

立法會
Legislative Council

LC Paper No. CB(2) 2625/99-00
(These minutes have been seen by
the Administration and cleared with
the Chairman)

Ref : CB2/BC/25/98

**Bills Committee on
Witness Protection Bill**

**Minutes of meeting
held on Monday, 3 April 2000 at 11:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon David CHU Yu-lin
Hon Mrs Sophie LEUNG LAU Yau-fun, JP
Hon Gary CHENG Kai-nam, JP
Hon Andrew WONG Wang-fat, JP

Public Officers attending : Miss Eliza YAU
Principal Assistant Secretary for Security E

Ms Jessie WONG
Assistant Secretary for Security E

Mr CHAN Wai-ki
Chief Superintendent of Police (Crime)
Hong Kong Police Force

Mr W B MADDAFORD
Senior Assistant Law Draftsman

Mr PEH Yun-lu
Principal Immigration Officer (Registration)
Immigration Department

Mr WONG Sai-chiu
Assistant Director of Operations
Independent Commission Against Corruption (ICAC)

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mr Raymond LAM
Senior Assistant Secretary (2)5

Action

I. Meeting with the Administration

(LC Paper Nos. CB(2)872/99-00(02)-(03), CB(2)1291/99-00(01) and CB(2)1552/99-00(01))

Administration's response to issues raised at the meeting on 17 March 2000

At the Chairman's invitation, Principal Assistant Secretary for Security E (PAS(S)E) briefed members on the paper setting out the Administration's response to issues raised at the meeting held on 17 March 2000.

Clause 2 - the definition of "witness"

2. Members accepted the Administration's explanation for retention of paragraph (e) in the definition of witness in clause 2.

Clause 4(3) - factors for consideration for inclusion in the witness protection programme (WPP)

3. Members accepted the revised drafting of clause 4(3) as proposed by the Administration.

4. Noting that a witness might be required under the memorandum of understanding (MOU) to sever all his existing social ties in the community, Mr CHENG Kai-nam pointed out that some circumstantial factors could prevent a witness from being able to sever all his social ties. To explain his point, Mr CHENG gave an example that a witness who was the only person to look after his single parent could not possibly leave his father or mother. Mr CHENG asked whether such background of the witness would also be taken into consideration in determining the witness' suitability for inclusion in WPP. The Chairman asked whether the consideration of a witness' existing social ties should be added to clause 4(3). PAS(S)E agreed to advise in writing.

Adm

Adm

Action

5. Mr Andrew WONG considered that the meaning of "witness' relationship to other witnesses" in clause 4(3)(g) was unclear. Assistant Director of Operations of Independent Commission Against Corruption (ADO/ICAC) of ICAC responded that clause 4(3)(g) was intended to deal with the situation where a witness who was being assessed for inclusion in WPP was related to other witnesses who were also being assessed for the same purpose. He explained that for example, a few family members were involved in a case and they were being considered for inclusion in WPP. A relative of the family might be as well involved in the same case as a witness and was also being considered for inclusion in WPP. The approving authority might consider the nature of relationship among the witnesses before deciding whether or not to include a witness in WPP. He pointed out that "other witnesses" in clause 4(3)(g) referred to witnesses in paragraph (e) of the definition of witness in clause 2.

6. Mr Andrew WONG commented that if it was intended that "other witnesses" in clause 4(3)(g) referred specifically to witnesses in paragraph (e) of the definition of witness in clause 2, it might be more appropriate to replace "other witnesses" in clause 4(3)(g) with "other persons". He said that one would be confused by the words "other witnesses" to think that they referred possibly to all those types of witnesses as defined in clause 2. The Chairman requested the Administration to consider this point.

Adm

Clause 5 - medical, psychological or psychiatric test/examinations

7. PAS(S)E said that the existing drafting of clause 5(2), which stipulated that the approving authority might require a witness to undergo medical tests or examinations for the purpose of assessing his suitability for inclusion in WPP, was not in line with the policy intention. She clarified that the purpose of asking a witness to undergo medical tests or examinations was only to allow for appropriate measures to be taken to reduce the risk of death or medical complication while under protection. The results of these tests or examinations were not for the purpose of assessing whether or not the witness should be included in WPP. She agreed to amend the clause to make clear the policy intent.

Adm

8. In response to members, PAS(S)E also agreed to review the drafting of clauses 4(3), 5 and 6 in relation to the medical, psychological or psychiatric tests or examinations as these tests or examinations might occur concurrently when considering the inclusion of a witness in WPP.

Adm

Clause 8(3) - change of identity

9. PAS(S)E said that clause 8 enabled the Commissioner of Police (CP) and the Commissioner of ICAC (C,ICAC) to exercise discretion as to what he should include in support of his recommendation for establishing a new identity for a participant of WPP. In exercising such discretion, CP or C,ICAC could make reference to the factors set out in clauses 4(3) and 5 or other criteria that he considered relevant.

Action

Adm

10. Members pointed out that clause 8(3) as presently drafted seemed to refer to the establishment of a new identity for a witness after he had been included in WPP for some time. In practice, the decision to include a witness in WPP and to establish a new identity for the witness might be dealt with concurrently. Members considered that the drafting of clause 8(3) might be unclear and requested the Administration to look into this point.

11. Referring to clause 8(3), the Chairman requested the Administration to provide information on the terms of the new MOU or the draft copy of the new MOU to be prepared for participants who would be given new identities. Mr Andrew WONG suggested that the Administration should consider if it was necessary to replace the word "new" with "separate" before "memorandum of understanding" in the same clause.

Adm

12. PAS(S)E informed members that there was a typographical error in clause 8(6) where "this Ordinance" should be replaced by "the Ordinance" or "the said Ordinance". The Administration would propose the relevant Committee Stage amendments.

Clause 8(4) - particulars of new identity

13. PAS(S)E advised that clause 8(4)(a) enabled the approving authority to provide all necessary particulars to the relevant public officer for creating a new identity for a participant. These particulars could include "specially created" names for the participant's parents as shown in his new birth certificate. In other words, the names of the participant's parents shown in his new birth certificates were "specially created" and existed on paper only. New identity would only be created for the participant's biological parents if such a need arose.

14. The Chairman asked if provisions contained in the Bill were sufficient to enable a witness with a new identity to inherit estate that he was entitled to under his former identity. Assistant Secretary for Security E pointed out that clause 9(1) provided that, if a participant had outstanding legal rights or obligations, the approving authority was required to take such steps as were reasonably practicable to ensure that those rights or obligations were dealt with according to law. PAS(S)E agreed to explain this point in detail when samples of existing MOU were discussed.

Outstanding debts of a witness

15. ADO/ICAC advised that the spirit of MOU was to make it very clear to the witness before he was given a new identity that any outstanding financial liabilities of the witness must be settled by himself. However, if the witness proved to have genuine needs for assistance, it might be provided by the Administration by way of a financial support arrangement. PAS(S)E assured members that in any case, a person would not be barred from WPP solely because of his inability to repay his debts.

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Annex C to the Legislative Council Brief on the need for witnesses concerned to sever their existing social ties in the community

16. Members noted the Administration's explanation that the requirement for a witness to sever all his existing social ties in the community was not absolute in practice. It would be a matter of degree judged on the particular circumstances of the case.

17. Members had no further questions on the Administration's paper.

18. The Chairman informed members that the Administration had requested that the discussion on existing MOU be conducted in-camera. With the agreement of members, the Chairman directed that the meeting proceeded to a closed-door session.

II. Samples of MOU currently used by the Police and ICAC
(Closed-door session)

This part of the minutes is CONFIDENTIAL

III. Date of next meeting

19. Members agreed that the next meeting would be held from 4 pm to 6 pm on 14 April 2000. Members also agreed that samples of MOU be discussed in-camera during the first part of the next meeting.

20. There being no other business, the meeting ended at 1:05 pm.

Legislative Council Secretariat
28 August 2000