

立法會
Legislative Council

LC Paper No. CB(2) 153/00-01

(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 Friday, 5 May 2000 at 10:45 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 : Ms Jessie WONG
Principal Assistant Secretary for Security E (Acting)

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

Mr W B MADDAFORD
Senior Assistant Law Draftsman

Ms Stella CHAN
Government Counsel

Mr CHOY Tak-po
Assistant Director of Immigration (Personal Documentation)
(Acting)

Mr SO Ping-hung, Daniel
Assistant Director of Operations (Acting)
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

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I. Meeting with the Administration

(LC Paper Nos. CB(2)872/99-00(02) and (03), CB(2) 1291/99-00(01) and CB(2) 1865/99-00(01))

Administration's response to issues raised at the last meeting on 14 April 2000

At the Chairman's invitation, Principal Assistant Secretary for Security E (Acting) (PAS(S)E(Atg)) briefed members on the paper setting out the Administration's response to issues raised at the meeting held on 14 April 2000.

Clause 4(3)(g) - relationship of the witness being assessed for inclusion in the witness protection programme (WPP) with other witnesses

2. In response to Mr Andrew WONG's suggestion raised at the last meeting on revising clause 4(3)(g), PAS(S)E(Atg) said that the Administration had reservations about the proposal because the suggested wording would unnecessarily expand the scope of the provision. She explained that clause 4(3)(g) was intended to deal with the situation where a witness being assessed for inclusion in the WPP was related to other witnesses, who were either involved in the same case or other cases and were being assessed for inclusion in the programme. The Administration was of the view that the wording suggested by Mr Andrew WONG would expand the scope of the provision to cover all witnesses, including those who were not being assessed for inclusion in the WPP.

Clause 8(3) - the new memorandum of understanding (MOU) and the Chinese text "to establish"

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3. PAS(S)E(Atg) informed members that the Administration agreed to revise the Bill to provide for the signing of the new MOU for change of identity by a parent or guardian of a participant who was below the age of 18 or who lacked legal capacity. Adm The Administration would also revise the Bill to empower the approving authority to require such a participant to re-sign a MOU when or after he reached 18 years of age or had the legal capacity, if he was still in the WPP then. Details of the proposed amendments to be made were set out in paragraphs 4(a) to (c) in the Administration's paper.

4. PAS(S)E(Atg) also informed members that the Administration proposed to revise the Chinese text of "to establish" in all provisions of the Bill from "另立" to "定立" where the establishment of a new identity was mentioned. Adm

Clause 9(2) - rights and obligations of a participant

5. In response to members' concern expressed at the last meeting, PAS(S)E(Atg) said that the Administration agreed that in some cases, the approving authority might need to allow a participant to avoid certain obligations or restrictions for the sake of confidentiality of his identity and his safety. The Administration would revise the drafting of clause 9(2) to provide the approving authority with the required flexibility in dealing with such cases. Adm

Appropriateness of the term "former identity"

6. Pursuant to members' request, PAS(S)E (Atg) said that the Administration proposed to replace the term "former identity" in clauses 9, 10 and 12 with "original identity" which better reflected the actual meaning. Adm

MOU for change of identity

7. Members noted the brief description of the content of the new MOU signed under clause 8(3) in paragraph 10 of the Administration's paper. The Chairman requested that the Panel on Security be briefed on the details of the MOU for change of identity in the next legislative session. Adm

Clause-by-clause examination of the Bill

Clause 11(2) - Termination of protection

8. The Chairman expressed concern about the appropriateness of using the word "intention" in clause 11(2) as it did not tie in with the word "decision" in clause 13. Assistant Legal Adviser 4 (ALA4) shared the Chairman's views. He suggested that the word "intention" in clause 11(2) be replaced with "decision". The Administration agreed to consider the suggestion. Adm

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9. ALA4 pointed out that there were no explicit provisions in the Bill to deal with legal rights, obligations and restrictions incurred by a participant who had assumed a new identity and were still extant after his original identity was restored. He said that he had written to the Administration to seek clarification on this point and the Administration had replied that the principle adopted in clause 9 applied in dealing with rights and obligations arising during the period of protection. The Chairman suggested that provisions be added to the Bill to state clearly that the principle adopted in clause 9 would apply in dealing with the rights and obligations incurred by a former participant upon termination of protection. PAS(S)E(Atg) agreed to consider the suggestion and revise the Bill where appropriate.

Adm

Clause 13 - Request for review

10. In response to the Chairman's question, PAS(S)E(Atg) said that there were no provisions in the Bill requiring the approving authority to inform a witness in writing of the approving authority's decision not to include him in the WPP. Chief Superintendent of Police (Crime) (CSP(C)) pointed out that the WPP was not a programme open for application. He explained that in practical situations, very often it was the Police who initiated to offer protection to a witness after assessing the level of threat faced by the witness rather than the witness asking for inclusion in the WPP. Therefore, the need to inform a witness that he had been rejected for inclusion in the WPP seldom arose. The Chairman took the view that if a witness was not informed of the approving authority's decision not to include him in the WPP, the witness would not be able to seek a review of the decision. He considered that the approving authority should inform a witness in writing of the approving authority's decision not to include him in the WPP, particularly when the request for inclusion was from the witness. PAS(S)E(Atg) agreed to look into the issue.

Adm

11. ALA4 pointed out that there were no provisions in the Bill to enable a witness who was included in the WPP but was aggrieved by a decision of the approving authority not to establish a new identity for him to seek a review of the decision. In response, PAS(S)E(Atg) said that under the Bill, a person could request a review if he was aggrieved by a decision of the approving authority not to include him; or to terminate his protection as a participant in the WPP. The Administration was of the view that the approving authority's decision as to whether or not a new identity should be established for a participant should not be subject to review. She explained that a change of a participant's identity should be considered based on the recommendations of the enforcement authorities which would conduct an objective and professional assessment of the level of threat faced by the participant. In view of the complexities involved in effecting a change of identity, the Administration envisaged that the change of identity would only be considered as the last resort. She pointed out that as a participant might ask for a change of his identity for purposes such as avoidance of certain liabilities, the Administration must be very careful in making the decision and it was not appropriate to change the identity of a participant at his request.

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12. In response to Mr Andrew WONG, CSP(C) said that at present, the terms and conditions of a MOU were not subject to review by the Police Witness Protection Appeal Board. He explained that if such a review mechanism covering the terms and conditions of MOU were provided, it might be open to abuse and unnecessarily prolong the liaison process between the approving authority and witnesses in drawing up the terms and conditions.

Adm 13. The Chairman expressed worry that the approving authority could, by drawing up very harsh terms and conditions of the MOU which a witness could not possibly accept, force the witness to refuse to be included in the WPP. Since in such a case, the witness was not rejected by the approving authority to be included in the WPP, the witness could not seek a review of his case in accordance with clause 13. He also expressed particular concern about witnesses who did not have much bargaining power to negotiate the terms and conditions with the enforcement authorities. PAS(S)E(Atg) noted members' concern and undertook to look into the issue.

Adm 14. The Chairman remained of the view that for fairness, the decision of not establishing a new identity for a participant should also be subject to review. He considered that the Police could explain to the board to be set up under clause 14 why they did not recommend to change a participant's identity in a particular case. He said that the board would tend to believe in the professional judgment of the Police. PAS(S)E(Atg) agreed to consider the suggestion and advise in writing.

Clause 14 - Review of decision

Adm 15. The Chairman suggested that the Administration should review the present drafting of clause 14 to provide more details about the nature and operation of the committee to be set up under the provision. PAS(S)E(Atg) agreed to elaborate clause 14 by adding more details and advise whether the existing Police Witness Protection Appeal Board was advisory in nature.

Clause 15 - Provision of information to officers and law enforcement agencies

Adm 16. The Chairman requested the Administration to consider if there was a need to empower the approving authority to release information to law enforcement agencies outside Hong Kong and whether clause 15 as presently drafted clause could serve the purpose. PAS(S)E(Atg) agreed to look into this and advise in writing.

Clause 17 - Offences

Adm 17. The Chairman considered that it was not clear as to the meaning of the expression "compromises the security" in clause 17(1)(b). He also expressed concern that the provision might have implications on the freedom of the press. PAS(S)E(Atg) agreed to consult the Department of Justice for advice. Mr Andrew

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WONG requested the Administration to advise whether the Chinese text "危害安全" tallied with "compromises the security".

18. The Chairman expressed reservations about clause 17(2)(a) which provided that it would be an offence for a person to disclose that he was or had been a participant or had undergone assessment for inclusion in the WPP. According to the provision, the person could not do so unless he had a reasonable excuse or had been authorized by the approving authority. The Chairman said that he would further consider the provision.

Clause 18 - Approving authority and officer not to be required to disclose information

Adm 19. The Chairman requested the Administration to review the present drafting of clause 18(2) to see if it was consistent with similar provisions in other ordinances.

Clause 19 - Protection of witness giving evidence in court

Adm 20. Members considered that the "well-being" of a witness giving evidence in court might be dealt with by other legislation under the purview of the Judiciary. Members requested the Administration to check with the Judiciary to see if they had any objection to the present drafting of clause 19(1)(b) in relation to the "well-being" of a participant who was to give evidence in legal proceedings.

Clause 20 - Regulations

21. The Chairman considered that clause 20 as presently drafted was not specific. He expressed reservations about the present drafting and would further consider the clause.

II. Date of next meeting

22. Members agreed that the next meeting be scheduled when the draft Committee Stage amendments were available.

23. There being no other business, the meeting ended at 12:45 pm.

Legislative Council Secretariat

5 September 2000