

**A note for the 17th Bills Committee meeting on
Dangerous Drugs, ICAC and Police Force (Amendment) Bill 1999
to be held on 8 June 2000**

**Draft Committee Stage Amendments (I)
to be moved by the Administration**

Purpose

This paper sets out the draft Committee Stage Amendments (CSAs) to the Bill for Members' comments.

Details

2. On the basis of discussion at previous Bills Committee meetings, the Administration proposed to make a number of amendments to the Bill. The first batch of CSAs to be moved by the Administration are drafted and attached at Annex. Apart from the minor technical amendments, the gist of the proposed CSAs are summarised below –

- (a) setting out clearly that authorisation given for the taking of intimate sample will be given in writing, and that for non-intimate sample will be given in writing as far as practicable, and if given orally, should be confirmed in writing [Clauses 2(a)(i), 4(a)(i), 6(a)(i) and 6(b)(ii)];
- (b) revising the definition of serious arrestable offence to those offences with maximum imprisonment term of 7 years. The serious arrestable offences under the Police Force Ordinance also include a schedule of sexual and violent

- offences with maximum imprisonment term of 5 or 6 years [Clauses 2(a)(ii), 4(a)(ii)(C), and 5(a)(iii)];
- (c) expanding the prohibition of unauthorised use of sample and results of forensic analysis of the sample to cover unauthorised access, and disclosure [Clauses 2(b)(i) &(ii), 4(b) and 6(c)];
 - (d) specifying that samples will be destroyed after conclusion of all proceedings upon conviction of one or more offences, only if there is no other relevant charge against the person from whom the sample is taken [Clause 2(b)(iv), 4(c) and 6(e)(ii)];
 - (e) redefining hair sample by retaining only head hair as non-intimate sample, hair other than head hair is defined as intimate sample [Clause 4(a)(ii), 5(a)(i) & (ii)];
 - (f) excluding an impression of a private part of a person's body from non-intimate sample [Clause 4(a)(III) and 5(a)(ii)(C)]; and
 - (g) narrowing the specified use of the DNA database for the purpose of "administering the DNA database" [Clause 6(d)].

Advice Sought

3. Members are invited to comment on the draft CSAs at [Annex](#).

Security Bureau
7 June 2000

1st working draft: 14.2.2000

2nd working draft: 23.5.2000

3rd working draft: 31.5.2000

1st draft: 1.6.2000

1st (revised) draft: 1.6.2000

2nd draft: 5.6.2000

3rd draft: 7.6.2000

DANGEROUS DRUGS, INDEPENDENT COMMISSION
AGAINST CORRUPTION AND POLICE FORCE
(AMENDMENT) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

Clause

Amendment Proposed

2

- (a) In the proposed section 54AA -
- (i) by deleting subsection (3) and substituting -
“(3) An authorizing officer must give an authorization pursuant to subsection (2) in writing.”;
 - (ii) in subsection (8), in the definition of “serious arrestable offence”, by deleting “5” and substituting “7”.
- (b) In the proposed section 54AB -
- (i) in subsection (1), by deleting “No person shall” and substituting “Without prejudice to subsection (3), no person

- shall have access to or”;
- (ii) in subsection (2), by deleting “No person shall” and substituting “Without prejudice to subsection (3), no person shall have access to, disclose or”;
 - (iii) in subsection (4)(i)(A), by adding “or” at the end;
 - (iv) by deleting subsection (6) and substituting -
 - “(6) Without prejudice to the operation of subsections (4) and (5), if -
 - (a) a person from whom a urine sample was taken pursuant to section 54AA has been convicted of one or more offences in relation to dangerous drugs; and
 - (b) there is no other charge in relation to dangerous drugs against the person,

then the Commissioner of Police or the Commissioner of Customs and Excise, as the case may be, shall take reasonable steps to ensure that the sample which may be retained by him or on his behalf is destroyed as soon as practicable after the conclusion of all proceedings

(including any appeal) arising out of the conviction.”.

- 4 (a) In the proposed section 10E -
- (i) by deleting subsection (3) and substituting -
- “(3) An authorizing officer -
- (a) subject to paragraph (b), must give an authorization pursuant to subsection (2) in writing;
- (b) where it is impracticable to comply with paragraph (a), may give such authorization orally, in which case he must confirm it in writing as soon as practicable.”;
- (ii) in subsection (8) -
- (A) in the definition of “intimate sample” -
- (I) by deleting paragraph (a) and substituting -
- “(a) a sample of blood, semen or any other tissue fluid, urine or hair other than head hair;”;

(II) by deleting paragraph (c) and substituting -

“(c) a swab taken from a private part of a person’s body or from a person’s body orifice other than the mouth;”;

(B) in the definition of “non-intimate sample” -

(I) by deleting paragraph (a) and substituting -

“(a) a sample of head hair;”;

(II) by deleting paragraph (c) and substituting -

“(c) a swab taken from any part, other than a private part, of a person’s body or from the mouth but not any other body orifice;”;

(III) by deleting paragraph (e) and substituting -

“(e) an impression of any part of a person’s body other

than -

- (i) an impression of a private part; or
- (ii) the identifying particulars described in section 59(6) of the Police Force Ordinance (Cap. 232);”;

(C) in the definition of “serious arrestable offence”, by deleting “5” and substituting “7”.

(b) In the proposed section 10F -

- (i) in subsection (1), by deleting “No person shall” and substituting “Without prejudice to subsection (3), no person shall have access to or”;
- (ii) in subsection (2), by deleting “No person shall” and substituting “Without prejudice to subsection (3), no person shall have access to, disclose or”.

(c) By deleting the proposed section 10G(4) and substituting -

“(4) Without prejudice to the operation of subsections (1) and (2), if -

- (a) a person from whom a non-intimate sample was taken pursuant to section 10E has been convicted of one or more offences for which a person may be arrested under section 10; and
- (b) there is no other charge in relation to an offence which a person may be arrested under section 10 against the person,

then the Commissioner shall take reasonable steps to ensure that the sample which may be retained by him or on his behalf is destroyed as soon as practicable after the conclusion of all proceedings (including any appeal) arising out of the conviction.”.

5

- (a) In section 3 -
 - (i) in the proposed definition of “intimate sample” -
 - (A) by deleting paragraph (a) and substituting -
 - “(a) a sample of blood, semen or any other tissue fluid, urine or hair other than head hair;”;
 - (B) by deleting paragraph (c) and

substituting -

“(c) a swab taken from a private part of a person’s body or from a person’s body orifice other than the mouth;”;

(ii) in the proposed definition of “non-intimate sample” -

(A) by deleting paragraph (a) and substituting -

“(a) a sample of head hair;”;

(B) by deleting paragraph (c) and substituting -

“(c) a swab taken from any part, other than a private part, of a person’s body or from the mouth but not any other body orifice;”;

(C) by deleting paragraph (e) and substituting -

“(e) an impression of any part of a person’s body other than -

(i) an impression of a private part; or

(ii) the identifying particulars described in

section 59(6);”;

- (iii) by deleting the proposed definition of “serious arrestable offence” and substituting -
 ““serious arrestable offence”(嚴重的可逮捕罪行) means -

- (a) an offence for which a person may under or by virtue of any law be sentenced to imprisonment for a term not less than 7 years; or
 (b) any other offence specified in Schedule 1A.”.

New

By adding -

“5A. Declaration of office

Section 26 is amended by repealing “the Schedule” and substituting “Schedule 1”.”.

6

- (a) In the proposed section 59A -

- (i) by deleting subsection (3) and substituting -

“(3) An authorizing officer must give an authorization pursuant to subsection (2) in writing.”;

- (ii) in the Chinese text, in subsection (4)(e), by adding “或任何其他罪行” after “罪行” .

- (b) In the proposed section 59C -

- (i) in subsection (1)(a), by deleting “magistrate or”;
 - (ii) by deleting subsection (3) and substituting -
 - “(3) An authorizing officer -
 - (a) subject to paragraph (b), must give an authorization pursuant to subsection (2) in writing;
 - (b) where it is impracticable to comply with paragraph (a), may give such authorization orally, in which case he must confirm it in writing as soon as practicable.”.
- (c) In the proposed section 59D -
- (i) in subsection (1), by deleting “No person shall” and substituting “Without prejudice to subsection (3), no person shall have access to or”;
 - (ii) in subsection (2), by deleting “No person shall” and substituting “Without prejudice to subsection (3), no person shall have access to, disclose or”.
- (d) By deleting the proposed section 59G(2)(iv) and substituting -
- “(iv) administering the DNA database for the

purposes of or connected with any of the following -

- (A) paragraph (i), (ii) or (iii) or subsection (1);
- (B) section 59H.”.

(e) In the proposed section 59H -

(i) in subsection (1)(i)(A), by adding “or” at the end;

(ii) by deleting subsection (4) and substituting -

“(4) Without prejudice to the operation of subsections (1) and (2), if -

- (a) a person from whom an intimate sample or a non-intimate sample was taken pursuant to section 59A or 59C has been convicted of one or more offences; and
- (b) there is no other charge against the person,

then the Commissioner shall take reasonable steps to ensure that the sample which may be retained by him or on his behalf is destroyed as soon as practicable after the conclusion of all proceedings (including any appeal) arising out of the conviction.”.

(f) By deleting the proposed section 59I and substituting -

“59I. Amendment of Schedules 1A and 2

The Chief Executive in Council may by order published in the Gazette amend Schedule 1A or 2.”.

New

By adding -

“7A. Schedule added

The following is added -

“SCHEDULE 1A [ss. 3 & 59I]

OFFENCES SPECIFIED AS SERIOUS

ARRESTABLE OFFENCES

Offence	Descriptions*
Crimes	
Ordinance (Cap. 200)	
section 24	criminal intimidation
section 25	assault with intent to cause certain acts to be done or omitted
section 118F	homosexual buggery committed otherwise than in private
section 120	procurement by false pretences
section 124	intercourse with girl

under 16

section 132 procurement of girl under 21

*Note: The short description of offences in this
Schedule is for ease of reference only.”.”.