

LC: The Evidence (Miscellaneous Amendments) Bill 2002

Following is the speech by the Secretary for Justice, Ms Elsie Leung, in the Resumption of the Second Reading of the Evidence (Miscellaneous Amendments) Bill 2002 in the Legislative Council today (June 25) :

Madam President,

As I explained when I introduced this Bill into this Council on 29 May last year, this Bill is in two Parts. Part I implements recommendations made by the Law Reform Commission, and relates to the extent to which a person can lawfully be called and be compelled to give evidence for or against his or her spouse in criminal proceedings. Part II of the Bill aims at enabling a witness outside Hong Kong to give evidence in criminal proceedings in Hong Kong by way of a live television link.

Since the introduction of the Bill, the Bills Committee, chaired by the Hon Margaret Ng, has thoroughly examined the clauses and the policies behind them. I am most grateful to the Chairman and members of the Bills Committee [namely the Hon Audrey Eu, Hon Miriam Lau, Hon Tsang Yok-sing, Hon Cyd Ho, Hon James To, Hon Andrew Wong, Hon Chan Yuen Han] for their hard work and helpful contributions.

Some changes to the Bill have been proposed and agreed. As a result, I will be moving a number of Committee Stage amendments later this afternoon. I will now give a brief outline of the more important amendments.

Part I

The proposed Committee Stage amendments primarily relate to clause 4, which repeals and replaces section 57 of the Criminal Procedure Ordinance.

The proposed new section 57(3) of that Ordinance provides that a spouse of an accused shall be compellable to give evidence for the prosecution and on behalf of a co-accused if the offence charged is one specified under that subsection. Members of the Bills Committee expressed concern that once the accused or co-accused is

charged with any one of these specified offences, the spouse may be compelled to give evidence for any other offence with which the accused or co-accused may also be charged. A Committee Stage amendment will be introduced to make it clear that a spouse can only be compellable to give evidence in respect of a specified offence.

At the suggestion of the Bills Committee, the amendment also extends the scope of the specified offences to cover certain offences involving a child of the family who was mentally incapacitated at the time of the offence, or is so incapacitated at the time of the trial.

Another Committee Stage amendment relates to the proposed section 57(4), which provides that, where an accused is standing trial together with his or her spouse, neither spouse will be competent or compellable to testify against the other. This is to protect the fundamental rights of the co-accused. A new subsection (57(4A)) will be introduced to make it clear that a spouse will not be subject to that principle if he or she is no longer liable to be convicted at the same trial.

The proposed section 57A gives the spouse of an accused the right to apply to the court for exemption from giving evidence where the spouse is compellable to give evidence. This provision would serve to allay the concern about the sanctity of marriage, which may be compromised as a result of one spouse being compellable to testify against the other spouse. A Committee Stage amendment will be moved to amend the proposed section 57A to ensure that a spouse can make an application for exemption at any time, including halfway through the examination.

Part II

Madam President, I now turn to amendments relating to Part II of the Bill.

Clause 16 of the Bill introduces, amongst others, a new section 79I to the Criminal Procedure Ordinance, which gives the court the power to permit evidence to be given by live television link. To avoid the possible impression that the court must give permission once the stipulated requirements are met, the provision is redrafted to make it clear that, whilst the court has a general discretion to give permission, it shall not give the permission if any one of the circumstances exists. Two new circumstances are also added, as suggested by the Bills Committee, to ensure that giving evidence by live television link will not be permitted if measures to ensure that the person will give evidence without coercion cannot reasonably be taken; or if it is

not in the interest of justice to permit such evidence.

Another amendment will be moved to facilitate the taking of evidence upon a request from abroad under the Mutual Legal Assistance in Criminal Matters Ordinance. Clause 19(2)(b) of the Bill will be amended to allow the magistrate to take evidence otherwise than on oath, which includes an "oath" which does not amount to an oath under Hong Kong law but is acceptable under the law of the requesting jurisdictions. Consequential amendments to clause 20, and new clauses 19A, 23 and 24 are necessitated by this proposal.

Madam President, with these remarks and subject to the Committee Stage Amendments proposed by the Administration, I commend the Bill to Honourable Members.

End/Wednesday, June 25, 2003