

**立法會**  
**Legislative Council**

LC Paper No. CB(2) 2512/99-00  
(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 Friday, 7 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

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)

**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 Nos. CB(2) 1380/99-00(02) and CB(2) 1633/99-00(01))

Assessment on the scope of serious arrestable offence

At the invitation of the Chairman, Principal Assistant Secretary for Security E (PAS(S)E) briefed members on the Administration's assessment on the scope of serious arrestable offence.

2. Referring to paragraph 9(a) of the Administration's paper, Mr Albert HO asked whether a suspect would be informed of the reasonable grounds for suspecting his involvement in a serious arrestable offence and whether such reasonable grounds would be recorded in writing. He considered that a suspect should be informed of such reasonable grounds.

3. Chief Superintendent of Police (Crime Support) (CSP(CS)) responded that the reasonable grounds would be recorded in the investigation files of the Police. Providing too much details about the reasons for the suspect's involvement in a serious arrestable offence would be inappropriate as the suspect might interfere with the witness or evidence concerned. He added that it would be inappropriate to set out in legislation what constituted reasonable grounds. It might lead to debate about whether the reasons given constituted reasonable grounds for suspecting the person's involvement in the offence. He considered it more appropriate to inform a suspect that a senior police officer of the rank of superintendent or above had reasonable grounds for suspecting his involvement in a serious arrestable offence.

4. Mr Albert HO considered that a suspect should at least be informed of the serious arrestable offence in which he was suspected to be involved. The reasons for suspecting the person's involvement should be recorded in writing and submitted to the police superintendent concerned. CSP(CS) responded that administrative guidelines would be issued to require that the reasons for suspecting a person's involvement in a serious arrestable offence be recorded and contained in the Police's investigation file.

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5. The Chairman expressed concern that about 74.1% of persons arrested in the past six-year period were involved in serious arrestable offence. He considered that the scope of serious arrestable offence was too wide and should be narrowed. He added that a number of offences as set out in Annex I to the Administration's paper, such as unlawful assembly, were only very minor offences. Mr Albert HO shared the same view. He said that the nature of each kind of offence should be examined to see whether it should be classified as serious arrestable offence. The threshold of an imprisonment term of not less than five years should be raised. The Chairman said that even if the threshold was raised from not less than five years' imprisonment to not less than seven years' imprisonment, some offences that were of less serious nature, such as offences against the Bankruptcy Ordinance, would still be included in the list. It might be necessary to increase the threshold to an imprisonment term of not less than 10 years. He added that the DNA information of persons who were convicted but not imprisoned should be destroyed.

6. PAS(S)E responded that the Administration considered that a threshold of an imprisonment term of not less than five years was a reasonable one. The examination of the nature of each kind of offence to determine whether it should be included in the list might result in a lack of consistency. CSP(CS) added that there were many repeated offenders in Hong Kong. The key feature of the Bill was to introduce a unique identifiable particular in the criminal record to enhance the detection of crime. The DNA information would not have any impact on the future of a person from whom a sample was taken if he no longer committed an offence. The Chairman said that it would always facilitate the work of the Police if more personal information was maintained by the Police. However, the use of force in the taking of a buccal swab could be very annoying.

7. Senior Assistant Legal Adviser (SALA) said that should members wish to list specific offences as serious arrestable offences, an example would be the Police and Criminal Evidence Act 1984 of the United Kingdom (UK), which set out in a schedule a list of serious arrestable offences and provided six criteria for determining whether an offence was a serious arrestable offence. CSP(CS) said that the Police and Criminal Evidence Act 1984 of UK was recently amended to allow the taking of DNA information from a person convicted of any recordable offence. Such information had been found to be useful in the detection of crime. He added that overseas experience indicated that there was a close relationship between persons convicted of burglary and sexual offences.

8. The Chairman said that each offence in Annex I to the Administration's paper should be examined to determine whether it should be classified as serious arrestable offence. He added that the Administration's paper on overseas legislation indicated that DNA information was only used in some places for the investigation of very serious offences. Under such circumstances, it would be more appropriate to set out a list of serious offences and the circumstances under which samples would be taken from a person for DNA analysis. He said that he was fundamentally objected to the

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inclusion of unlawful assembly and unlawful public meeting and procession as serious arrestable offences.

9. Mr CHENG Kai-nam said that it would be very difficult to assess the seriousness of each type of offence. He considered that consideration might be given to the actual sentence of a convicted person when storing the DNA information of the person in the DNA database.

10. CSP(CS) said that while DNA profile could be taken from a person convicted of any recordable offence in UK, the requirements for the taking of a sample in Hong Kong, as set out in paragraph 9 of the Administration's paper, were more stringent. The threshold of an imprisonment term of not less than five years was therefore a reasonable one.

11. The Chairman reiterated that offences such as unlawful public meeting and procession should be deleted from the list of serious arrestable offences. The DNA information of a person should be stored in the DNA database only if he was subsequently convicted of the offence and sentenced to imprisonment term. Mr Albert HO said that it would be more appropriate to increase the threshold from an imprisonment term of five years to seven years. Mr CHENG Kai-nam suggested that consideration might be given to revising the definition of serious arrestable offence as offences where a person could be sentenced to an imprisonment term of not less than seven years or specified sexual and violent offences with a maximum imprisonment term of less than seven years. Members requested the Administration to look into the suggestion.

Adm

12. Mr Albert HO asked whether the reasons which tended to confirm or disprove a suspect's involvement in a serious arrestable offence could be set out in the legislation. CSP(CS) responded that it would be more appropriate to set out the reasons in the internal administrative guidelines of the Police.

13. Referring to proposed section 59C(3) of the Police Force Ordinance (Cap. 232), Mr Albert HO requested the Administration to consider spelling out in the Bill that a suspect should be informed in writing the reasons for the authorization given by an authorizing officer.

Adm

Comparison between the Bill and overseas legislation

14. At the invitation of the Chairman, Assistant Secretary for Security E took members through the Administration's paper on overseas legislation in respect of the taking of intimate and non-intimate samples.

15. Members noted that the Criminal Investigations (Blood Samples) Act 1995 of New Zealand was applicable to the taking of blood samples only. Mr Albert HO asked whether blood samples were adequate for DNA analysis. He also asked

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whether hair samples would be needed if blood samples had been taken. Senior Chemist (Biochemical Sciences B) (SC(BSB)) responded that sufficient information for DNA analysis could usually be derived from a blood sample. Hair samples would not be needed if the taking of sample was for DNA analysis only. PAS(S)E said that the taking of a sample of blood was relatively more intrusive.

16. The Chairman asked whether a superintendent of the police in UK was equivalent to a chief superintendent of the Police in Hong Kong. CSP(CS) responded that they were broadly comparable. It was however difficult to make a direct comparison as there were geographical differences.

17. In response to the Chairman, PAS(S)E said that the issue of volunteering of samples would be dealt with in a separate paper.

18. In response to the Chairman's question about the designated offences in Canada as referred to in page 7 of the Annex to the Administration's paper, SALA explained that a list of designated offences was set out in the relevant legislation of Canada.

Adm 19. The Chairman noted that the tampering of samples would constitute an offence in New Zealand. He asked the Administration to consider introducing similar provisions in the Bill.

Adm 20. In response to the Chairman's question on why there was no information on the United States (US) in the Administration's paper, PAS(S)E said that legislation in US usually differed from one State to another. The Chairman requested the Administration to provide information on legislation in respect of the taking of samples in some typical States of US.

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

21. Members agreed that a further meeting be scheduled for 17 April 2000 at 4:30 pm to continue discussion with the Administration. The Chairman said that the Bills Committee might commence the clause-by-clause examination of the Bill at the next meeting.

22. There being no other business, the meeting ended at 6:35 pm.

Legislative Council Secretariat

7 July 2000