

**Bills Committee on
Evidence (Miscellaneous Amendments) Bill 2002**

**Response by the Administration to suggestions made by members at the
meeting on 14 March 2003 on Part I of the Bill**

During the meeting held on 14 March 2003, members requested the Administration to provide a draft Committee Stage amendment to extend the scope of the compellable offences under the new section 57(3) of the Criminal Procedure Ordinance to cover also a child of the family who was mentally incapacitated for the Bills Committee's consideration.

2. A draft Committee Stage amendment to amend clause 4 of the Bill is attached.

3. The draft Committee Stage amendment also seeks to clarify two aspects of the proposed section 57 of the Criminal Procedure Ordinance. The first aspect relates to the offences in respect of which the spouse of an accused may be compelled to give evidence for the prosecution or on behalf of a co-accused under the proposed section 57(3). It is clear from the draft Committee Stage amendment that the spouse may be compellable to give evidence for the prosecution only in respect of a specified offence with which the accused or a co-accused is charged. The spouse may also be compellable to give evidence on behalf of a co-accused only in respect of a specified offence with which the co-accused is charged. Specified offences are those compellable offences under the proposed section 57(3) in the Bill and are now set out in the proposed section 57(3A). This proposed amendment is suggested in order to make clear that the spouse will not be compellable to give evidence for the prosecution or on behalf of a co-accused in respect of a non-compellable offence in cases where the accused or a co-accused is charged with both compellable and non-compellable offences.

4. The second aspect relates to the proposed section 57(4). The purpose of the proposed section 57(4) is to exempt the spouse of the accused from being competent for the prosecution under the proposed section 57(1), and from being compellable for giving evidence for the accused under section 57(2) and for the prosecution or the co-accused under section 57(3) if the spouse is

jointly charged for the same offence with the accused and standing trial together with the accused. The wording of the proposed section 57(4) may give rise to an interpretation that the spouse of the accused charged with a different offence from that with which the accused is charged but standing trial together with the accused is not covered.

5. The rationale of the proposal section 57(4) is that the spouse, being an accused person himself or herself, should not be deprived of the usual protection accorded to an accused person simply because he or she is the spouse of the accused. The revised section 57(4) in the draft Committee Stage amendment will make it clear that the spouse of the accused who is standing trial together with the accused is covered, regardless of whether the spouse is jointly charged for the same offence with the accused.

Department of Justice
April 2003

#65219

EVIDENCE (MISCELLANEOUS AMENDMENTS) BILL 2002

COMMITTEE STAGE

Amendments to be moved by the [_____]

Clause

Amendment Proposed

4

In the proposed section 57 -

(a) in subsection (3), by deleting everything after
"compellable" where it first appears and
substituting -

" -

(a) to give evidence for the
prosecution but only in
respect of any specified
offence with which the
accused or a co-accused is
charged; or

(b) to give evidence on behalf of
a co-accused but only in

respect of any specified
offence with which the co-
accused is charged.";

(b) by adding -

"(3A) An offence is a specified offence
for the purposes of subsection (3) if -

(a) it involves an assault on, or
an injury or threat of injury
to, the husband or wife of the
accused;

(b) it involves causing the
death of, an assault on, or
an injury or threat of injury
to, a child of the family who
at the material time was
under the age of 16 years or
was a mentally incapacitated
person;

(c) it is a sexual offence
alleged to have been

committed in respect of a
child of the family who at the
material time was under the
age of 16 years or was a
mentally incapacitated
person; or

(d) it consists of attempting or
conspiring to commit, or of
aiding, abetting,
counselling, procuring or
inciting the commission of,
an offence falling within
paragraph (a), (b) or (c).";

(c) in subsection (4), by deleting everything before
"neither" and substituting -

"(4) Subject to subsection (4A), where
an accused and the husband or wife of the
accused are standing trial together,";

(d) by adding -

"(4A) Subsection (4) shall not apply to

either spouse who is no longer liable to be convicted of any offence in the trial (whether as a result of pleading guilty or for any other reason).";

(e) in subsection (10), by adding -

" "mentally incapacitated person" (精神上無行為能力的人) means a mentally disordered person within the meaning of section 2(1) of the Mental Health Ordinance (Cap. 136) or a mentally handicapped person within the meaning of that section;".