

立法會

Legislative Council

LC Paper No. LS99/01-02

**Paper for the House Committee Meeting
on 31 May 2002**

**Legal Service Division Report on
Evidence (Miscellaneous Amendments) Bill 2002**

I. SUMMARY

- 1. Objects of the Bill**
 - (a) To implement the recommendations made by the Law Reform Commission ("LRC") in its "Report on Competence and Compellability of Spouses in Criminal Proceedings" (1988); and
 - (b) To provide for the giving of evidence by way of a live television link in criminal proceedings.
- 2. Comments**

The Bill involves important aspects of criminal procedure and seeks to implement changes of a fundamental nature.
- 3. Public Consultation**
 - (a) The Administration issued a consultation paper on the proposed implementation of the LRC recommendations in July 2000. According to the Administration, most of the associations consulted including the Bar Association support the recommendations. The Law Society, JUSTICE, the Society for the Rehabilitation of Offenders and the Heung Yee Kuk have expressed concerns.
 - (b) With respect to the taking of evidence overseas via live television link, the Administration circulated a consultation paper on the proposals to the Judiciary, the Law Society, the Bar Association and the law faculties of HKU and City University in March 2002. The Law Faculty of HKU and the Judiciary have expressed support.
- 4. Consultation with LegCo Panels/Committees**
 - (a) The issue of competence and compellability of spouses in giving evidence in criminal proceedings was discussed at length at the meeting of the Panel on Administration of Justice and Legal Services ("AJLS") on 25 February 2002.
 - (b) The policy aspects of the legislative proposal on giving of evidence via live television link are discussed at the AJLS Panel meeting on 20 March 2002.

The Chairman has expressed the view that the Bill should be scrutinized by a Bills Committee.
- 5. Conclusion**

In view of the importance of the proposals from a criminal procedural point of view and the concerns expressed, it is recommended that a Bills Committee be formed to study the Bill in detail.

II. REPORT

Objects of the Bill

(a) Part I of the Bill

To implement the recommendations made by the Law Reform Commission in its "Report on Competence and Compellability of Spouses in Criminal Proceedings" published in 1988; and

(b) Part II of the Bill

To provide for the giving of evidence by way of a live television link in criminal proceedings.

LegCo Brief Reference

2. LP 911/00/1C/LP 911/00/2C issued by the Department of Justice in May 2002.

Date of First Reading

3. 29 May 2002.

Comments

Part I of the Bill

4. At common law, a person is not competent to give evidence (i.e. may not lawfully give evidence) for or against his or her spouse except in very limited circumstances, for example, where the spouse is accused of inflicting violence on him or her. Moreover, a person is not under any circumstances compellable to give evidence (i.e. may not lawfully be required to give evidence) against his or her spouse.

5. In 1988, the Law Reform Commission published a "Report on Competence and Compellability of Spouses in Criminal Proceedings" in which the following recommendations were made:-

- (a) a spouse should be competent, if he or she consented, to give evidence for the prosecution in all criminal proceedings against his or her spouse;
- (b) a spouse should, in certain types of criminal proceedings, be compellable to give evidence for the prosecution against his or her spouse; and

- (c) a spouse should be compellable to give evidence for the defence of his or her spouse in all criminal proceedings.

6. Following the recommendations of the Law Reform Commission, the Administration introduced the Criminal Procedure (Amendment) Bill 1990 ("the 1990 Bill") in 1990. At that time, concerns about the potential harmful effect of the proposed legislative changes on the family units were raised. The 1990 Bill was eventually defeated by a vote of 17 to 14 with 9 abstentions.

7. The Administration considers the situation has changed since 1990 as there is a rising trend of family violence and the views of the public have changed. Hence, the Administration seeks to re-introduce the recommendations of the Law Reform Commission in Part I of this Bill.

8. Part I of the Bill seeks to amend the Evidence Ordinance (Cap. 8) ("EO") to provide that the privilege against self-incrimination in criminal proceedings to be extended to include incrimination of a spouse.

9. The Criminal Procedure Ordinance (Cap. 221) ("CPO") is also sought to be amended to provide that, amongst other things:-

- (a) the spouse of an accused shall be competent to give evidence on behalf of the accused;
- (b) except where both spouses are co-defendants for the same offence, the spouse of an accused shall be competent to give evidence for the prosecution;
- (c) except where both spouses are co-defendants for the same offence, the spouse of an accused shall be compellable to give evidence on behalf of the accused; and
- (d) except where both spouses are co-defendants for the same offence, the spouse of an accused shall be compellable to give evidence for the prosecution or on behalf of a co-accused if the offence charged involves (i) an assault on, or an injury or threat of injury to the spouse of the accused; (ii) causing the death of, an assault on, or an injury or threat of injury to a child of the family under the age of 16; or (iii) a sexual offence committed on a child of the family under the age of 16.

10. Under the new provisions of the CPO, the spouse of an accused, where he or she is called to give evidence for the prosecution or on behalf of co-accused, may apply to the court for an exemption from giving evidence. The court may exempt the spouse wholly or in part from giving evidence. In exercising its discretion, the court will consider, amongst other things, whether there would be a substantial risk of serious harm to the marital relationship or serious emotional, psychological or economic consequence to the spouse. The court will also give regard to the nature and gravity of the offence charged and the importance of the evidence that the spouse is in a position to give.

11. These proposals involve a very important aspect of criminal procedure and seek to implement changes of fundamental nature.

Part II of the Bill

12. Part II of the Bill seeks to provide for the taking of evidence from witnesses overseas via live television link. It seeks to amend the CPO to enable the Court of First Instance ("CFI"), the District Court and magistrates, upon the application of a party to any criminal proceedings, to permit a witness (other than the defendant in the proceedings concerned) outside Hong Kong to give evidence to the court via live television link.

13. It also seeks to amend the EO to the effect that the CFI may assist a court or tribunal outside Hong Kong in obtaining evidence for civil or criminal proceedings by ordering the examination of a witness in Hong Kong via live television link. Similarly, the CFI may request a court or tribunal outside Hong Kong to assist in obtaining evidence by the examination of a witness in that place via live television link for criminal proceedings in Hong Kong. The Court of Appeal may also take evidence via live television link from vulnerable witnesses and witnesses outside Hong Kong.

Public consultation

14. With respect to the issue of competence and compellability of spouses in giving evidence in criminal proceedings (Part I of the Bill), the Administration issued a consultation paper on the proposed implementation of the recommendations of the Law Reform Commission in July 2000. According to the Administration, most of the associations consulted including the Hong Kong Bar Association support the recommendations. The Law Society of Hong Kong, JUSTICE, the Society for the Rehabilitation of Offenders, Hong Kong and the Heung Yee Kuk have expressed concerns.

15. With respect to the taking of evidence overseas via live television link (Part II of the Bill), the Administration circulated a consultation paper on the proposals to the Judiciary, the Law Society of Hong Kong, the Hong Kong Bar Association and the law faculties of the University of Hong Kong and the City University in March 2002. The Law Faculty of Hong Kong and the Judiciary have replied and they supported the proposals.

Consultation with LegCo Panels/Committees

16. The issue of competence and compellability of spouses in giving evidence in criminal proceedings was discussed at length at the meeting of the Panel on Administration of Justice and Legal Services ("AJLS") on 25 February 2002. The policy aspects of the legislative proposal on giving of evidence via live television link are also discussed at the AJLS Panel meeting on 20 March 2002. The Chairman has expressed the view that the Bill should be scrutinized in detail by a Bills Committee.

Conclusion

17. In view of some of the important procedural aspects of the criminal law that are dealt with by the Bill and the concerns raised by some sectors of the community, Members may wish to form a Bills Committee for a more detailed study.

18. The legal and drafting aspects of the Bill are still being scrutinized.

Prepared by

CHENG Kit-yee Kitty
Assistant Legal Adviser
Legislative Council Secretariat
27 May 2002