

立法會
Legislative Council

LC Paper No. CB(2)1846/02-03

(These minutes have been
seen by the Administration)

Ref : CB2/BC/11/01

**Bills Committee on
Evidence (Miscellaneous Amendments) Bill 2002**

**Minutes of the third meeting
held on Thursday, 10 April 2003 at 4:50 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon Cyd HO Sau-lan
Hon Andrew WONG Wang-fat, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon CHAN Yuen-han, JP
Hon James TO Kun-sun
Hon Miriam LAU Kin-ye, JP
- Public Officers attending** : Mr Stephen WONG
Deputy Solicitor General
- Mr Patrick CHEUNG
Senior Assistant Director of Public Prosecutions
- Mr Wayne Walsh
Deputy Principal Government Counsel
- Mr Llewellyn MUI
Senior Government Counsel, Legal Policy Division
- Miss Agnes CHEUNG
Senior Government Counsel, Legal Policy Division
- Miss Selina LAU
Government Counsel, Law Drafting Division

Mr Peter KAM
Government Counsel, Legal Policy Division

Attendance by invitation : Law Society of Hong Kong

Mr CHAN Kwai-hong, Bucky
(Attend for discussion on Part I of the Bill)

Clerk in attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mr Paul WOO
Senior Assistant Secretary (2)3

Action

I. Confirmation of minutes
(LC Paper No. CB(2)1696/02-03)

The minutes of the meeting held on 14 March 2003 were confirmed.

II. Meeting with the Administration and legal professional bodies
(LC Paper Nos. CB(2)1446/02-03(01); 1698/02-03(01) & (02); 1732/02-03;
1740/02-03(01) & (02); 1744/02-03(01) to (03))

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

Views of the Law Society of Hong Kong on Part I of the Bill
(LC Paper No. CB(2)1740/02-03(01))

3. Mr CHAN Kwai-hong said that the major concern of the Law Society in relation to Part I of the Bill was that the criteria for the court to grant exemption to the spouse of an accused to give evidence for the prosecution or on behalf of the co-accused were too strict. In the view of the Law Society, proposed section 57A(2) of the Criminal Procedure Ordinance imposed a heavy burden on the spouse, in applying for exemption to give evidence, to satisfy the court that the giving of

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evidence would cause "serious harm to the relationship between the spouse and the accused", or "serious emotional, psychological or economic consequence for the spouse". It would be very difficult if not impossible for the spouse to satisfy such criteria, particularly when minor offences were involved. The Law Society also failed to see how the court might, in practice, exempt the spouse wholly or in part from the obligation to give evidence.

4. Deputy Solicitor General explained that the threshold adopted in proposed section 57A(2) was the possibility of a "substantial risk" of serious harm or consequence, rather than an actual harm. He added that the case of *Trezesinski v Daire* set out in the Administration's paper (LC Paper No. CB(2)1446/02-03(01)) provided an example of the court exempting the spouse of an accused, in part, from the obligation to give evidence.

Follow-up actions required of the Administration

5. The Administration was requested to -

Part I of the Bill

Proposed section 57 of the Criminal Procedure Ordinance

- (a) explain how compellability would apply to a person in the following scenarios :
 - (i) the person was the spouse of the accused at the time of the alleged offence but had since divorced the accused; and
 - (ii) the person was not the spouse of the accused at the time of the alleged offence but had since become the spouse of the accused;

Proposed new section 57(3A) of the Criminal Procedure Ordinance

- (b) reconsider the drafting of the proposed new section 57(3A)(a) and 57(3A)(b), having regard to the legislative intent. Members pointed out that the use of the word "involves" in the section could widen the scope of the compellable offences in the Bill;
- (c) clarify whether "material time" in proposed new section 57(3A)(b) and 57(3A)(c) referred to the time when the offence was committed, or the time of the trial, and consider the need to reflect this clearly in the legislation;

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- (d) explain, for the proposed new section 57(3A)(b), the rationale for limiting the age of the child to under 16 years in the case of death of the child;
- (e) respond to the suggestion that the scope of the compellable offences under proposed section 57(3A) should also cover a child of the family who at the material time was above the age of 16 years but became a mentally incapacitated person afterwards;
- (f) illustrate the meaning of "mentally disordered person" and "mentally handicapped person" in the Mental Health Ordinance by way of actual court cases, if available;

Proposed new section 57(4A) of the Criminal Procedure Ordinance

- (g) review the drafting of the section. A member pointed out that where a spouse had pleaded guilty, he/she would be convicted. Hence, the situation of "no longer liable to be convicted" in the trial would not arise;

Part II of the Bill

Section 79I of the Criminal Procedure Ordinance

- (h) further consider the views of members and the legal professional bodies that the criteria for the court to be satisfied before giving permission under section 79I were too loose. Some members considered that it was for the party concerned to provide justifications in support of an application to give evidence by live television link, an overseas witness should give evidence in a courtroom as a general rule, and the court should only give permission to take evidence via live television link under very exceptional circumstances;
- (i) provide details of the rules for consideration of the Bills Committee, if detailed criteria of which the court must be satisfied before giving permission under the section would be set out in rules to be made by the Chief Justice; and

Overseas experience

- (j) provide the relevant UK Crown Court Rules for the Bills Committee's reference.

Action

(Post-meeting note : The Administration's responses were issued vide LC Paper Nos. CB(2)1848/02-03(01) to (03))

III. Date of next meetings

6. The next two meetings were scheduled for 25 April 2003 at 10:45 am and 13 May 2003 at 10:45 am respectively.
7. The meeting ended at 6:35 pm.

Council Business Division 2
Legislative Council Secretariat
6 May 2003

Annex

Proceedings of the third meeting of the Bills Committee on Evidence (Miscellaneous Amendments) Bill 2002 on Thursday, 10 April 2003 at 4:30 pm in Conference Room A of the Legislative Council Building

Time Marker	Speaker(s)	Subject(s)	Action required
000001-000232	Chairman	Confirmation of minutes of meeting on 14 March 2003 (LC Paper No. CB(2)1696/02-03). Invitation for Admin to brief members on its written responses to issues raised at the last meeting on 14 March 2003	
000233-001015	Administration/ Chairman	Paper prepared by Admin in response to issues raised by members at the meeting on 14 March 2003 on Part II of the Bill on use of live television link in criminal proceedings (LC Paper No. CB(2)1698/02-03(02))	
001016-001501	Law Society/ Chairman	Letters from the Law Society to Admin on Part I of the Bill on competence and compellability of spouses in criminal proceedings (LC Paper No. CB(2)1740/02-03(01)).	
001502-002430	Administration/ Chairman/ Ms Audrey EU/ Law Society	The criteria of which the court must be satisfied before it might exempt the husband or wife, wholly or in part, from the obligation to give evidence for the prosecution or on behalf of a co-accused under proposed section 57A(2) of the Criminal Procedure Ordinance (CPO). Reference to the case of <i>Trezesinski v Daire</i> in Admin's previous paper to the Bills Committee (LC Paper No. CB(2)1446/02-03(01))	
002431-002924	Chairman/ Administration	Draft Committee Stage amendment (CSA) proposed by Admin to introduce a new section 57(3A) of	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>CPO to extend the scope of the compellable offences under proposed section 57(3) to cover also a child of the family who was mentally incapacitated (LC Paper No. CB(2)1698/02-03(01)).</p> <p>Amendment of proposed section 57(4) of CPO and proposed addition of a new section 57(4A).</p>	
002925-003109	Chairman/ Administration	Drafting of proposed new section 57(4A) of CPO.	Admin to review the drafting.
003110-004150	Ms Audrey EU/ Chairman/ Administration	The compellable offences under proposed new section 57(3A)(a) and 57(3A)(b) of CPO, the scope of which could be widened with the use of the word "involves" to describe the offences.	Admin to respond to the concern expressed, having regard to the legislative intent.
004151-004424	Chairman/ Administration	Meaning of "mentally incapacitated person" in proposed new section 57(3A)(b) and 57(3A)(c) of CPO introduced under the draft CSA.	
004425-004622	Ms Audrey EU/ Administration/ Chairman	<p>How compellability would apply in the following situation -</p> <p>(a) the person was the spouse of the accused at the time of the alleged offence but had since divorced the accused; and</p> <p>(b) the person was not the spouse of the accused at the time of the alleged offence but had since become the spouse of the accused.</p>	Admin to clarify in writing.
004623-005009	Ms Cyd HO/ Administration/ Chairman/ Ms Audrey EU	Meaning of "material time" in proposed new section 57(3A)(b) and 57(3A)(c) of CPO.	
005010-005553	Ms Audrey EU/ Administration/ Chairman	Proposed section 57(7) and 57(8) of CPO.	

Time Marker	Speaker(s)	Subject(s)	Action required
005554-005819	Chairman/ Administration	Meaning of "mentally incapacitated person" under the Mental Health Ordinance.	
005820-010301	Ms Cyd HO/ Chairman/ Administration/ Mr Jasper TSANG	Suggestion to extend the scope of the compellable offences to also cover a child of the family who at the material time was above the age of 16 years but became a mentally incapacitated person afterwards.	Admin to respond to the suggestion in writing.
010302-010445	Mr Jasper TSANG/ Chairman	Rationale for limiting the age of the child of the family to under 16 years in the case of death of the child.	Admin to respond in writing.
010446-012038	Chairman/ Mr Jasper TSANG/ Ms Audrey EU/ Administration	Meaning of "material time" in proposed new section 57(3A)(b) and 57(3A)(c) of CPO.	Admin to clarify the meaning in the light of legislative intent.
012039-012325	Administration/ Chairman	Meaning of "mentally incapacitated person", "mentally disordered" and "mentally handicapped" persons under the Mental Health Ordinance. Illustration of the meaning of "mentally disordered" and "mentally handicapped" persons by way of actual court cases, if available.	Admin to provide examples for reference
012326-013354	Chairman/ Administration	Arrangements adopted in the United Kingdom, Australia and under the European Union Mutual Legal Assistance Treaty 2000 in relation to taking of evidence via live video link (LC Paper No. CB(2)1698/02-03(02)).	Admin to provide the relevant UK Crown Court Rules for reference.
013355-013640	Ms Audrey EU	Fundamental rules and principles which the court should observe in the interests of justice before granting permission under proposed section 79I(1) of CPO to take evidence by live television link from person outside Hong Kong.	Admin to further respond in writing to the views of some members and the legal professional bodies that the criteria under proposed section 79I(2) of CPO were too loose.

Time Marker	Speaker(s)	Subject(s)	Action required
013641-014045	Chairman/ Administration	Whether detailed criteria of which the court must be satisfied before giving permission to take evidence via live television link would be set out in the rules made by the Chief Justice.	Admin to provide the rules for reference.
014046-014514	Chairman/ Ms Audrey EU	Dates of the next two meetings of the Bills Committee	

Council Business Division 2
Legislative Council Secretariat
6 May 2003