

立法會
Legislative Council

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Tel : 3919 3300

Date : 3 July 2020

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 8 July 2020

**Debate and voting arrangements for
Evidence (Amendment) Bill 2018**

Further to LC Paper No. CB(3) 585/19-20 issued on 24 June 2020,
I attach a table on the debate and voting arrangements for the captioned Bill
for Members' information.

(Dora WAI)
for Clerk to the Legislative Council

Encl.

**Evidence (Amendment) Bill 2018
Debate and voting arrangements**

Object of the Bill : To amend the Evidence Ordinance (Cap. 8) to provide for the admissibility of hearsay evidence in criminal proceedings; and to provide for related matters.

Joint debate : Clauses with no amendment, and clause with amendments proposed by Secretary for Justice (“SJ”) — Clauses 1 to 10
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Joint debate on the original clauses and the amendments.

Debate theme : Hearsay evidence in criminal proceedings

Clause 5

- To make a textual amendment to the Chinese version of the proposed section 55C to enhance its clarity.
- The proposed section 55E(3)(c) stipulates that criminal proceedings are regarded as having been started if, for proceedings instituted in respect of contempt of court, the person concerned has been committed by court. The amendments to the proposed section 55E seek to:
 - (a) delete section 55E(3)(c) in order not to limit the way in which the courts would be able to develop the jurisprudence on when contempt proceedings should be regarded as having been started; and
 - (b) make a consequential textual amendment to the proposed section 55E(3)(b).
- The proposed section 55N sets out the requirements in relation to the application to the court for permission to admit hearsay evidence. The proposed section 55M stipulates that the court may grant the permission if the hearsay evidence satisfies the conditions listed in section 55M(2) (including satisfying the condition of necessity under section 55O). Under the proposed section 55O(1)(e), the following situation satisfies the condition of necessity: the declarant refuses to give the evidence in the proceedings in circumstances where the declarant would be entitled to refuse on the ground of self-incrimination. The amendments to the proposed section 55O seek to:
 - (a) amend section 55O(1)(e) by adding a condition that the party applying for permission under section 55N is the accused, which in effect would limit the scope of application of section 55O(1)(e) to the defence only, to ensure that the statement exculpating the accused is received in evidence by the court; and
 - (b) make a consequential amendment to the proposed section 55O(2).
- To amend the proposed sections 55P(2) and 55Q(5) to better reflect the policy intent by providing that:
 - (a) in deciding whether the condition of threshold reliability is satisfied in respect of any hearsay evidence in proceedings, the court “may have regard only” (instead of “must have regard”) to all the factors listed in section 55P(2); and
 - (b) in considering whether it would be unsafe to convict the accused of the offence, the court “may have regard only” (instead of “must have regard”) to all the factors listed in section 55Q(5).

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| Voting order : <ol style="list-style-type: none">1. Clauses with no amendment (i.e. clauses 1 to 4 and 6 to 10) standing part of the Bill2. SJ's amendments3. Clause 5 with amendments or without amendment standing part of the Bill |
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SJ's amendments

(set out in LC Paper No. CB(3) 585/19-20 issued on 24 June 2020)

Council Business Division 3
Legislative Council Secretariat
3 July 2020