

Administration's Response to the Questions Raised
by the Assistant Legal Adviser of the Legislative Council
dated 20 January 2000 on the Witness Protection Bill

Clause 4(2)(c)(ii): a witness' legal capacity

“Legal capacity” generally means a person’s ability to create legal relationship. Where a person lacks legal capacity as set out in clause 4(2)(c)(ii), he is unable by deficiency in mental ability to comprehend the terms and conditions of the memorandum of understanding. While agreeing that persons of unsound mind may be the major class of persons referred to in this clause, the provision as drafted covers all possible scenarios, e.g. a person in coma.

Clause 4(3)(a)

2. Our main concern is whether there is any risk to the public if the witness concerned is included in the witness protection programme (WPP), for example, after relocation or change of identity. A witness’ criminal record will not be the sole consideration of the approving authority. Witnesses who have been convicted of crimes of violence will not be automatically barred from the WPP. Each case will be examined on its own merits.

Clause 4(3)(b)

3. The approving authority may consider a witness' psychological or psychiatric situation when deciding whether or not to include a witness in the WPP because it may affect the witness' suitability for inclusion in the programme. The factors that the authority may consider include whether the witness can mentally withstand the dramatic change to his life style following his inclusion in the WPP (e.g. restrictions on movement) and adapt to these changes; and whether the witness can be trusted to maintain the confidentiality of the programme,

Clause 4(4)

4. We will further explore the idea of including a clause in the Witness Protection Bill to empower the approving authority to require a participant of the WPP to re-sign a memorandum of understanding where the legal incapacity mentioned in clause 4(2)(c)(ii) is recovered.

Clause 8

5. The issue has been addressed in paragraphs 8, 9 and 12 of the paper issued on 6 March 2000.