

For discussion

5 May 2000

Bills Committee on Witness Protection Bill

**Administration's Response to Issues Raised at
the Bills Committee Meeting on 14 April 2000**

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

Some members suggested that the Administration should consider revising clause 4(3)(g) from “the nature of the witness’ relationship to other witnesses being assessed for inclusion in the witness protection programme” to “the nature of the relationship of the witness being assessed for inclusion in the witness protection programme to other witnesses”.

2. We have reservations about the proposal because it will unnecessarily expand the scope of the factor. Clause 4(3)(g) is intended to deal with the situation where a witness who is being assessed for inclusion in the witness protection programme (WPP) is related to other witnesses, either in the same case or other cases, who are being assessed for inclusion in the programme. The above proposal will expand the scope of the provision to cover all witnesses (including those who are not being assessed for inclusion in the WPP), which in fact serves no useful purpose when the approving authority is considering whether or not to include a witness in the WPP.

Clause 8(3) – the new memorandum of understanding (MOU) and the Chinese text of “to establish”

3. Some members queried whether clause 4(4), which empowers the approving authority to require a participant to sign another MOU, applied to a MOU for change of identity under clause 8(3). Considering that the existing Chinese text of “to establish” in clause 8 may cause confusion in the meaning, some members suggested that the Administration should consider revising the Chinese text of “to establish” whenever establishment of new identity is mentioned in the Bill.

4. Where necessary, the approving authority may decide to establish a new identity for a participant who is under 18 years old or lacks legal capacity to sign a MOU. In that case, a new MOU will need to be signed by the participant under clause 8(3). We will therefore revise the Bill to -

- (a) enable a parent or guardian of a participant to sign the new MOU if the participant is under 18 years;
- (b) enable a guardian or other person who is usually responsible for the care and control of a participant to sign the new MOU if the participant lacks legal capacity to do so; and
- (c) empower the approving authority to require a participant

under items (a) & (b) above to re-sign a MOU when or after he reaches 18 years or has the legal capacity, as the case may be, if he is still in the WPP.

5. To avoid confusion, we also propose to revise the Chinese text of “to establish” in all provisions of the Bill from “另立” to “定立” where the establishment of new identity is mentioned.

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

6. Some members suggested that the Administration should examine the existing drafting of clause 9(2), in particular the phrase “shall give notice” to see whether it provides sufficient flexibility in dealing with cases where a participant provided with a new identity avoids obligations or restrictions which might lead to disclosure of his former identity and hence expose him to danger.

7. We agree that in some cases, the approving authority may need to allow a participant to avoid certain obligations or restrictions for the sake of the confidentiality of his identity, and above all, his safety. We will therefore revise the drafting of clause 9(2) so as to provide the approving authority with the required flexibility in dealing with such cases.

The appropriateness of using the term “former identity”

8. Some members considered that the term “former identity” was not crystal clear in its meaning and is not in line with the Chinese text (原本身分). They suggested revising the term so as to better reflect the actual meaning.

9. The term “former identity” is mentioned in clauses 9, 10 and 12. To avoid confusion, we agree to replace it with “original identity”.

MOU for change of identity

10. The terms and conditions of a new MOU signed under clause 8(3) are basically similar to those mentioned under clause 6 except that it will contain additional terms and conditions that will only be applicable in the event of a change of identity for a participant. These additional terms and conditions will be drawn up based on the circumstances of each case. In general, they may include -

- (a) stipulations as to how the participant should behave in order not to compromise the integrity of his new identity or the WPP;
- (b) a list of the documentation that will be issued to the participant in his new identity;
- (c) approval for the participant not to disclose his original identity under clause 10, if necessary;
- (d) the participant’s undertaking to not use any of the documents

supporting his new identity for an unlawful purpose;

- (e) confirmation from the participant that the change of identity is not an inducement /reward for his giving evidence; and
- (f) financial support arrangements including the responsibilities of the participant and the approving authority as far as the participant's existing legal obligations and new obligations arising from his new identity, if any, are concerned.

The above list only serves to provide members with a brief idea about the content of the new MOU signed under clause 8(3) and is not exhaustive. Details will be worked out by the approving authority in consultation with the Department of Justice upon the enactment of the Witness Protection Bill.

Security Bureau

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