

**立法會**  
**Legislative Council**

LC Paper No. CB(2) 2520/99-00

(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, 17 April 2000 at 4:30 pm  
in Conference Room B of the Legislative Council Building**

**Members present** : Hon James TO Kun-sun (Chairman)  
Hon Albert HO Chun-yan  
Hon CHENG Kai-nam, JP

**Members absent** : Hon Mrs Selina CHOW LIANG Shuk-ye, 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

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**  
(LC Paper No. CB(2) 1704/99-00(01))

Administration's response to outstanding issues raised by members at previous meetings

At the invitation of the Chairman, Principal Assistant Secretary for Security E (PAS(S)E) briefed members on the Administration's response to outstanding issues raised by members at previous meetings of the Bills Committee.

*Imposing criminal liability on persons who tampered with samples and DNA information*

2. Referring to paragraph 3 of the Administration's paper, the Chairman asked whether only a narrow scope of acts would constitute an offence of perverting the course of justice. He also asked whether the existing legislation against perverting the course of justice was adequate to deal with the tampering of sample taken from a suspect and the DNA information derived therefrom, as well as the tampering of samples obtained from a crime scene and the DNA information derived therefrom.

3. Senior Assistant Legal Adviser (SALA) said that a person who tampered with the samples or DNA information of a particular case would commit an offence of perverting the course of justice. A person who tampered with samples or information not specific to any particular case would commit an offence of criminal damage, depending on the facts of the case. The Chairman pointed out that the criminal liability provision in the proposed section 59G of the Police Force Ordinance (PFO) was only related to access to, disclosure and use of information in the DNA database. He requested the Administration to consider providing in the Bill that any person who tampered with samples or DNA information, including falsification of samples and DNA information, committed an offence.

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*Empowering the Ombudsman to conduct random inspections of the Government Laboratory*

4. In response to Mr Albert HO's question about the party responsible for the appointment of an audit team to carry out audits on the Government Laboratory, Senior Chemist (Biochemical Sciences B) (SC(BSB)) said that members of the audit team were selected from a panel of international experts by the American Society of Crime Laboratory Directors (ASCLD). The administrative procedures of the Government Laboratory were part of the areas examined by the audit team. The report submitted by the audit team to ASCLD contained assessments on three category of items, namely, essential items, important items and desirable items. An overall pass in the audit would require a 100 % pass in essential items, at least 70% pass in important items and at least 50% pass in desirable items. The Government Laboratory would have to apply for accreditation again if it failed to attain an overall pass in the audit.

5. The Chairman said that the audit report provided by ASCLD to the Government Laboratory should also be provided to the Security Bureau, as it was the housekeeping bureau of the Government Laboratory. He added that a local expert team might be appointed, if necessary, to conduct surprise checks on the Government Laboratory.

*Issuing guidelines on the procedures for taking samples*

6. In response to the Chairman's question about the time when the guidelines on the procedures for taking of samples would take effect, PAS(S)E said that the guidelines would take effect after the Bill was passed. There were currently no such guidelines in the Government Laboratory. The Chairman requested the Administration to consider providing a copy of the guidelines to the Legislative Council (LegCo) Panel on Security before the proposed legislation came into force. PAS(S)E agreed.

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*Video-recording the process of taking of samples*

7. The Chairman asked whether limitation of resources was the main reason for the decision of not video-recording the process of taking samples. He expressed concern that as DNA information constituted very strong evidence and was used for the detection of serious arrestable offences, there would be numerous complaints about the process of taking samples. He said that the witnessing of the sample taking process by a Duty Officer or a police officer of Inspectorate rank or above was inadequate. This could be reflected from the currently large number of complaints about the taking of admission statements by police officers despite the process was witnessed by a Duty Officer. Mr Albert HO added that video-recording the process would increase the admissibility of DNA information in court. He asked whether the DNA information of samples obtained not in accordance with the requirements of the Bill was admissible in court.

8. PAS(S)E responded that the Administration was seeking legal advice on the

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admissibility in court of evidence obtained improperly. She added that a Duty Officer was responsible for the overall welfare of detained persons. As was the case with the process for the taking of statements, the process of sample taking could be challenged in court.

9. The Chairman considered that as video-recording was being made on the taking of statements from suspects involved in cases to be brought to district courts, the taking of samples from suspects involved in serious arrestable offences should also be video-recorded. He said that the taking of samples from a suspect would only need a very short time if consent was given by the suspect. Video-recording should in particular be made if a suspect refused to give consent to the taking of a sample. He considered that the additional resources required for the video-recording of the taking of samples should be very small. PAS(S)E responded that the taking of statements from suspects usually took a very long time. Suspects might have to wait a long time for the taking of samples if the process was to be video-recorded. The Chairman asked the Administration to look into the implementation details with the relevant law enforcement agencies. He said that consideration should be given to the construction of an additional video-interview room in each police station, if necessary. PAS(S)E said that although there were 66 video-recording rooms in different police stations, some police stations did not have any video-recording room. In response to Mr Albert HO's question about the time-table for the construction of a video-interview room in each police station, PAS(S)E said that although there was already at least one video interview room in each major police station, there was no plan for construction of more video-interview rooms in the near future.

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10. Referring to paragraph 10 of the Administration's paper, Mr Albert HO asked how the internal guidelines on the procedures for the taking of samples were to be promulgated which, according to his understanding, meant making public. PAS(S)E clarified that the term "promulgate" might have been improperly used. She said that the Administration would inform the LegCo Panel on Security of the internal guidelines. Mr HO said that the internal guidelines should at least be made accessible to the legal profession. PAS(S)E agreed to examine the suggestion with the Police. She added that to her knowledge, the internal guidelines on the taking of statements from suspects were accessible by the public.

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*Whether the Bill provided for the taking of samples from dead persons*

11. Mr Albert HO said that the Bill should expressly provide for the taking of samples from a deceased person. He asked about the application of a sample of blood taken from a corpse. SC(BSB) responded that a sample of blood taken from a corpse could be used for DNA analysis.

12. Mr Albert HO asked how consent for the taking of samples could be obtained from a person who was mentally incapacitated or in coma. He said that the

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Administration should consider adding a provision in the Bill to deal with the taking of samples from a person who was mentally incapacitated or in coma. PAS(S)E undertook to look into the issue. She said that it was not the intention of the Administration to apply the Bill to victims. In this connection, SALA said that under the common law, consent of the person from whom sample would be taken was required before a medical practitioner could take the sample. Even family members of the person could not give consent on his behalf. He drew members' attention that there was no express provision in the Bill empowering a medical practitioner to take intimate samples from a suspect. Members requested the Administration to look into the issue.

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Other issues raised at previous meetings of the Bills Committee

13. The Chairman informed members that the Administration's response on some issues, including the following, was still awaited -

- (a) the threshold of offences which triggered off the taking of a sample from a suspect and circumstances under which DNA information would be taken from a convicted person for storage in the DNA database;
- (b) further justifications and rationale for officers of the Independent Commission Against Corruption (ICAC) to have the power of taking non-intimate samples; and
- (c) the issue of redefining intimate sample and non-intimate sample with reference to the degree of intrusiveness, personal privacy and implications of obtaining judicial authorization on the taking of such samples.

14. PAS(S)E said that the Department of Justice was being consulted on a number of legal issues raised at previous meetings of the Bills Committee. She added that the Administration's response on the following issues would be provided to members on the following day -

- (a) justifications and rationale for ICAC officers to take non-intimate samples;
- (b) the Administration's response to outstanding issues raised at previous Bills Committee meetings (II); and
- (c) the human rights implications of the Bill.

15. PAS(S)E said that the Administration agreed to members' suggestion at a previous meeting that a suspect should be informed in writing about the destruction of his sample and DNA information if he was not charged, discharged before conviction

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or acquitted on appeal. The sample would not be delivered to the person concerned for hygiene reasons. It would be destroyed as soon as practicable as provided in the Bill.

16. As regards members' suggestion at the last meeting that a written record of the reasons for an authorization given by an authorizing officer should be kept, PAS(S)E informed members that the Administration had agreed to the suggestion.

17. Referring to member's suggestion at the meeting on 3 April 2000 of adding an avoidance of doubt provision in the Bill to prohibit the analysis of DNA information for other purposes such as "genetic testing" or "genetic personality profiling", PAS(S)E said that the proposed section 59G(2) of PFO had already set out the purposes for which information in the DNA database could be accessed, disclosed or used. The avoidance of doubt provision as proposed by members was inappropriate, as an express provision prohibiting "genetic testing" or "genetic personality profiling" might create ambiguity as to whether the use of DNA information for other purposes, such as medical research and archaeological research, were allowed.

18. The Chairman said that there should be an express provision prohibiting "genetic testing" or "genetic personality profiling". Mr Albert HO however considered that the addition of more provisions might not be desirable from a drafting point of view.

19. SALA said that the drafting of the proposed section 59G(2) of PFO had confined the access to, disclosure and use of information in the DNA database to a few purposes. Any access to or use of DNA information other than for the purposes specified in the proposed section would constitute an offence under the proposed section 59G(3) of PFO.

20. The Chairman expressed concern about whether the proposed section 59G(2)(i) of PFO could adequately restrict the use of information in the DNA database to forensic comparison using polymerase chain reaction technique. He also expressed concern that information in the DNA database might be used in the future for the analysis of a person's sexual orientation or anti-government inclination. SALA responded that the question would be whether it could be considered as forensic comparison. PAS(S)E said that forensic comparison was made when there were sufficient grounds for suspecting that a person had committed an offence.

21. The Chairman expressed concern that the DNA information of a sample taken under the proposed section 59A or 59C could be used for investigation of any offence rather than any serious arrestable offence. Senior Government Counsel responded that it was a policy decision as set out in the proposed section 59D(1)(a) of PFO that the DNA information of a sample taken under the proposed section 59A or 59C of PFO could be used for the investigation of any offence. The Chairman said that he was fundamentally opposed to the policy. Mr Albert HO shared the same view.

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22. SC(BSB) said that restricting the use of the DNA information to serious arrestable offences might prohibit DNA information relating to a case to be used for prosecution if the offence was subsequently found to be not a serious arrestable one. Mr CHENG Kai-nam said that it was very difficult to confine the use of the DNA information to the investigation of serious arrestable offences only. The Chairman said that evidence obtained under the Organized and Serious Crimes Ordinance (Cap. 455) could only be used in the prosecution of cases related to organized and serious crime. His view was confirmed by SALA.

23. The Chairman said that the term "any offence" in the proposed section 59C(1) of PFO should be amended as "serious arrestable offence". PAS(S)E responded that the proposed section should be read in conjunction with the proposed section 59C(2) of PFO, which required reasonable grounds for suspecting the involvement of a suspect in a serious arrestable offence. She added that a number of requirements in the Bill had to be met before a sample could be taken from a suspect. The Chairman reiterated that the Administration should consider amending "any offence" as "any serious arrestable offence".

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

24. Members agreed that further meetings be scheduled for 28 April 2000 at 12:45 pm and 8 May 2000 at 10:45 am to continue discussion with the Administration. Members noted that the deadline for the Bills Committee to conclude its deliberations and report to the House Committee was mid-June.

25. There being no other business, the meeting ended at 6:40 pm.

Legislative Council Secretariat  
7 July 2000