

**For discussion
5 June 2000**

Bills Committee on Witness Protection Bill

Committee Stage Amendments to be moved by the Administration

Introduction

On the basis of discussion at previous Bills Committee meetings, the Administration proposes to make amendments to the Witness Protection Bill, most of which are technical in nature. A copy of the draft Committee Stage Amendments (CSAs) proposed to be moved by the Administration is at Annex. This paper supersedes the paper on the same topic that was issued in April 2000.

Proposed Committee Stage Amendments

2. As discussed and agreed at the previous Bills Committee meetings, apart from some minor technical amendments, the Administration would move CSAs to -

- (a) highlight the nature of the perceived danger to the witness as a factor to be considered by the approving authority when deciding whether or not to include a witness in the Witness Protection Programme (WPP) (clause 4(3));
- (b) empower the approving authority to require a participant to sign a new Memorandum of Understanding (MOU) where the original memorandum has been signed by his guardian or other person under clause 4(2)(c)(ii) and he subsequently acquires the legal capacity concerned (the new clause 4(4)).
- (c) require the approving authority to take reasonable steps to notify a witness or participant of his decision not to include him in the WPP or to establish a new identity for him, as the case may be, in writing if the request is from the witness/or the participant (the new clauses 4(5) & 8(2A));

- (d) make it clear in the Bill that the approving authority may require a witness to undergo medical tests or examinations before deciding whether or not to include him in the WPP but the results of such tests or examinations are not for “screening” purposes (the new clause 5(3)).
- (e) make it clear that the principles adopted for the signing of a MOU under clause 4 also apply to a new MOU signed under clause 8 when a new identity is to be established for a participant (the new clause 8(3A));
- (f) apply the same principles adopted in clause 9 for dealing with legal rights/obligations/restrictions incurred by a participant before a new identity is acquired to legal rights/obligations/restrictions incurred during a new identity and which remain extant after the original identity is restored (the new clause 12(3A));
- (g) enable a participant to request a review if the approving authority refuses to establish a new identity for him under clause 8 (clause 13(1));
- (h) set out more details about the operation of the review mechanism provided under the Bill (the new clauses 14(3) & (4)).

WMADD:DMA#23558v6

1st draft: 19.4.2000

2nd draft: 26.4.2000

3rd draft: 27.4.2000

4th draft: 16.5.2000

5th draft: 24.5.2000

6th draft: 26.5.2000

7th draft: 30.5.2000

8th draft: 30.5.2000

WITNESS PROTECTION BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

Clause

Amendment Proposed

- | | |
|------|---|
| 2 | In paragraph (a) of the definition of “witness”, by deleting “Government” and substituting “HKSAR”. |
| 4(3) | (a) By deleting “The” and substituting “In addition to the nature of the perceived danger to the witness, the”. |
| | (b) In paragraph (e), by adding “and” after “the semicolon. |
| | (c) By deleting paragraph (f). |
| 4 | By deleting subclause (4) and substituting -
“(4) If -
(a) a parent, guardian or other |

person signs a memorandum of understanding pursuant to subsection (2) (c) (i) or (ii); and

- (b) the witness to which the memorandum relates is included in the witness protection programme and remains a participant on or after reaching 18 years or having legal capacity, as the case may be,

the approving authority may require the participant to sign another memorandum of understanding on or after reaching 18 years or having legal capacity, as the case may be.

(5) Where the approving authority considers a witness for inclusion in the witness protection programme pursuant to a request made by the witness and decides not to include the witness in the witness protection programme, he shall take reasonable steps to notify the witness in writing of his decision.”.

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- (a) By deleting the proposed section 5(2) (a) and substituting -

“(a) require a witness to undergo psychological or psychiatric examinations and make the results available to the approving authority; or”.

(b) By adding -

“(3) In addition to the requirements under subsections (1) and (2), the approving authority may require a witness to undergo medical tests or examinations and make the results available to the approving authority to obtain information that may be needed in the event that the witness is included in the witness protection program.”.

6(2)(a) By deleting subparagraph (iv).

8 (a) In subsections (2), (3), (4) and (5), by deleting “另立” wherever it appears and substituting “定立” .

(b) In subsection (6), by deleting “this Ordinance” and substituting “the Ordinance”.

(c) By adding -

“(2A) Where the approving authority considers establishing a new identity for

a participant pursuant to a request made by the participant and decides not to establish a new identity for him, he shall take reasonable steps to notify the participant in writing of his decision.”.

(d) By adding -

“(3A) If the participant is under 18 years or otherwise lacks legal capacity to sign the memorandum, it shall be signed in the manner as provided for in section 4(2) (c) (i) or (ii) (as the case may require), and if the participant remains a participant on or after reaching 18 years or having legal capacity, as the case may be, the approving authority may require him to sign another memorandum of understanding at that time.”.

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(a) In subsection (2) -

(i) by deleting “shall” and substituting “may”;

(ii) by deleting “另立” wherever it appears and substituting “定立” .

(b) In subsection (4), by deleting “former identity” and substituting “original identity”.

- 10 By deleting “former identity” wherever it appears and substituting “original identity”
- 11(2) By deleting “intention” and substituting “decision”.
- 12 (a) In subsections (1) and (3) (a), by deleting “former identity” and substituting “original identity”.
- (b) By adding -
- “(3A) Where a former participant’s original identity is restored and he has outstanding legal rights or obligations or is subject to legal restrictions in respect of the identity that had been provided under the witness protection program (“the new identity”), section 9 applies to such rights, obligations and restrictions, and the approving authority may take the same actions as he could have if they had occurred before the new identity was established.”.
- 13(1) (a) In paragraph (a), by deleting “or”.
- (b) In paragraph (b), by deleting the comma and substituting”; or”.
- (c) By adding -

“(c) not to establish a new identity for him as a participant,”.

13(4) By adding “or not to establish a new identity for a participant” after “programme”.

14 (a) In subsection (1), by deleting “such persons as are” and substituting “at least two persons not being public officers from the panel”.

(b) By adding -

“(3) The Chief Executive shall for the purposes of subsection (1) appoint a panel of persons consisting of such number of public officers and persons not being public officers as he thinks fit.

(4) An appointment made under subsection (3) shall be notified in the Gazette.”.

15(b) By adding “in or outside Hong Kong” after “agency”.

19 (a) In subsection (1), by deleting everything before paragraph (a) and substituting -

“(1) Where a participant is to give evidence for the HKSAR in legal proceedings, the judge or magistrate in charge of such proceedings may, upon an

ex parte application by the prosecution, authorize a police officer or an officer of the Independent Commission Against Corruption to require all members of the public wishing to enter the courtroom to -”.

(b) By adding -

“(1A) An application under subsection (1) shall be heard in chambers.”.

(c) In subsection (2), by adding”, subject to any direction of the judge or magistrate,” after “may”.