

'立法會'
Legislative Council

LC Paper No. CB(2)2051/02-03

(These minutes have been
seen by the Administration)

Ref : CB2/BC/11/01

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

**Minutes of the fourth meeting
held on Friday, 25 April 2003 at 10:45 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon Cyd HO Sau-lan
Hon James TO Kun-sun
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 Miriam LAU Kin-yee, 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, International
Law Division
- Mr Llewellyn MUI
Senior Government Counsel, Legal Policy Division
- Mr Peter KAM
Senior Government Counsel (Acting)
Legal Policy Division
- Miss Selina LAU
Government Counsel, Law Drafting Division

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. Meeting with the Administration

(LC Paper Nos. CB(2)1848/02-03(01) - (03); 1698/02-03(01) and 1169/02-03(02))

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

Clause by clause examination of the Bill

2. The Bills Committee completed clause by clause examination of the English version of Part I of the Bill, except proposed section 57 of the Criminal Procedure Ordinance (CPO) under clause 4 of the Bill, pending the revised Committee Stage amendments (CSAs) to be provided by the Administration.

3. The Bills Committee would examine the Chinese version of the Bill at a later stage.

Follow-up actions required of the Administration

4. The Administration was requested to -

Part I of the Bill

Proposed new section 57(3A) of CPO

- (a) provide cases where the court had ruled against certain persons as falling within the definition of "mentally disordered person" under the Mental Health Ordinance. A member expressed concern whether a person suffering from "emotional disorder" would be classified as "mentally disordered person";
- (b) provide draft CSA to clarify the meaning of "material time" in respect of a child of the family who was mentally incapacitated at the time of trial but was not so at the time of offence;

Action

Proposed section 57A of CPO

- (c) consider the proposal to replace the word "economic" with "financial" in proposed section 57A(2)(a)(ii);
- (d) consider whether under proposed section 57A(2), the spouse of an accused should be allowed to apply for exemption from giving evidence in respect of a compellable offence, on the ground that the evidence was related to a jointly charged offence in respect of which the spouse was not compelled to give evidence, and advise whether this question had been considered or addressed by the Law Reform Commission and overseas common law jurisdictions;
- (e) clarify when and how many times could the spouse of an accused apply for exemption from giving evidence under proposed section 57A(1);

Part II of the Bill

Proposed section 79I of CPO

- (f) consider introducing additional criteria in proposed section 79I(2) :
 - (i) a provision similar to Rule 23B(10) of the UK Crown Court Rules; and
 - (ii) a provision that the place outside Hong Kong from which a person was to give evidence via live television should have the same "sanctity" as a courtroom in Hong Kong; and
- (g) provide draft CSAs to proposed section 79I(2) to specify the additional criteria of which the court must be satisfied before giving permission under proposed section 79I(1).

II. Date of next meeting

- 5. The next meeting was scheduled for 13 May 2003 at 10:45 am.
- 6. The meeting ended at 11:50 am.

Annex

Proceedings of the fourth meeting of the Bills Committee on Evidence (Miscellaneous Amendments) Bill 2002 on Friday, 25 April 2003 at 10:45 am in Conference Room B of the Legislative Council Building

Time Marker	Speaker(s)	Subject(s)	Action required
0000 - 0152	Chairman	Invitation for Admin to brief members on its written responses to issues raised at the last meeting on 10 April 2003.	
0153 - 0212	Admin	Admin's written response to issues raised at the meeting on 10 April 2003 on Part I of the Bill - Competence and compellability of spouses in criminal proceedings (LC Paper No. CB(2)1848/02-03(01)).	
0213 - 0709	Ms Audrey EU Admin Chairman ALA5	Meaning of "matters that occurred during his or her marriage to the accused" in proposed section 57(8) of the Criminal Procedure Ordinance (CPO).	
0710 - 1011	Ms Cyd HO Admin Chairman	Committee Stage amendment (CSA) to clarify the meaning of "material time" in proposed new section 57(3A) of CPO in respect of a child of the family who was mentally incapacitated at the time of trial but was not so at the time of offence.	Admin to provide draft CSA for consideration of the Bills Committee.
1012 - 1359	Admin Chairman	Meaning of "mentally disordered person" under the Mental Health Ordinance. "Mentally disordered persons" and persons suffering from "emotional disorder".	Admin to provide cases where the court had ruled against certain persons as falling within the definition of "mentally disordered person" under the Mental Health Ordinance.
1400 - 1521	Chairman Admin	Admin's written response to issues raised at the meeting on 10 April 2003 on Part II of the Bill - Use of live television link in criminal proceedings (LC Paper No. CB(2)1848/02-03(03)). Additional criteria stated in the Admin's paper to be included in proposed section 79I(2) of CPO of which the court must be satisfied before giving permission under proposed section 79I(1).	Admin to provide the draft CSA for consideration of the Bills Committee.

Time Marker	Speaker(s)	Subject(s)	Action required
1522 - 2006	Chairman Admin	Proposal to introduce additional criteria in proposed section 79I(2) by including a provision similar to Rule 23B(10) of the UK Crown Court Rules.	Admin to respond to the proposal in writing.
2007 - 2547	Ms Cyd HO Admin Chairman Ms Audrey EU	Practice in other jurisdictions as regards the place from which an overseas witness was allowed to give evidence via live video link. Proposal to introduce additional criteria in proposed section 79I(2) of CPO by including a provision that the place outside Hong Kong from which a person was to give evidence via live television link should have the same "sanctity" as a courtroom in Hong Kong.	Admin to respond to the proposal in writing.
2548 - 3146	Chairman Admin	Clause by clause examination of Part I of the Bill (English version of the Bill) (LC Paper No. CB(2)1169/02-03(02)). Proposal to replace the word "economic" with "financial" in proposed section 57A(2)(a)(ii) of CPO	Admin to respond to the proposal in writing.
3147 - 4423	Ms Audrey EU Admin Chairman	Whether the spouse of an accused should be allowed to apply for exemption from giving evidence under proposed 57A(2) of CPO in respect of a compellable offence, on the ground that the evidence was related to a jointly charged offence in respect of which the spouse was not compelled to give evidence. Whether and how the above issue had been addressed by the Law Reform Commission and other common law jurisdictions.	Admin to respond in writing.
4424 - 4904	Ms Audrey EU Chairman Admin	When and how many times could the spouse of an accused apply to the court under proposed section 57A(1) of CPO for an exemption to give evidence for the prosecution or on behalf of a co-accused.	Admin to respond in writing.
4905 - 5610	Mr Jasper TSANG Admin Chairman Ms Audrey EU	Whether the circumstances specified under proposed sections 57A(2)(a) and (b) of CPO were exhaustive conditions of which the court must be satisfied before it might grant permission to exempt the spouse of an accused from giving evidence for the prosecution or on behalf of a co-accused.	

Time Marker	Speaker(s)	Subject(s)	Action required
5611 - 010146	Chairman ALA5 Admin	Continuation of clause by clause examination of clauses 5 to 10 of the Bill.	

Council Business Division 2
Legislative Council Secretariat
12 May 2003