

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

**Response by the Administration to issues raised by
Members at the meeting on 25 April 2003
on Part I of the Bill**

In response to the issues raised at the Bills Committee meeting held on 25 April 2003, the Administration has the following information to provide.

Part I

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

- (a) **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”;**

Further research conducted by the Administration reveals that there is no court ruling against certain persons as falling within the definition of “mentally disordered person” under the Mental Health Ordinance, Cap. 136.

- (b) **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;**

The Administration has proposed to revise the proposed section 57(3) by way of CSA so that a child of the family who was not a mentally incapacitated person at the time of the offence but is such a person at the time of the trial is covered (please see draft CSA).

Proposed new section 57 of the Criminal Procedure Ordinance

(c) Proposal to replace the word “economic” with “financial” in proposed section 57A(2)(a)(ii);

The provision refers to the degree of dependency on their husband which put wives in a vulnerable position. "Economic" has a broader meaning than "financial". "Financial" relates to money matters whereas “economic” can include money matters and other elements, such as business opportunity, employment etc.

For instance, in the particular position of a new immigrant wife, whose right to stay in Hong Kong may be dependent on her husband and who may have difficulties in retaining it if she leaves him and the matrimonial home. It seems that at a broader term "economic" is preferred.

In Victoria of Australia, where a similar exemption arrangement is provided for under the Crimes Act 1958, the term "economic consequences" rather than "financial consequences" is used.

(d) 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 whether this question had been considered or addressed by the Law Reform Commission and overseas common law jurisdictions;

This issue was not discussed by the Law Reform Commission in its report Under the U.K. Police and Criminal Evidence Act 1984, the issue is not covered because, under the U.K. Act, there are no exemption provisions. The above proposed ground is not a ground for granting exemption from giving evidence in those Australian states, e.g. South Australia, where an exemption arrangement is provided under their legislation. It is considered that the above proposed ground should not form a separate ground for granting an exemption under the proposed section 57A. In cases where evidence to be given by a spouse in respect of a compellable offence may relate to a jointly charged but not compellable offence, the court may apply the same considerations as set out in the proposed section

57A(2), i.e. whether there is substantial risk of serious harm to the relationship between the spouse and the accused, whether there is serious emotional, psychological or economic consequences for the spouse and whether there is sufficient justification for exposing the spouse to that risk.

(e) When and how many times could the spouse of an accused apply for exemption from giving evidence under proposed section 57(A)(1);

There is no restriction on when and how many times the spouse of an accused could apply for exemption. In the draft CSA, the Administration has proposed to add “at any time” after “may” in the proposed section 57A(1). This amendment will clarify the concern of members about when and how many times could the spouse of an accused apply for exemption from giving evidence under the proposed section 57A(1).

Department of Justice
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