

**Administration's Response to the questions
raised by the Assistant Legal Adviser of the
Legislative Council dated 5 October 1999
on the Witness Protection Bill**

Definition of "witness" in clause 2

The Department of Justice has advised that the prosecution of any defendant is in the name of the HKSAR. In the light of this, we will consider making the necessary amendments.

Clause 4(3)(g) : "other witnesses"

2. The term "other witnesses" referred to in clause 4(3)(g) normally applies to witnesses in the same case in which a witness is being considered for witness protection. However, "other witness" may also refer to witnesses in other cases as well so long as the approving authority considers it a relevant consideration for providing witness protection for a witness in a particular case.

Clause 4(4) : signing another memorandum of understanding (MOU)

3. The law enforcement agencies will normally ask a witness under protection to sign another MOU on reaching the age of 18 to replace the one signed by the parent or guardian. Obviously the witness will have the right to choose whether or not he wish to continue participation in the protection programme. In practical terms, witness protection would be effective only if both sides give consent.

4. It would be appropriate to ask a witness to sign another MOU when he reaches the age of 18. This would require him to personally assume the responsibilities specified in the MOU and hold him accountable for any breach thereof.

Clause 5(2)(a)(i) : Medical tests or examinations

5. Under clause 5(2)(a)(i) of the Bill, the approving authority may ask a witness to undergo medical tests or examinations. This provision is not intended to be applied routinely to all witnesses applying for admission into the witness protection programme. However, where a witness has a known problematic medical history, then it is necessary that his/her condition be assessed. This will allow for the appropriate measures to be taken to reduce the risk of death or medical complication whilst under protection. The results of the medical tests are

not for “screening” purpose. The information is vital to ensuring the continued good health of the witness whilst under protection.

Clause 6(2)(a)(iv) vs clause 6(1)(b)

6. We agree that clause 6(2)(a)(iv) may not be necessary, in the light of clause 6(1)(b). We will remove it from the Bill by way of CSA.

Clause 9 : new identity

7. The principle here is that no witness admitted into the protection programme should be unfairly penalized as a consequence of his admission. The rights and obligations due to the witness prior to assuming a new identity will be preserved, wherever and whenever possible. At the same time, neither should any action be taken that might disclose the original identity of a witness to third parties.

8. Clause 9(1) of the Bill provides that, if a participant has outstanding legal rights or obligations or is subject to legal restrictions, the approving authority is required to take such steps as are reasonably practicable to ensure that those rights or obligations are dealt with according to law, or to ensure that those restrictions are complied with. We believe that this clause should be sufficient to enable a witness with new identity to enjoy benefits accrued under his former identity but arising only after the change of identity.

Clause 11 : rights and obligations of a witness with new identity after witness protection is terminated

9. Under clause 12 of the Bill, if a witness has been provided with a new identity and if protection and assistance to the witness is terminated, the approving authority may take such action as is necessary to restore the witness’ former identity. In this context, the approval of the Chief Executive is required unless the consent of the witness is obtained.

10. While there are no explicit provisions stipulating how rights and obligations arising during the period of protection should be dealt with for a witness who reverts to his old identity, we consider that the principle under clause 9 needs to apply, i.e. the approving authority would take such steps as are reasonably practicable to ensure that such rights and obligations are dealt with according to law if and when a witness reverts to his old identity. Any rights and obligations conferred or assumed by the witness during the period of protection should remain with him after protection has ceased.

11. For instance, if a “re-identified” witness (i.e. a witness who reverts to his old identity) has been conferred rights under his new identity to which he would

ordinarily have been entitled (i.e. prior to assuming a new identity), then those rights should not be affected when he reverts back to his old identity.

12. If a “re-identified” witness has assumed obligations under his new identity by which he would ordinarily have been legally bound had it been assumed under his old identity, then he should still be bound by such obligations when he reverts back to his old identity.

13. We do not envisage that a witness who has assumed a new identity would be conferred any rights or would assume any obligations to which he would not ordinarily be entitled because of change of identity per se. If such a situation were to arise, it would be dealt with on a case-by-case basis, given the rareness of change of identity and the reversion to old identity.

Clause 13 : review of variation of the terms of a MOU

14. Arguably, the most important terms of a MOU are the basis on which a witness is included in the Witness Protection Programme and the details of the protection and assistance to be rendered under the programme. Such details are required to be set out in a MOU under clause 6(1)(a).

15. Clause 6(5) empowers the approving authority to vary the MOU by notice in writing served personally on the witness. At the same time, it prohibits the variation from having the effect of removing provisions referred to in clause 6(1), which includes the details of the protection and assistance afforded to a witness.

16. We consider that only the most important decisions under the witness protection programme should be subject to review. These decisions are whether or not to include a person for protection or whether or not to terminate protection. The prohibition contained in clause 6(5) has, in effect, guaranteed that a variation of the MOU will not have the effect of terminating protection. We are therefore satisfied that the scope of matters that could be subject to review is appropriate.

Security Bureau
22 November 1999

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