

**A note for the 19<sup>th</sup> Bills Committee meeting on  
Dangerous Drugs, ICAC and Police Force (Amendment) Bill 1999  
to be held on 13 June 2000**

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

**Purpose**

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

**Details**

2. The first batch of draft CSAs has been issued to the Bills Committee on 7 June 2000. On the basis of subsequent clause-by-clause vetting of the Bill by the Bills Committee, the Administration proposed to make further amendments to the Bill. A revised list of draft CSAs to be moved by the Administration is at Annex. Apart from the ones covered in the paper issued on 7 June 2000, the newly proposed CSAs are summarised below -

- (a) removing the reference to the rank of the officers to whom requests for access to information derived from the sample should be made [Clauses 2(a)(ii), 4(a)(ii), 6(a)(iii), 6(b)(iii) and 6(d)(i)];
- (b) setting out clearly that the person from whom the sample is taken is entitled to access to the information derived from the sample [Clauses 2(a)(iii), 4(a)(iii), 6(a)(iv), 6(b)(iv) and 6(d)(ii)];
- (c) setting out that the sample/DNA information shall not be used during the time between the decision of not to charge the person, or after the volunteer has withdrawn his authorisation, etc. and the time of the destruction of the sample/DNA information [Clauses 2(b)(iii), 4(b)(iii) and 6(c)(iii)];
- (d) providing that the results of forensic analysis can be used for the purpose of making it available to the person to whom it relates [Clauses 2(b)(ii), 4(b)(ii) and 6(c)(ii)]; and

- (e) providing that the person who volunteers his sample should be informed of a list of matters, including how the sample will be used, his right to request for access to the information, and his right to withdraw the authorisation [Clause 6(e)].

### **Advice Sought**

3. Members are invited to comment on the draft CSAs at Annex.

**Security Bureau**  
**12 June 2000**

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1<sup>st</sup> working draft: 14.2.2000

2<sup>nd</sup> working draft: 23.5.2000

3<sup>rd</sup> working draft: 31.5.2000

1<sup>st</sup> draft: 1.6.2000

1<sup>st</sup> (revised) draft: 1.6.2000

2<sup>nd</sup> draft: 5.6.2000

3<sup>rd</sup> draft: 7.6.2000

4<sup>th</sup> draft: 12.6.2000

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) by deleting subsection (4) (f) and substituting -
- “(f) that he may make a request to a police officer or a member of the Customs and Excise Service for access to the information derived from the

sample.”;

(iii) by adding the following after subsection (4) -

“(4A) The person from whom a urine sample was taken pursuant to subsection (1) is entitled to access to the information derived from the sample.”;

(iv) 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 (3A), no person shall have access to[, dispose of] or”;

(ii) by deleting subsection (2) and substituting -

“(2) Without prejudice to subsection (3A), no person shall have access to, disclose or use any information derived from the forensic analysis of a urine sample taken pursuant to section 54AA except for the purposes of -

(a) any proceedings for an offence in relation to dangerous drugs; or

(b) making the information available to the person to

whom the information relates.”;

(iii) by adding -

“(3A) Whether or not a urine sample taken pursuant to section 54AA or any information derived from the forensic analysis of the sample has been destroyed under subsection (4), no person shall use the sample or information in any proceedings for an offence in relation to dangerous drugs after -

(a) it is decided that a person from whom the sample was taken shall not be charged with any offence in relation to dangerous drugs;

(b) if the person has been charged with one or more such offences -

(i) the charge or all the charges, as the case may be, is or are withdrawn;

(ii) the person is discharged by a court before

conviction of the offence or all the offences, as the case may be; or

(iii) the person is acquitted of the offence or all the offences, as the case may be, at trial or on appeal,

whichever occurs first.”;

(iv) in subsection (4) (i) (A), by adding “or” at the end;

(v) 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) by deleting subsection (4) (g) and

substituting -

“(g) that he may make a request to an officer for access to the information derived from the analysis of the sample; and”;

(ii) by adding the following after subsection (4) -

“(4A) The person from whom a non-intimate sample was taken pursuant to subsection (1) is entitled to access to the information derived from the analysis of the sample.”;

(iii) 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 (3A),  
no person shall have access to[, dispose of ] or”;

(ii) by deleting subsection (2) and substituting -

“(2) Without prejudice to subsection (3A), no  
person shall have access to, disclose or use the  
results of forensic analysis of a non-intimate sample  
taken pursuant to section 10E except -

(a) for the purposes of -

(i) forensic comparison and  
interpretation in the course of  
investigation of any offence for  
which a person may be arrested  
under section 10;

(ii) any proceedings for such an offence; or

(iii) making the results available to the person to whom the results relate; or

(b) for the purposes of section 59G(1) and (2) of the Police Force Ordinance (Cap.232) where the results are of forensic DNA analysis.”.

(iii) by adding -

“(3A) Whether or not a nonintimate sample taken pursuant to section 10E or the results of forensic analysis of the sample has been destroyed under section 10G, no person shall use the sample or results in any proceedings for an offence for which a person may be arrested under section 10 after -

(a) it is decided that a person from whom the sample was taken shall not be charged with any offence for which a person may be arrested under section 10;

(b) if the person has been charged

with one or more such offences -

(i) the charge or all the charges, as the case may be, is or are withdrawn;

(ii) the person is discharged by a court before conviction of the offence or all the offences, as the case may be; or

(iii) the person is acquitted of the offence or all the offences, as the case may be, at trial or on appeal,

whichever occurs first.”;

(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”.”.

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(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” ;

(iii) by deleting subsection (4)(f) and

substituting -

“(f) that he may make a request to a police officer for access to the information derived from the analysis of the sample; and”;

(iv) by adding the following after subsection (4) -

“(4A) The person from whom an intimate sample was taken pursuant to subsection (1) is entitled to access to the information derived from the analysis of the sample.”;

(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.”;

(iii) by deleting subsection (4)(g) and substituting -  
“(g) that he may make a request to a police officer for access to the information derived from the analysis of the sample; and”;

(iv) by adding the following after subsection (4) -  
“(4A) The person from whom a non-intimate sample was taken pursuant to subsection (1) is entitled to access to the information derived from the analysis of the sample.”;

(c) In the proposed section 59D -

(i) in subsection (1), by deleting “No person shall” and substituting “Without prejudice to subsection (4), no person shall have access to[, dispose of ]or”;

(ii) by deleting subsection (2) and substituting -  
“(2) Without prejudice to subsection (4), no person shall have access to, disclose or use the results of forensic analysis of an intimate sample or a non-intimate sample taken pursuant to section 59A or 59C except -

(a) for the purposes of -

- (i) forensic comparison and interpretation in the course of investigation of any offence;
- (ii) any proceedings for such an offence; or
- (iii) making the results available to the person to whom the results relate; or

(b) for the purposes of section 59G(1) and (2) where the results are of forensic DNA analysis.”.

(iii) by adding -

“(4) Whether or not an intimate or a non-intimate sample taken pursuant to section 59A or 59C or the results of forensic analysis of the sample has been destroyed under section 59H, no person shall use the sample or results in any proceedings after -

- (a) it is decided that a person from whom the sample was taken shall not be charged with any offence;

(b) if the person has been charged

with one or more such offences -

(i) the charge or all the charges, as the case may be, is or are withdrawn;

(ii) the person is discharged by a court before conviction of the offence or all the offences, as the case may be; or

(iii) the person is acquitted of the offence or all the offences, as the case may be, at trial or on appeal,

whichever occurs first.

(5) Whether or not a non-intimate sample taken pursuant to section 59F or DNA information derived from the sample

has been destroyed under section 59H(7), no person shall use the sample or information in any proceedings after the Commissioner receives a notice served under section 59F(5).”; “.

(d) In the proposed section 59E -

(i) by deleting subsection (2)(d) and substituting -

“(d) that the person may make a request to a police officer for access to the DNA information derived from the sample.”;

(ii) by adding -

“(5) The person from whom a non-intimate sample of a swab from the mouth was taken pursuant to subsection (1) is entitled to access to the DNA information derived from the sample.”;

(e) In the proposed section 59F, by adding the following after subsection (3)

-

“(3A) Where an authorization has been given pursuant to subsection (3), a police officer shall, before the taking of a non-intimate sample, inform the person from whom the sample is to be

taken -

- (a) the DNA information derived from the sample may be stored in the DNA database maintained under section 59G(1) and may be used for the purposes specified in subsection (2) of that section;
- (b) that he may make a request to a police officer for access to the information; and
- (c) that he may withdraw his authorization given for the purposes referred to in subsection (1)(b) and (c).”.

(f) 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.”.

(g) 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.”.

(h) 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.”.”.