

**For discussion
5 June 2000**

Bills Committee on Witness Protection Bill

**Administration's Response to Issues Raised at
the Bills Committee Meeting on 5 May 2000**

Clause 11(2) – the appropriateness of using the word “intention”

Some Members were concerned that the participant's right of review might be prejudiced by use of the word “intention” in clause 11 as clause 13 dealt with the “decision” of the approving authority.

2. According to clause 11(1), the approving authority may terminate the protection of a participant. Clause 11(2) requires the approving authority to advise the participant in writing of his intention to terminate the protection. Such a requirement facilitates the participant to request a review under clause 13. To avoid unnecessary misunderstanding, we agree to replace the word “intention” in clause 11(2) with “decision”.

Rights and obligations of a participant incurred during the new identity

3. Some Members were concerned that there was no provision in the Bill dealing with legal rights, obligations and restrictions that were incurred by a participant with a new identity and remained extant after his original identity was restored.

4. We will revise the Bill to deal with such rights, obligations and restrictions by applying the same principle adopted in clause 9 which deals with rights, obligations and restrictions incurred before a new identity is acquired. In other words, the approving authority would take such steps as are reasonably practicable to ensure that such rights, obligations and restrictions are dealt with according to law if and when a witness restores his original identity.

Ways to inform a witness of the decision of not including him in the Witness Protection Programme (WPP)

5. Clause 13 gives a witness the right of review on the approving authority's decision to not include him in the WPP. However, there is no provision in the Bill requiring the approving authority to inform a witness in writing of such decision. Some Members were concerned that a witness would not be able to request a review if he was not informed of the approving authority's decision. They therefore suggested that the Administration should consider informing a witness in writing of the decision to not include him in the WPP, particularly when the request is from that person.

6. While agreeing that there is a need to notify a witness of the decision, it may not be practicable to notify him in writing in some occasions. We therefore propose to revise the Bill to make it clear that the approving authority shall notify a witness of his decision of not including him in the WPP in writing as far as practicable if the witness has made a request for inclusion in the programme.

A witness' right of review

7. Under the Bill, a person can request a review if he is aggrieved by a decision of the approving authority not to include him; or to terminate his protection as a participant in the WPP. Some Members however considered that the terms and conditions set by the approving authority when deciding on inclusion of a person into the WPP, including the decision of not establishing a new identity for a participant, should also be subject to review.

8. As explained at the last meeting, the terms and conditions of a Memorandum of Understanding (MOU) may include a financial support arrangement and other detailed logistical arrangements including accommodation. The review mechanism may be subject to abuse if a witness is allowed to request a review on any of these arrangements. In practice, the approving authority will liaise with the witness and draw up the terms and conditions after making an objective and professional

assessment of the genuine needs of the witness. Interests of the witness will be taken care of provided that they are reasonable and practicable. Hence, we have reservation on expanding the existing review mechanism to cover all the terms and conditions set by the approving authority.

9. On the other hand, we agree that some witnesses may consider the establishment of a new identity as a very important element of the WPP. To address Members' concern, we agree to allow a participant to request for review if the approving authority refuses to establish a new identity for him under clause 8. Similar to the decision of not including a person in the WPP (paragraph 6 above), we will also revise the Bill to require the approving authority to notify the participant of his decision of not creating a new identity for him in writing as far as practicable if the request for establishing a new identity is from the participant.

The existing Police Witness Protection Appeal Board and the existing drafting of clause 14

10. Some Members asked whether the existing Police Witness Protection Appeal Board was advisory in nature. In addition, they suggested that the Administration should review the existing drafting of clause 14 to provide more details about the nature and operation of the committee to be set up under the provision.

11. The existing Police Witness Protection Appeal Board is chaired by the Deputy Commissioner of Police (Operations). Members include the Deputy Secretary for Security and four non-official members appointed by the Chief Executive. The terms of reference of the Appeal Board are -

- (a) to hear appeals against the decision of the Police to refuse to admit a witness into the WPP; and
- (b) to hear appeals against the decision of the Police to withdraw from the programme a witness who has entered the WPP.

For each hearing, the Board should comprise the Chairman, the Deputy Secretary for Security and two of the four non-official members. As the

Board may overrule the original decision after reviewing the case, it is not advisory in nature.

12. The current drafting of clauses 13 and 14 follows the practice of the existing Police Witness Protection Appeal Board. In other words, the appeal system provided under the Bill will work in the same way as the current Police Witness Protection Appeal Board. To enable people to have a better understanding about the operation of the appeal system, we propose to elaborate clause 14 by stating that -

- (a) CE shall appoint a panel of persons for the purpose of clause 14(1);
- (b) such appointments shall be notified in the Gazette; and
- (c) the officer designated by the Commissioner under section 13(1) should consult at least two non-officials selected from the panel when considering each appeal.

Clause 15 – the definition of “law enforcement agency”

13. Some Members suggested that the Administration should consider whether there was a need to empower the approving authority to release information to law enforcement agencies outside Hong Kong under clause 15 and whether the existing drafting of clause 15 could serve the purpose.

14. Both the Police and ICAC have confirmed that multi-jurisdiction efforts and co-operation are essential for effective law enforcement. They have so far established good operation liaison with law enforcement agencies outside Hong Kong including search of persons who are wanted on warrant of arrest. As the Department of Justice has advised that the term “law enforcement agency” in clause 15 refers to local law enforcement agencies only, we propose to revise the Bill to cover those agencies outside Hong Kong as well.

Clause 17(1)(b) – possible impact on freedom of press

15. Some Members were concerned that the present drafting of clause 17(1)(b), in particular the use of the word “compromise”, may have implications on the freedom of press.

16. The Department of Justice has advised that clause 17(1)(b) relates to information that will affect the safety or security of a witness. General reports which do not prejudice the safety or security of a witness (e.g. lead to the identity of a witness being discovered) will not be prohibited.

Clause 18(2) –consistence with similar provisions in other ordinances

17. Some Members suggested that the Administration should review the present drafting of clause 18(2) to make it consistent with similar provisions in other ordinances.

18. Clause 18(2) deals with the situation in which the approving authority and officers performing functions in relation to the WPP are required to disclose information about a participant in legal proceedings. With the assistance of the Assistance Legal Advisor of the Legislative Council and the Department of Justice, we have identified similar provisions in various ordinances that are concerned with the protection of informers in legal proceedings, e.g. the Dangerous Drugs Ordinance, Prevention of Bribery Ordinance and Control of Chemicals Ordinance (relevant extracts at Annex). However, as the nature and role of an informer is different from a participant and hence the protection required is not the same, these provisions do not appear to be relevant to the Bill. In addition, the existing drafting of clause 18(2) as well as other provisions relating to the protection of a participant is tailor-made to suit the needs to protect the participants. We therefore do not see the need to make any revisions to clause 18(2).

The appropriateness of including clause 19(1)(b) in the Bill

19. Some 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. They therefore suggested that the Administration should check with the Judiciary to see whether they have

any objection to the present drafting of clause 19(1)(b) which deals with the “well-being” of a participant who is to give evidence for the HKSAR in legal proceedings.

20. The Judiciary has confirmed that they have no objection to the present drafting of clause 19(1)(b) in relation to the “well-being” of a participant who is to give evidence in legal proceedings. However, to avoid giving a misconception that the court appears to abdicate control over its courtroom to the Police or ICAC, the Judiciary has suggested slight amendments to clause 19 so that the powers of Police or ICAC stipulated at clause 19(1)(a)&(b) are subject to an application made by the prosecution to the court. For details, please refer to the Committee Stage Amendments that the Administration proposes to move to clause 19.

Security Bureau

24 May 2000

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BLIS ON

INTERNET

Section of Enactment

Chapter: 134 Title: DANGEROUS DRUGS Gazette Number:
ORDINANCE

Section: 57 Heading: **Protection of informers** Version Date: 30/06/1997

(1) Save as provided in subsection (2)-

(a) no information for an offence under this Ordinance shall be admitted in evidence in any civil or criminal proceeding; and

(b) no witness in any civil or criminal proceeding shall be obliged-

(i) to disclose the name or address of any informer who has given information to the police with respect to an offence under this Ordinance or of any person who has assisted the police in any way with respect to such an offence; or

(ii) to answer any question if the answer thereto would lead, or would tend to lead, to discovery of the name or address of such informer or person, if, in either case, such informer or person is not himself a witness in such proceeding, and, if any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding contain an entry in which any such informer or person is named or described or which might lead to his discovery, the court shall cause all such passages to be concealed from view or to be obliterated so far as may be necessary to protect the informer or such person from discovery.

(2) If in any proceeding before a court for an offence under this Ordinance the court, after full inquiry into the case, is satisfied that an informer wilfully made a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceeding a court is of opinion that justice cannot be fully done between the parties thereto without disclosure of the name of an informer or a person who has assisted the police, the court may permit inquiry and require full disclosure concerning the informer or such person.

Chapter:	201	Title:	DANGEROUS DRUGS ORDINANCE	Gazette Number:	
Section:	30A	Heading:	Protection of informers	Version Date:	30/06/1997

(1) Save as provided in subsection (2)-

- (a) no information for an offence under this Ordinance shall be admitted in evidence in any civil or criminal proceeding; and
- (b) no witness in any civil or criminal proceeding shall be obliged-
 - (i) to disclose the name or address of any informer who has given information to the Commissioner with respect to an offence under this Ordinance or of any person who has assisted the Commissioner in any way with respect to such an offence; or
 - (ii) to answer any question if the answer thereto would lead, or would tend to lead, to discovery of the name or address of such informer or person, if, in either case, such informer or person is not himself a witness in such proceeding, and, if any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding contain an entry in which any such informer or person is named or described or which might lead to his discovery, the court shall cause all such passages to be concealed from view or to be obliterated so far as may be necessary to protect the informer or such person from discovery.

(2) If in any proceeding before a court for an offence under this Ordinance the court, after full inquiry into the case, is satisfied that an informer wilfully made a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceeding a court is of opinion that justice cannot be fully done between the parties thereto without disclosure of the name of an informer or a person who has assisted the Commissioner, the court may permit inquiry and require full disclosure concerning the informer or such person.

(Added 28 of 1980s. 13)

Chapter: 201	Title: DANGEROUS DRUGS ORDINANCE	Gazette Number:
Section: 30A	Heading: Protection of informers	Version Date: 30/06/1997

(1) Save as provided in subsection (2)-

- (a) no information for an offence under this Ordinance shall be admitted in evidence in any civil or criminal proceeding; and
- (b) no witness in any civil or criminal proceedings shall be obliged-
 - (i) to disclose the name or address of any informer who has given information to the Customs and Excise Service or police with respect to an offence under this Ordinance or of any person who has assisted the police in any way with respect to such an offence: or (Amended 46 of 1977 s. 18)
 - (ii) to answer any question if the answer thereto would lead, or could tend to lead, to discovery of the name or address of such informer or person, if, in either case, such informer or person is not himself a witness in such proceeding, and, if any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceedings contain an entry in which any such informer or person is named or described or which might lead to his discovery, the court shall cause all such passages to be concealed from view or to be obliterated so far as may be necessary to protect the informer or such other person from discovery

(2) If in any proceedings before a court for an offence under this Ordinance the court, after full inquiry into the case, is satisfied that an informer wilfully made a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceeding a court is of opinion that justice cannot be fully done between the parties thereto without disclosure of the name of the informer or a person who has assisted the Preventive Service or police, the court may permit inquiry and require full disclosure concerning the informer or such person. (Amended 46 of 1977s. 18)