

立法會
Legislative Council

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the Administration)

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**Bills Committee on
Witness Protection Bill**

**Minutes of meeting
held on Friday, 17 March 2000 at 4:00 pm
in Conference Room B of the Legislative Council Building**

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

Member absent : Hon Mrs Sophie LEUNG LAU Yau-fun, 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 LAI Tung-kwok
Assistant Director of Immigration (Personal Documentation)

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

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) 1291/99-00(01) and CB(2) 1427/99-00(01))

Administration's response to issues raised at the meeting on 20 January 2000

At the invitation of the Chairman, Principal Assistant Secretary for Security E (PAS(S)E) briefed members on how the proposed change of identity of a witness under the witness protection programme (WPP) was operated, how the rights and obligations of a witness would be dealt with and the experience of overseas countries in operating WPP.

Threat assessment

2. Referring to clause 4(3)(d) of the Witness Protection Bill (the Bill), the Chairman said that in deciding whether to include a witness in WPP, the major consideration should be the perceived danger to the witness rather than the nature and importance of the evidence. Mr David CHU shared the same view. He said that even where the evidence provided by a witness was unimportant but the witness was in danger, the Administration should still seek to protect the witness.

3. PAS(S)E said that the perceived danger to the witness would certainly be a major factor to be considered in deciding whether or not to include a witness in WPP. Other factors, such as the nature and importance of evidence, would also be taken into consideration.

4. Chief Superintendent of Police (Crime) (SCP(C)) said that while the perceived danger to a witness was a major consideration in threat assessment, the Police would also consider the importance of and need for the evidence. He assured members that if there was perceived danger to a witness, the Police had a responsibility to protect him under the principle of prevention of crime.

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5. The Chairman requested the Administration to consider redrafting clause 4(3) to the effect that in deciding whether to include a witness in WPP, the major consideration would be given to the perceived danger to the witness. In addition, the approving authority would have regard to the other factors listed in clause 4(3).

6. PAS(S)E responded that if the factor of perceived danger was given more weight in comparison with other factors, there might be difficulties in implementation. In response to the Chairman, Assistant Legal Adviser 4 (ALA4) said that if the perceived danger to the witness was given more weight than other factors, there might be the question of balance between different factors. Assistant Secretary for Security E (AS(S)E) said that there were practical difficulties in assigning weights to different factors. Instead, each case had to be examined on its own merits. To address the Chairman's concerns, clause 4(3) might be amended along the line that in addition to the nature of the perceived danger to the witness, the approving authority should also consider other factors as listed in the original version of clause 4(3) of the Bill. The Chairman requested the Administration to consider redrafting clause 4(3) along the line.

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7. Mr CHENG Kai-nam asked how the "risk to the public" in clause 4(3)(a) was to be assessed. PAS(S)E explained that according to overseas experience, some witnesses committed crime in their new identity. The probability of a witness to commit crime was therefore a factor to be considered in deciding whether to include a witness in WPP. CSP(C) added that the need for a witness to stand out as a witness in the court and his status as accomplice witness would also be taken into account in assessing whether to admit a witness in WPP.

8. Mr CHENG Kai-nam asked whether there would be any change to the outstanding debts or obligations of a person upon his admission to WPP. He asked whether a witness would no longer be on probation or liable for payment of outstanding debts upon inclusion in WPP. AS(S)E responded that under clause 9(1) of the Bill, if a participant had outstanding legal rights or obligations, the approving authority should take such steps to ensure that the rights or obligations were dealt with according to the law. PAS(S)E said that the Administration had no intention to remove or alter any records pertaining to the original identity of a witness. Clause 15 of the Bill also provided for the release of the new identity or new location of the participant to a law enforcement agency.

9. The Chairman said that it should be expressly provided in the Bill that any person aggrieved by a decision of the approving authority not to include him or to terminate his protection as a participant in WPP could request a review of the decision by a review committee. Assistant Director of Operations of Independent Commission Against Corruption (ADO/ICAC) said that after the passage of the Bill, consideration would be given to establishing a review committee comprising the Head of Operations and a few other members to be appointed by the Chief Executive of the Hong Kong Special Administrative Region. Any person aggrieved by a decision of

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the approving authority not to include him or to terminate his protection as a participant in WPP could request a review by the review committee. In response to the Chairman, CSP(C) and ADO/ICAC said that the respective review committees of the Police and ICAC would be responsible for the review of the respective approving authority's decision as set out under clauses 13 and 14 of the Bill.

Change of identity

10. The Chairman pointed out that the Bill only provided for the issuing of three types of documents, namely the birth certificate, identity card and marriage certificate in a witness's new identity. He said that consideration should be given to introducing an enabling provision to provide for other organizations to issue new documents or certificates in the new identity of the witness. With the enabling provision, the witness would be able to produce a certificate issued by the Immigration Department (ImmD) to request an organization such as a university to issue a new certificate bearing his new identity. In this connection, ALA4 said that under clause 17(2) of the Bill, a participant of WPP was not allowed to disclose his former identity unless he had been authorized by the approving authority to make the disclosure or had a reasonable excuse for doing so.

11. PAS(S)E responded that it was practically difficult to draw up a full list of the organizations to be subject to the Bill. It might also inappropriately change the name appearing on documents such as visit visa. The issue should be addressed by way of a deedpoll. Assistant Director of Immigration (Personal Documentation) added that ImmD would not issue any letter or certificate about the change of identity of a person. It would only issue new birth certificate, identity card and marriage certificate for the witness concerned.

12. PAS(S)E informed members that the Administration would not remove or alter any records pertaining to the original identity of a witness. Under clause 15 of the Bill, the approving authority could provide the law enforcement agencies with the criminal records of a witness included in WPP for the purpose of law enforcement. CSP(C) added that in the event that a witness was arrested in his new identity, even the Police officers involved in the arrest and the taking of fingerprints would not know his original identity. Cross-referencing could be made by an administrative instruction in the fingerprint record of the witness concerned.

13. The Chairman asked whether witnesses being protected were found to have large amounts of outstanding debts in the past. CSP(C) responded that the Police had not come across such a problem in the past.

Overseas experience

14. CSP(C) informed members that the Administration had written to overseas countries to seek information about their WPP. Only one country had so far provided

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information in confidence and it was noted that their WPP was very similar to that proposed for Hong Kong.

15. The Chairman said that the Administration had suggested that it might be more appropriate to discuss the information in camera. He considered that the convening of a closed session to consider such information was acceptable.

Administration's response to questions raised in ALA4's letter of 20 January 2000

16. At the invitation of the Chairman, PAS(S)E briefed members on the Administration's response to questions raised in ALA4's letter of 20 January 2000.

17. The Chairman asked whether the psychological or psychiatric examination as referred to in clause 4(3)(b) was currently carried out on witnesses being considered for protection and how a conclusion was drawn in such a test. CSP(C) said that such tests were currently carried out on witnesses being considered for protection. In conducting such tests, factors such as whether the witness was overly suspicious of threats, his acceptability towards dullness and a completely different life, and his psychological stability would all be considered in the examination. He added that the purpose of the examination was to determine whether the witness was suitable for admission into WPP.

18. Referring to Annex C to the Legislative Council (LegCo) Brief, the Chairman asked whether the requirement for a witness to sever all his existing social ties in the community covered all of his social ties or only those social ties which posed a threat to the safety of the witness. He expressed concern that if a witness was required to sever all of his social ties, the number of witnesses admitted into WPP might be very few. The Chairman requested the Administration to elaborate in writing on "sever all his existing social ties in the community".

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19. The Chairman asked whether the settlement of all outstanding debts by a witness was a factor for deciding whether he would be included in WPP. PAS(S)E said that every effort would be made to ensure a witness repay all his outstanding debts. Where necessary, a financial scheme could be worked out on mutual agreement basis. She assured members that where a real threat was proven, a witness would be protected even under the principle of prevention of crime. ADO/ICAC assured members that a person would not be barred from WPP solely because of his inability to repay his debts. CSP(C) shared the same view. The Chairman requested the Administration to provide a written response on the issue. He also requested the Administration to provide members with a sample of the memorandum of understanding (MOU).

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20. The Chairman asked why reference was made in paragraph (f) of Annex C to the LegCo Brief to "falsification of official documents" although the term was not found in the Bill. AS(S)E explained that "falsification of official documents"

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actually referred to the three types of documents issued in the new identity of a witness as set out in clause 8(1) of the Bill. The term "falsification" might have been inappropriately used in the LegCo Brief, as the documents were not really "falsified" documents.

Clause-by-clause examination of the Bill

21. Members then proceeded to examine the Bill clause-by-clause.

Clause 1 (Short title and commencement)

22. Members made no particular comments on the clause.

Clause 2 (Interpretation)

23. The Chairman asked whether a defence witness could be admitted into WPP. He said that a person who intended to stand out as a defence witness might not do so as a result of pressure from the Police. ADO/ICAC said that under such circumstances, the person could lodge a complaint against the public officer for perverting or obstructing the course of justice. He would then become the witness of another case and eligible for admission into WPP. PAS(S)E added that the issue could be dealt with under clause 2(b) of the Bill.

24. The Chairman asked whether clause 2(e) was covered by clause 2(d). He said that if the former was covered by the latter, clause 2(e) should be deleted. Senior Assistant Law Draftsman (SALD) said that clause 2(e) specifically covered family members or close friends of the witness. However, he acknowledged that there might be some overlap between clause 2(d) and clause 2(c).

25. Regarding the definition of "witness" in clause 2, ALA4 drew members' attention that he had written to the Administration suggesting that the phrase "on behalf of the Government" in the definition be amended to "on behalf of the Hong Kong Special Administrative Region" and the Administration had replied that it would consider making the necessary amendments. He added that if the parents of a witness were subject to the assessment as referred to in clause 4(3) and they were not in danger, it might not be possible to create special particulars of his parents in his new birth certificate. AS(S)E responded that the problem could be dealt with under clause 8(4)(a), which enabled the approving authority to provide all the necessary particulars to the relevant public officer for creating a new identity for a new participant. The Chairman requested ALA4 and the Administration to look into whether the provisions in clause 8(4) were sufficient for covering all the particulars in the issuing of new documents to the participant when creating a new identity for him.

Clause 3 (Establishment of witness protection programme)

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26. The Chairman asked whether "witnesses whose personal safety or well-being may be at risk as a result of being witnesses" covered the family members of a witness. PAS(S)E responded that according to clause 2(e), it covered the family members of a witness.

Clause 4 (Selection for inclusion in witness protection programme) and clause 5 (Witness to disclose necessary information before being included in witness protection programme)

Adm 27. ALA4 drew members' attention that medical tests or examinations were mentioned in clause 5(2) but not in clause 4(3) of the Bill. He said that there might be a need to mention medical tests or examinations in clause 4(3) of the Bill. The Chairman requested the Administration to advise whether the health and psychological conditions of a witness were factors for deciding whether to include him in WPP.

28. The Chairman asked whether the factors as set out in clause 4(3) of the Bill constituted "all information that the approving authority considers is necessary to decide whether or not the witness should be included" as referred to in clause 5(1) of the Bill. ADO/ICAC said that the phrase "such other matters as the approving authority considers relevant" in clause 4(3) should be adequate for covering all necessary information. He added that any person aggrieved by a decision of the approving authority not to include him in WPP could request a review of the decision.

Adm 29. The Chairman requested the Administration to consider providing witnesses with the reports of medical tests or examinations, and psychological or psychiatric examinations if such tests or examinations were conducted. PAS(S)E undertook to consult the relevant departments responsible for carrying out the examinations on the issue.

Clause 6 (Memorandum of understanding)

30. In response to the Chairman, CSP(C) explained that an example of the activities as referred to in clause 6(2)(a)(ii) was an activity that was not illegal but unethical, thus making it difficult to protect the witness.

31. ALA4 informed members that he had written to the Administration pointing out that in the light of clause 6(1)(b), clause 6(2)(a)(iv) might be redundant and the Administration had agreed to remove it by way of a Committee stage amendment.

32. ADO/ICAC informed members that the variation of MOU in clause 6(5) was decided through the convening of a meeting chaired by the Director of Operations and attended by the Assistant Director of Operations as well as the Chief investigator of ICAC. CSP(C) said that a variation in MOU had to be approved by a Senior Assistant Commissioner of Police. ALA4 informed members that he had written to

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the Administration regarding clause 6(5) of the Bill and the latter had advised that a decision to vary the MOU was not subject to review under clause 13. ADO/ICAC explained that if his protection was terminated because a witness disagreed to the variations made to the MOU, the witness could request a review of the decision to terminate his protection as a participant.

Clause 7 (Action where witness was included in witness protection programme)

33. Referring to clause 7 of the Bill, which set out that a witness would be given protection when he was being assessed for inclusion in WPP, the Chairman asked whether there was any particular reason for such an administrative arrangement to be set out in the Bill. ADO/ICAC explained that setting out the administrative arrangement in the Bill would provide a legal basis and obligation for the Administration to protect a witness even when he was being assessed for inclusion in WPP. This would reinforce the public's confidence in the Administration's commitment to protect witnesses.

Clause 8 (Establishing new identity for new participant in witness protection programme)

34. ALA4 drew members attention that if the factors set out in clause 4(3) and 5 would apply when establishing a new identity under clause 8(3) for a participant who had been included in WPP, the term "participant" in clause 8(3) might restrict the application of clauses 4(3) and 5, as the latter only referred to the consideration of including a "witness" in WPP. The Chairman requested the Administration to look into the issue and respond in writing.

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II. Date of next meeting

35. Members agreed that the next meeting be scheduled for 3 April 2000 at 10:45 am to continue discussion with the Administration.

36. There being no other business, the meeting ended at 6:05 pm.

Legislative Council Secretariat

12 June 2000