

**Bills Committee on  
Criminal Procedure (Amendment) Bill 2004**

**Administration's Response to  
Issues raised at the 1<sup>st</sup> Bills Committee meeting**

**Purpose**

This paper sets out the Administration's response to the issues raised by the Bills Committee at its meeting held on 2 June 2004.

**Administration's response**

*(a) to consider amending the proposed section 67C(1) of the Criminal Procedure Ordinance (CPO) to the effect that the Secretary for Justice should, as soon as practicable but not exceeding six months after the commencement of the section, in respect of each prescribed prisoner, apply to the court for a determination by a judge under the section*

We propose to change the proposed section 67C(1) to “As soon as practicable after the commencement of this section and in any event within 6 months after such commencement, the Secretary for Justice must, in respect of each prescribed prisoner, apply to the court for a determination by a judge under this section.”

*(b) to provide the membership list of the Long-term Prison Sentences Review Board (LTPSRB); and*

*(c) to provide a response to the suggestion that LTPSRB should lay down clear guidelines on the release of a prisoner after serving his minimum sentence*

The response is set out in the separate information paper on the Long-term Prison Sentences Review Board.

***(d) to provide the alternative drafting for the proposed section 67C(4) of CPO and to consider improving the drafting of the proposed section***

We set out an alternative version that combines the proposed section 67C(3) and (4), as follows:

“(3) Where the prescribed prisoner is serving the relevant sentence in respect of the conviction of murder committed when the prescribed prisoner was under 18 years of age, then, subject to the consent of the prescribed prisoner to the application of this subsection to the prescribed prisoner, the judge has the discretion as to whether –

- (a) to make a determination under subsection (2); or
- (b) to determine instead that the relevant sentence be quashed, and be substituted by a sentence of imprisonment for a fixed term of such duration as the judge considers appropriate.”

As suggested, we provide this version for Members’ consideration. We consider that both this and the original version duly reflect our policy intent. Subject to Members’ views, we propose to keep the original version.

***(e) to consider amending the term “may” in the proposed section 67C(5) of CPO as “shall”; and***

***(f) to consider amending the proposed section 67C(5) of CPO along the lines that previous recommendation and previous determination were irrelevant to a determination under the proposed section 67C***

The policy intent is to make it clear that the previous minimum term should not be taken into account by the CFI judge when he/she makes a determination under the proposed sections 67C (2) and (3), so that the judge can form a fresh and independent view as to the length of minimum term or sentence. Given that the previous determination was made on the recommendation of the Chief Justice, this is to avoid any perception that the new determination might be biased.

As for the wording, we consider “may not” is also appropriate. However, if Members wish, we have no objection to the use of the more emphatic “must not” (the use of “must” is in line with the original provisions that we are amending).

***(g) to consider allowing a prescribed prisoner to apply for an extension under the proposed section 67D(1)***

The proposed section 67D(1) is to provide a mechanism for Secretary for Justice to extend the period within which she must make an application to the court for a determination in respect of each prescribed prisoner by a judge. Since the applications will be made by the Secretary for Justice, there is no need to give the prisoners the right to apply for an extension.

We note the concern of some Members regarding the right of prisoners to apply for an adjournment of the hearing after the case has been listed. Once the case is listed, the prisoner can apply for an adjournment if he has good reason to do so. This is under the inherent jurisdiction of the court. Unlike the time limit to make the application, no statutory power is necessary to apply for an adjournment.

***(h) to explain the policy intent of the proposed section 67D(3)(a) of CPO, to provide the relevant section in CPO on which the drafting of the proposed section was modeled, and to consider improving the drafting of the proposed section***

The policy intent of the proposed section 67D(3)(a) is to enable the Secretary for Justice to put together the basic documents to make the applications to the court. These documents would be made available to the judge that hears the case and, as a matter of practice, copies would also be served on the prisoner concerned.

In drafting the proposed section 67D(3)(a), reference was made to s.81A of the Criminal Procedure Ordinance, Cap 221 (copy attached). The documents referred to in the proposed section are mainly the transcript of the proceedings relating to the sentencing of the prescribed prisoners.

To address Members' concern, we propose to change section 67D(3)(a) to "... a copy of the record, if available, of the proceedings relating to the relevant sentence, other than the evidence given in those proceedings; and ...".

***(i) to consider allowing a prescribed prisoner to request the provision of the documents referred to in the proposed section 67D(3) to the prescribed***

*prisoner and the court.*

As stated in our response to (h) above, when the Secretary for Justice files the applications to the court together with the documents, copies of those documents will be served on the prisoners.

Members suggested at the last meeting that the prescribed prisoners should be allowed to request the provision of documents. We consider that the right to apply to the judge for further records or documents after the case has been listed for hearing should be given to both parties, i.e. the prescribed prisoners and the Secretary for Justice. We propose to add a provision to this effect.

Security Bureau  
7 June 2004