

LC Paper No. CB(4)1376/16-17(03)

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Bills Committee on the Statute Law (Miscellaneous Provisions) Bill 2017

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper gives an account of the deliberations of the Panel on Administration of Justice and Legal Services ("the Panel") on the Statute Law (Miscellaneous Provisions) Bill 2017 which seeks to introduce miscellaneous amendments to various Ordinances.

Background

Current legislation governing the giving of evidence by way of a live television <u>link</u>

2. Currently, under section 79B of Criminal Procedure Ordinance (Cap. 221), the court may, on its own motion or upon application, permit a person falling within any of the following three categories to give evidence by way of a live television link :

- (a) a child (other than a defendant) giving evidence in proceedings in respect of an offence of sexual abuse or cruelty, or of an offence (other than one triable summarily only) which involves an assault on, or injury or a threat of injury to, a person; or
- (b) a mentally incapacitated person (including a defendant) giving evidence in proceedings in respect of an offence that is triable otherwise than summarily only; or
- (c) a "witness in fear" ¹ giving evidence in proceedings in respect of any offence.

¹ A "witness in fear" is defined in section 79B(1) (by application of section 7(1) of the Interpretation and General Clauses Ordinance (Cap. 1)) to mean a witness whom the court hearing the evidence is satisfied, on reasonable grounds, is apprehensive as to the safety of himself/herself or any member of his/her family if he/she gives evidence.

3. While it is possible that a complainant of sexual offences can be a "witness in fear", and hence be covered by the existing section 79B, it is not necessarily so. According to the Administration², a complainant or witness of a sexual offence, though not "in fear" as statutorily defined, ought nonetheless to be treated with understanding, fairness and dignity. The court should have the requisite powers in appropriate cases to protect such witnesses from the embarrassment of being exposed to public sight, any indignity of treatment, and the anxiety arising from the need to physically face the assailants during the trial.

Proposed legislative amendments to give the court a discretion to permit complainants of certain sexual offences to give evidence by way of live television link

4. In late 2014, a Panel member, Dr Hon Elizabeth QUAT, proposed to extend the definition of the term "witness in fear" under the Cap. 221 to allow a witness falling within the expanded definition to give evidence in court under the provision of a screen or by live television link, and enter/leave the court building through special passageways.

5. In this regard, DoJ was given to understand that Mr Eric CHEUNG, Principal Lecturer of the Department of Law of The University of Hong Kong, had prepared a draft bill³ to add a new provision to section 79B of Cap. 221, so that where a complainant within the meaning of section 156(8) of Cap. 200^4 was to give evidence in proceedings in respect of a specified sexual offence within the meaning of section 117(1) of Cap. 200^5 , the court might, on application or on its own motion, permit the complainant (i.e. the victim) to give evidence by way of a live television link, subject to such conditions as the court considered appropriate in the circumstances.

² The consultation paper on the proposed amendment to Cap. 221 to give the court a discretion to permit complainants of certain sexual offences to give evidence by way of a live television link issued by DoJ in October 2016 (Annex A to LC Paper No. CB(4)718/16-17(03)).

³ The draft bill is included in Mr Eric CHEUNG's submission dated 17 June 2016 (LC paper No. CB(4)1144/15-16(04)).

⁴ Under section 156(8) of Cap. 200, complainant, in relation to an allegation of a specified sexual offence, means the person against whom the offence is alleged to have been committed.

⁵ Under section 117(1) of Cap. 200, specified sexual offence means any of the following, namely, rape, non-consensual buggery, indecent assault, an attempt to commit any of those offences, aiding, abetting, counselling or procuring the commission or attempted commission of any of those offences, and incitement to commit any of those offences.

Public Consultation

6. In October 2016, DoJ issued a consultation paper⁶ on the proposed legislative amendments to Cap. 221 and Live Television Link and Video Recorded Evidence Rules (Cap. 221J) to give the court a discretion, on application or on its on motion, to permit complainants of certain sexual offences to give evidence by way of a live television link (the "live television link proposal"), with a draft bill.

7. At the Panel meeting held on 27 March 2017, the Administration briefed members the outcome of the consultation on exercise. The Administration advised that views had been received from respondents including the two legal professional bodies and the relevant interest groups'. Save for one respondent, all other respondents expressed support to the proposals set out in the consultation paper. Hence, DoJ undertook to take forward the above proposed amendments by way of the Statute Law (Miscellaneous Provisions) Bill 2017 ("the Bill").

Statute Law (Miscellaneous Provisions) Bill 2017

8. The Bill was published in the Gazette on 2 June 2017 and received its First Reading at the Council meeting on 14 June 2017. The Bill seeks to introduce miscellaneous amendments to various Ordinances. The major proposed amendments include:

- (a) amendments to Cap. 221 and Cap. 221J to confer on the court a discretion to permit a complainant of specified sexual offences to give evidence in proceedings by way of a live television link;
- (b) amendments to the District Court Ordinance (Cap. 336) so that the jurisdiction limits of costs-only proceedings may be amended by resolution of the Legislative Council;
- (c) amendments to the Legal Practitioners Ordinance (Cap. 159) and the Admission and Registration Rules (Cap. 159B) relating to the residency requirements for admission as solicitor in Hong Kong; and;

⁶ The consultation paper is attached to Annex A of LC Paper No. CB(4)718/16-17(03).

⁷ The individuals and organizations which had submitted their comments on the consultation paper are listed out in paragraph 9 of LC Paper No. CB(4)718/16-17(03).

(d) amendments to the Legislation Publication Ordinance (Cap. 614) and the Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990) relating to law compilation and operational arrangements for editorial amendments.

Discussions of the Panel

9. At the Panel meetings held on 27 June 2016 and 27 March 2017, the Panel discussed the issues relating to the protection of complainants in sexual offence cases during court proceedings. The Hong Kong Bar Association (the "Bar Association"), the Law Society of Hong Kong (the "Law Society") and deputations also attended the meetings to give views on the subject. Major views on the live television link proposal and related measures for protection of complainants in sexual offence during court proceedings are set out in the ensuing paragraphs.

Legislative amendments proposed by Mr Eric CHEUNG

10. During the discussion on the legislative amendments proposed by Mr Eric CHEUNG at the meeting held on 27 June 2016, the Bar Association saw no fundamental difficulty in permitting the giving of evidence by live television link by sexual violence victims in appropriate cases. The Association Concerning Sexual Violence Against Women and RainLily also expressed support for the proposed amendments. Members considered that the proposed amendments should be put forward to the LegCo as soon as practicable.

11. A member asked whether there should be a provision to set out the protection to prevent the identification of the complainant of sexual offence cases. Mr Eric CHEUNG responded that the main attraction of the proposed stopgap measure which he proposed was that it could be done by simple legislative amendment and was built upon well-established mechanism with judicial control. As to a comprehensive review on whether the coverage should be expanded, it would still be required at a later stage, after the proposed legislative amendment had taken effect.

12. At the meeting held on 27 March 2017, members were briefed on the proposed amendments to be included in the Bill, under seven headings, namely, (a) Criminal Procedure Ordinance (Cap. 221) and Live Television Link and Video Recorded Evidence Rules (Cap. 221J); (b) High Court Ordinance (Cap. 4), District Court Ordinance (Cap. 336) and Competition Ordinance (Cap. 619); (c) District Court Ordinance (Cap. 336); (d) Legal Practitioners Ordinance (Cap. 159) and the Admission and Registration Rules (Cap. 159B); (e)

Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597); (f) Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990) and Legislation Publication Ordinance (Cap. 614); and (g) Other miscellaneous amendments.

13. Members expressed support to the live television link proposal in (a) mentioned in the above paragraph. Members agreed that this would provide better protection for complainants of sexual offence as well as children and mentally incapacitated persons during court proceedings.

14. The Chairman of the Panel shared the views of the Bar Association and the Law Society that the current proposal, which would confer upon the court a discretion to decide on whether the complainant will be allowed to testify by way of a live television link, would be an appropriate approach, as opposed to the option of making the live television link arrangement an automatic one. The Bar Association stressed that in deciding on the above said matter, the magistrates/ judges concerned had to strike a balance between the needs to offer protection for the complainants in some special circumstances, the rights of the defendants and the interests of open justice.

15. Members however had not expressed views on other parts of the Bill, i.e. from (b) to (g) as mentioned in paragraph 12 above.

Other measures and enhancements for the protection of complainants of sexual offence

Enhancement of court facilities and special arrangement to facilitate the implementation of the protective measures

16. Members also welcomed the implementation of other measures, including the provision of screens as set out under the revised/new Practice Directions issued by the Judiciary, to enhance protection for complainants of sexual offence cases and mentally incapacitated persons during court proceedings.

17. Members also raised concern as to the feasibility of the provision of special passageway for complainants, especially in some old court buildings. The Judiciary advised that the existing court facilities at various levels of courts should be able to meet the operational need in relation to the implementation of the live television link proposal as well as the provision of screens and special passageway. The Judiciary further advised that if a special passageway was not operationally feasible in certain court building, the relevant case might be transferred to be heard at another court building where necessary court facilities were available.

Measures to conceal the identity of a witness

18. A member raised the concern that the television screens for live television link were often placed at positions where members of the public or media inside the courtroom would be able to see. The above mentioned situation was considered to be undesirable and enhancement measure was considered necessary to conceal the identity of the witness.

19. The Administration advised that even after the passage of the Bill, other existing measures, including the provision of a screen to shield off the television screen, could still be adopted if the merit of the case so required, subject to the judge's discretion under the common law. The Law Society opined that whenever the giving of evidence by way of television link was allowed, the face of the witness should be completely obscured from the public. The Bar Association expressed a contrary view and opined that there might be reasons whereby open justice would demand a complainant's face to be seen by the public when he/she made accusation against the defendant. Hence, the granting of screen (to shield the television screen) in order to conceal the identity of the witness should not be automatic, but subject to the court's discretion and might be also subject to the debate of the counsels representing the parties.

Support Person

20. In response to a members' request that the Administration should review the practice guide in relation to the arrangement of "support person" in the court proceedings so that a person whom the witness had known previously could be trusted to act as a "support person", the Administration advised that, as stipulated in Rule 3(9) of Cap. 221J, a witness giving evidence through a live television link shall be accompanied by a person (i.e. "support person") acceptable to the court and, unless the court otherwise directed, by no other person. The Administration stressed that procedural fairness of the relevant court proceedings and whether the person had the ability and relevant professional knowledge to provide emotional support for the witness during the trail were important considerations in assessing the above said matter. The Administration agreed to give further considerations to the suggestion made/ concern raised by the members.

Latest position

21. The House Committee decided on 16 June 2017 to set up a Bills Committee to scrutinize the Bill.

Relevant papers

22. A list of relevant papers is in the Appendix.

Council Business Division 4 Legislative Council Secretariat 10 July 2017

Bills Committee on the Statute Law (Miscellaneous Provisions) Bill 2017

List of relevant papers

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
28.5.2013	Panel on Administration of Justice and Legal Services ("AJLS")	Administration's paper on "Protection of Victims of Sexual Offence Cases during Court Proceedings"	CB(4)439/12-13(01) http://www.legco.gov.hk/yr <u>12-</u> <u>13/english/panels/ajls/paper</u> <u>s/aj0108cb4-439-1-e.pdf</u>
		Administration's paper on "Procedures in handling of sexual offence cases and related trainings of the Hong Kong Police Force"	http://www.legco.gov.hk/yr
		Administration's paper on "Existing measures by Prosecutions Division of Department of Justice in handling victims in sexual offence cases"	http://www.legco.gov.hk/yr 12-
		Sexual Offence Cases	http://www.legco.gov.hk/yr
		Submission from the Hong Kong Committee on Children's Rights (Chinese version only)	CB(4)695/12-13(02) http://www.legco.gov.hk/yr 12- 13/chinese/panels/ajls/paper s/aj0528cb4-695-2-c.pdf

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
		Submission from Against Child Abuse (Chinese version only)	CB(4)713/12-13(01) http://www.legco.gov.hk/yr <u>12-</u> <u>13/chinese/panels/ajls/paper</u> <u>s/aj0528cb4-713-1-c.pdf</u>
		Association Concerning	CB(4)695/12-13(03) http://www.legco.gov.hk/yr 12- 13/chinese/panels/ajls/paper s/aj0528cb4-695-3-c.pdf
		Submission from RainLily (Chinese version only)	CB(4)713/12-13(02) http://www.legco.gov.hk/yr 12- 13/chinese/panels/ajls/paper s/aj0528cb4-713-2-c.pdf
		Submission from Dr Monit CHEUNG, Graduate College of Social Work of the University of Houston	
		Submission from Association for Concern for Legal Rights of Victims of Domestic Violence	CB(4)713/12-13(03) http://www.legco.gov.hk/yr 12- 13/chinese/panels/ajls/paper s/aj0528cb4-713-3-c.pdf
		Minutes of the meeting	CB(4)213/13-14 http://www.legco.gov.hk/yr <u>12-</u> <u>13/english/panels/ajls/minut</u> es/aj20130528.pdf

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
		Response from Security Bureau dated 11 July 2013 on the handling of sexual offence cases to issues raised at the meeting on 28 May 2013	http://www.legco.gov.hk/yr
		Response from DoJ dated 25 February 2014 on the handling of sexual offence cases to issues raised at the meeting of 28 May 2013	
		Submission from Association Concerning Sexual Violence Against Women (Chinese version only)	CB(4)695/12-13(03) http://www.legco.gov.hk/yr <u>12-</u> <u>13/chinese/panels/ajls/paper</u> <u>s/aj0528cb4-695-3-c.pdf</u>
28.11.2014	AJLS	Elizabeth QUAT dated 28 November 2014 requesting to discuss the	CB(4)220/14-15(01) <u>http://www.legco.gov.hk/yr</u> <u>14-</u> <u>15/chinese/panels/ajls/paper</u> <u>s/ajls20141222cb4-220-1-</u> <u>c.pdf</u>
22.12.2014	AJLS	Minutes of the meeting (paragraph 2)	CB(4)556/14-15 http://www.legco.gov.hk/yr 14- 15/english/panels/ajls/minut es/ajls20141222.pdf

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
26.1.2015	AJLS	Judiciary Administration's paper entitled "Provision of screens for complainants in sexual offence cases during court proceedings"	http://www.legco.gov.hk/yr
		Minutes of the meeting	CB(4)703/14-15 http://www.legco.gov.hk/yr <u>14-</u> 15/english/panels/ajls/minut es/ajls20150126.pdf
		Association Concerning Sexual Violence Against Women for agenda item IV on "Provision of screens for	<u>14-</u> <u>15/chinese/panels/ajls/paper</u> <u>s/ajls20150126cb4-412-1-</u>
15.10.2015	AJLS	Minutes of the meeting (paragraph 20)	CB(4)113/15-16 <u>http://www.legco.gov.hk/yr</u> <u>15-</u> <u>16/english/panels/ajls/minut</u> <u>es/ajls20151015.pdf</u>
2.12.2015	Council Meeting		general/201512/02/P201512
27.6.2016	AJLS	Security Bureau and Hong Kong Police Force's paper on "Measures for handling	<u>15-</u> 16/english/panels/ajls/paper

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
		complainants in sexual offence cases during court proceedings"	_
		Judiciary Administration's paper on "Practice Directions relating to the Provision of Screens for Witnesses in Sexual Offence Cases during Court Proceedings"	<u>http://www.legco.gov.hk/yr</u> <u>15-</u> <u>16/english/panels/ajls/paper</u>
		Background brief on "Measures for handling sexual offence cases and provision of screens for complainants in sexual offence cases during court proceedings" prepared by Legislative Council Secretariat	http://www.legco.gov.hk/yr 15- 16/english/panels/ajls/paper s/ajls20160627cb4-1144-3-
		Submission from Mr Eric CHEUNG Tat-Ming	CB(4)1144/15-16(04) <u>http://www.legco.gov.hk/yr</u> <u>15-</u> <u>16/english/panels/ajls/paper</u> <u>s/ajls20160627cb4-1144-4-</u> <u>e.pdf</u>
		Letter dated 21 June 2016 from The Law Society of Hong Kong	CB(4)1153/15-16(01) <u>http://www.legco.gov.hk/yr</u> <u>15-</u> <u>16/english/panels/ajls/paper</u> <u>s/ajls20160627cb4-1153-1-</u> <u>e.pdf</u>
-	-	Submission on "Measures for handling sexual offence cases and provision of screens for complainants in	http://www.legco.gov.hk/yr

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
		sexual offence cases during court proceedings" from RainLily (Chinese version only)	
-	-	Submission on "Measures for handling sexual offence cases and provision of screens for complainants in sexual offence cases during court proceedings" from Association Concerning Sexual Violence Against Women (Chinese version only)	http://www.legco.gov.hk/yr 15- 16/chinese/panels/ajls/paper s/ajls20160627cb4-1187-2- c.pdf
-	_	Minutes of the meeting	CB(4)1309/15-16 http://www.legco.gov.hk/yr <u>15-</u> 16/english/panels/ajls/minut es/ajls20160627.pdf
27.3.2017	AJLS	Administration's paper on "Enhancing protection of complainants in sexual offence cases and mentally incapacitated persons during court proceedings"	http://www.legco.gov.hk/yr
		Administration's paper on "Statute Law (Miscellaneous Provisions) Bill 2017"	
		Letter dated 20 March 2017 from the Judiciary Administration providing an update on the various	

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
		issues relating to the Judiciary on "Measures for handling sexual offence cases and provision of screens for witnesses in sexual offence cases during court proceedings"	17/english/panels/ajls/paper s/ajls20170327cb4-718-5-
		Updated background brief on "Measures for handling sexual offence cases and provision of screens for complainants in sexual offence cases during court proceedings" prepared by Legislative Council ("LegCo") Secretariat	http://www.legco.gov.hk/yr 16- 17/english/panels/ajls/paper s/ajls20170327cb4-718-6-

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