

立法會
Legislative Council

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the Administration and cleared with
the Chairman)

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

**Minutes of meeting
held on Tuesday, 30 May 2000 at 12:45 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Albert HO Chun-yan
Hon Emily LAU Wai-hing, JP

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

Mr Carmel CHOW
Principal Investigator
Independent Commission Against Corruption

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

Mr NG Wai-ming
Group Head (Drug Investigation)
Customs Drug Investigation Bureau
Customs and Excise Department

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.

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

Proposed section 10F - Limitations on use of samples and results of forensic analysis

2. Principal Assistant Secretary for Security E (PAS(S)E) informed members that the Administration would propose amendments to the proposed section 10F(1) and 10F(2) of the ICAC Ordinance to bring it in line with the relevant provisions in the proposed section 59G(2) of the Police Force Ordinance (Cap. 232) (PFO). Senior Government Counsel (SGC) said that the proposed Committee Stage amendments (CSAs) would involve the addition of the words "access to, disclose and" before the word "use". The Chairman requested the Administration to provide members with the draft CSAs, when available.

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Proposed section 10G - Disposal of samples and records

3. PAS(S)E informed members that technical amendments would be made to the proposed section 10G(4) of the ICAC Ordinance to provide that a sample would be destroyed only when there was no other charge against the person under section 10 of the ICAC Ordinance.

4. In response to the Chairman, PAS(S)E said that the term "record" in the proposed section 10G(1)(b) of the ICAC Ordinance had the same meaning of the same term in PFO, such as in the proposed section 59H(1)(b) of PFO.

5. The Chairman asked why "a record" in the proposed section 10G(1)(b) of the ICAC Ordinance was followed by the phrase "to the extent that it contains information about the sample and particulars that are identifiable by any person as particulars identifying that information with the person from whom the sample was taken". He asked whether the DNA information of a person would be completely destroyed or some information would be kept with all identifiable personal particulars deleted.

6. Senior Assistant Legal Adviser (SALA) said that the issue depended on whether, as a question of fact, DNA information contained identifiable personal particular. The provision as currently drafted would allow the keeping of DNA record in which the name and other personal particulars had been deleted. Senior Chemist (Biochemical Sciences B) (SC(BSB)) clarified that DNA information was a kind of identifiable personal particular. The proposed section 10G(1)(b) of the ICAC Ordinance covered the destruction of the complete DNA profile. Chief Superintendent of Police (Crime Support) (CSP(CS)) added that the proposed section should be read in two parts, i.e. "a record to the extent that it contains information about the sample" and "particulars that are identifiable by any person as particulars identifying that information with the person from whom the sample was taken". The first part referred to the results of the analysis of the sample, and the latter part referred to any trail leading to the identity of the person from whom the sample was taken. Thus, the DNA information of the person had to be destroyed. SGC added that the Chinese version of the proposed section 10G(1)(b) of the ICAC Ordinance was clearer in indicating that the DNA information of a person would have to be destroyed.

7. The Chairman asked how the 12-month period within which a sample was to be destroyed and the extended period in the proposed section 10G(1)(b)(i) of the ICAC Ordinance were determined. SGC responded that the 12-month period was determined after making reference to the relevant legislation in New Zealand. The provision for extended periods was proposed in view of operational needs. The provision as currently drafted had already provided for the destruction of a sample before the expiry of the 12-month period, if a charge was withdrawn, or if a person was discharged by the court or acquitted before the 12-month period. Principal Investigator of ICAC (PI/ICAC) added that the 12-month period was a reasonable one,

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as the investigation of most cases should have been completed within such a period. As the investigation of some cases involved a much longer period, extension of the expiry period was sometimes required. He added that the extension of the expiry period had to be approved by an officer of the rank of Assistant Director of the Commission Against Corruption or above.

Adm 8. The Chairman requested the Administration to review the drafting of the proposed section 10G(1) of the ICAC Ordinance to cater for the situation where approval had been obtained from the Operations Review Committee (ORC) of ICAC that investigation of a case should not be proceeded with or a suspect had been informed in writing that the investigation of the case concerned had been completed, the sample and DNA information derived therefrom should be destroyed.

Adm 9. At the Chairman's request, PI/ICAC agreed to report any extension of the expiry period to ORC.

Part II - Amendments to the Dangerous Drugs Ordinance (DDO)

10. The Chairman asked why Customs and Excise Service (C&ES) officers did not need to take non-intimate samples for forensic analysis for the purpose of investigation. He said that he was more inclined to provide C&ES officers with such a power than officers of the ICAC.

11. Group Head (Drug Investigation) of the Customs Drug Investigation Bureau (GH(DI)/CDIB) said that the proposed amendments to DDO were mainly related to the taking of urine samples for the investigation of drugs concealed in the body of a suspect. Where a suspect refused to give consent for the taking of a urine sample, DDO had already empowered a member of C&ES of the rank of Inspector or above to request a registered medical practitioner or a registered or enrolled nurse to examine the body cavities of that person. A C&ES officer would then bring the suspect to a hospital for examination. He added that the examination of a suspect in hospital did not require the consent of the suspect concerned.

Adm 12. The Chairman requested the Administration to consider the need of empowering C&ES officers to take non-intimate samples from suspects. He said that it was undesirable from an operational point of view for the taking of non-intimate samples to be carried out through the Police. Mr Albert HO said that ICAC should be provided with such a power as it was usually involved in the investigation of the Police. He considered that if C&ES officers were provided with such a power, officers of other law enforcement agencies might also have to be provided with this power. He suggested that the provision of such a power be considered only upon request by law enforcement agencies. Miss Emily LAU shared the same view.

Clause 2 - Sections added

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Proposed section 54AA - Taking of urine samples

13. Referring to the proposed section 54AA(6) of DDO, Miss Emily LAU asked whether it was mandatory for consent to be given from a suspect before judicial authorization could be sought. PAS(S)E confirmed that if consent for the taking of an urine sample was not given by a suspect, judicial authorization could not be sought. SGC added that under the Seventh Schedule to DDO, an application for judicial authorization could not be made without the consent of the suspect concerned.

14. Mr Albert HO asked whether consent would need to be sought from the parent or guardian of a person, who was mentally incapacitated, for the taking of a urine sample. PAS(S)E said that the Administration had considered the issue and decided that urine samples should not be taken from persons who were mentally incapacitated.

15. GH(DI)/CDIB said that the forensic analysis of a urine sample mainly involved an examination of whether drugs were concealed in the body of a person. If drugs were concealed inside the body of a person, a small amount of drug would usually permeate through the wrapping membrane into the body system of the person within a few hours after swallowing. As traces of drug could also be found in the body system of a drug addict, such forensic analysis results would have to be considered together with other indicators. A urine test usually took one to two minutes to complete. If the result of a urine test was positive, the suspect would be sent to hospital for further examination. It would be concealed drugs, rather than the result of the urine test, that would constitute the major evidence in legal proceedings.

16. Miss Emily LAU questioned why judicial authorization would be required in cases where consent had been given by a suspect for the taking of a urine sample. She asked about the existing practice for the taking of urine samples by C&ES officers. GH(DI)/CDIB said that under the existing practice, a urine sample would be taken with the consent of the suspect without any requirement for judicial authorization. The proposed amendments to DDO only sought to maintain consistency in the requirement in respect of judicial authorization on the taking of intimate samples.

17. Mr Albert HO expressed concern that the amendments to DDO would only result in suspects being detained for a longer time. He considered that the examination of the cavities of a person should require judicial authorization. SALA said that as the taking of an intimate sample under the PFO required judicial authorization, it was acceptable from a legal point of view that the taking of a urine sample, which was an intimate sample, was to be made with judicial authorization. He said that it was against the code of practice of a registered medical practitioner to examine the body of a patient without the patient's consent. Mr HO asked the Administration to reconsider the need of obtaining judicial authorization for taking urine samples from suspects who had already given consent.

18. In response to Miss Emily LAU's question about the number of urine samples

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tested in the past few years, GH(DI)/CDIB provided the following information -

<u>Year</u>	<u>Number of urine samples tested</u>	<u>Number of urine samples found to contain drugs</u>
1996	831	11
1997	1076	4
1998	584	0
1999	75	0

GH(DI)/CDIB informed members that the conducting of a urine test was based on intelligence and the general trend in drug trafficking. The statistics provided indicated a general decrease in drug trafficking activities through concealment in the body of a person.

19. In response to Miss Emily LAU's question about whether there were safeguards for suspects in respect of the taking of urine samples, GH(DI)/CDIB said that there was a unit in the Customs and Excise Department which handled complaints of suspects. However, the unit had not received complaints of this nature.

Other issues

20. SGC said that the provision in respect of the taking of hair samples was drafted with reference to the relevant legislation in UK. SALA drew members' attention that the United Kingdom (UK) Police and Criminal Justice Act 1984 enabled plucking of hair for samples. The plucking provision was pursuant to the recommendation of the UK Royal Commission on Criminal Justice. In view of this, members might wish to consider whether plucking should be expressly provided in the Bill. PAS(S)E responded that it was very difficult to list out all methods of taking a hair sample in the Bill.

21. Members noted that they had asked the Administration at a previous meeting to consider specifying in the Bill that the taking of saliva samples should be confined to unresolved crimes. PAS(S)E said that the Administration considered it inappropriate to restrict the use of DNA information for the investigation of unresolved crimes only. She assured members that saliva samples would be taken only when it was necessary to do so. The Chairman suggested that the Administration should address the issue in its internal guidelines.

Adm

II. Date of next meeting

22. Members agreed that two further meetings be scheduled for 8 June 2000 at 4:30 pm and 9 June 2000 at 10:45 am to continue discussion with the Administration.

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23. There being no other business, the meeting ended at 2:30 pm.

Legislative Council Secretariat
25 July 2000