

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

**Response by the Administration to issues raised by
Members at the meeting on 25 April 2003
on Part II of the Bill**

This paper is a response to the issues raised at the Bills Committee meeting held on 25 April 2003, namely :

Part II

Proposed Section 79I of the Criminal Procedure Ordinance

- (a) **Introducing additional criteria in proposed section 79I(2) –**
- (i) **a provision similar to Rule 23B(10) of the UK Crown Court Rules; and**

Rule 23B(10) reads “the Crown Court dealing with an application under paragraph (1) may specify that as a condition of the grant of leave the witness should give the evidence in the presence of a specified person who is able and willing to answer under oath or affirmation any questions the trial judge may put as to the circumstances in which the evidence is given, including questions about any persons who are present when the evidence is given and any matters which may affect the giving of the evidence.”

A similar provision will be included in the Rules to be made under the new section 79(L) of the Criminal Procedure Ordinance.

- (ii) **a provision that the place outside Hong Kong from which a person was to give evidence via live television should have the same “sanctity” as a courtroom in Hong Kong.**

Although similar requirements are not present in jurisdictions such as

the UK, New South Wales and Victoria, it is agreed that the place should have the "sanctity" of a courtroom. However, the prerequisites for the place outside Hong Kong from which the person is to give evidence must remain flexible. Considering that a courtroom may not always be available, other proper venues such as hotel conference facilities or arbitration centre facilities may be used, depending in each case on the practice of the requested jurisdiction, the needs and requirements of the witness, and the technological capabilities of any given room to transmit live television link evidence. The proposed section 79(I)2 sets out criteria which include requirements that the place must have a live television link available, and that measures can be taken to ensure that the witness is not subject to coercion.

More importantly, the "interests of justice" criterion will also give the court a basis to refuse the application, if it is not satisfied that the proposed place for the taking of evidence is appropriate. For these reasons, the Administration is of the view the proposed section 79(I)2 is adequate enough to cover "sanctity" of a courtroom and does not propose to revise it.

(b) Draft CSAs to proposed section 79I(2) to specify the additional criteria of which the court must be satisfied before giving permission under proposed section 79I(1).

To address the concerns raised by members, the Administration agrees to add the following criteria to the proposed section 79I(2) –

“(d) measures to ensure that the person will be giving evidence without coercion cannot reasonably be taken;
or

(e) it is not in the interests of justice to do so.”.

(please see draft CSA)

Department of Justice

May 2003

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