples as provided for in the proposed section 59C of Police Force Ordinance (PFO) could be made by medical practitioners only. PAS(S)E responded that under the proposed section 59C(6), a non-intimate sample could be taken by a registered medical practitioner, a police officer or public officer working in the Government Laboratory who had been properly trained.

16. The Chairman said that it was important that registered medical practitioners would not be forced to take non-intimate samples. PAS(S)E assured members that medical practitioners would not be forced under the proposed section to take a non-intimate sample.

Issue of involvement in an offence and committing an offence

17. PAS(S)E informed members that the use of the word "involvement" originated from the relevant report of LRC. It was used so as to cover the planning stage of a serious arrestable offence. However, it might be possible to replace "involvement" with "involvement in the commission" to exclude persons such as victims.

18. Miss Emily LAU said that a person involved in an offence might not necessarily commit the offence. The Chairman said that the word "involvement" should be substituted by "commission". There was also a need to maintain consistency in the

Action

use of words within a piece of legislation. In this connection, SALA informed members that "having committed an offence" was used in other parts of PFO. CSP(CS) said that if four persons were involved in a rape case and one of them was responsible for driving a getaway car, the person would be involved in the offence although he might not commit the offence.

19. SGC said that she had no strong views about the issue. However, she had consulted the Prosecutions Division and the Civil Division of the Department of Justice (D of J) and had been informed that they considered it inappropriate to narrow down the use of the word "involvement".

Adm

20. The Chairman reiterated that there should be consistency in law. He requested the Prosecutions Division and the Civil Division of D of J to reconsider narrowing down the scope of "involvement", especially given that a person could be prosecuted for aiding and abetting the commission of an offence.

Providing expressly in the Bill that the court would have the power to order for producing evidence in respect of DNA information in any proceedings

21. SGC informed members that the Prosecutions Division of D of J had made a search of existing legislation and found that there was no express provision in any existing legislation which provided the court with the power to compel the production of evidence. It was undesirable to expressly provide the court with such a power as it was inappropriate for the court to be involved in the prosecution or defence in criminal proceedings. SALA said that at common law, the court had the power to order the production of evidence relevant to a case. As the Administration and SALA had different views on whether the court had the power to order the production of evidence in criminal proceedings, members requested the Administration and SALA to look into the issue and discuss it at the following meeting.

Adm
SALA

Providing in the Bill for the use of forensic examination results for the purpose of coroner's inquest or inquiry

22. PAS(S)E informed members that in view of the time constraint, the Administration would inform the coroner of members' suggestion that information in the DNA database could be used for purposes under the Coroners Ordinance (Cap. 504) and the Administration had no objection to the suggestion. The CSA would involve the addition of a provision in the proposed section 59G(2) of PFO. The Chairman said that the Administration could proceed with the CSA if it agreed to the suggestion. If it had any reservations about the suggestion, it might be more desirable to introduce the amendment in the future.

Issue of binding effect of the Bill on the State

(LC Paper Nos. CB(2) 2285/99-00(01) and LS162/99-00)

Action

23. At the invitation of the Chairman, PAS(S)E and SALA briefed members on their respective papers on the binding effect of the Bill on the State.

24. In response to Miss Emily LAU's question on whether the list of Ordinances in Annex 2 to the paper prepared by the LegCo Legal Service Division were binding on the State, SALA explained that the list of Ordinances were those which expressly provided that they were binding on or applied to the Crown or Government in whole or in part. The policy aspects as to the adaptation of "the Crown" was unclear and the issue was still being considered by the Bills Committee on the Adaptation of Laws (No. 9) Bill 1999.

25. The Chairman questioned whether there would be any harm to the State if the Bill was to be binding on the State. He said that if all legislation were binding on every individual, as stated in the Administration's paper, discussion on the binding effect of the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) on the State would not have taken so long.

26. PAS(S)E said that the criminal offence provisions in the Bill were applicable to every individual, including State officials in the Hong Kong Special Administrative Region. The present drafting of the Bill had therefore provided adequate coverage to catch all persons responsible for any contravention. Mr CHENG Kai-nam said that as the Bill already applied to every individual, there was no need for an express provision to bind the State. He added that it was inappropriate to assume that the State would contravene the enacted legislation. He said that DNA information was different from personal data in that the former was a string of numbers not bearing any identifiable personal particulars.

27. The Chairman asked whether the Administration would consult the Central People's Government on the binding effect of the enacted legislation on the State after the Bill was passed. Mr CHENG Kai-nam said that if this approach of consultation was to be adopted, the Central People's Government would have to be consulted on all legislation relating to crime. This was against the "one country, two systems" principle. PAS(S)E said that the binding effect of legislation on the State was not a new issue. It would be inappropriate to discuss the enacted legislation in isolation from other legislation. She reiterated that the present drafting of the Bill had provided adequate coverage to catch all persons responsible for any contravention.

28. The Chairman said that he considered that all legislation should be binding on the State and amendments should not have been made to section 66 of the Interpretation and General Clauses Ordinance (Cap. 1).

29. The Chairman said that the Bills Committee would continue to discuss the issue at the meeting on the following day.

Action

II. Date of next meeting

30. Members noted that the following meeting had been scheduled for 16 June 2000 at 8:30 am to continue discussion with the Administration and to conclude the examination of the Bill. The Chairman reminded members that the deadline for giving notice of CSAs to the Bill was 16 June 2000.

31. There being no other business, the meeting ended at 12:50 pm.

Legislative Council Secretariat

14 September 2000