

**Information requested by the Bills Committee
at its meeting held on 24 January 2002 regarding
the Karaoke Establishments Bill**

The information requested by the Bills Committee is set out in the following paragraphs –

Clauses 2 and 4(4)

- 1. To review the definition of “karaoke establishment” under clause 2 with a view to narrowing its scope to cover only premises which targeted by the Bill;**

The policy intent of establishing a licensing regime for karaoke establishments (KE) is to improve the fire and building safety in these establishments. At present, there is no specific control of KE, other than some general requirements applicable to the premises in which they are located. As most of the KE also serve food or are attached to clubs or hotels, they are subject to some form of regulatory controls if the karaoke business is conducted in a licensed restaurant, premises operated with a liquor licence, a certified clubhouse or a licensed hotel or guesthouse under the respective Ordinances.

Without proper fire safety construction and installations, the risk of fire with serious consequences in a KE remains high in view of the unique characteristics of its operations. General alertness of the customers or patrons may be affected by dim lighting, the consumption of alcoholic drinks and loud music inside the premises. These premises are often partitioned into small cubicles and accessed through long and narrow passages. Such special layout will make it difficult to escape in case of fire. General fire safety provisions cannot adequately address the fire risk associated with, for example, the special closed-cubicle layout of most KE. Therefore, a set of prescribed minimum standards to safeguard fire and public safety in KE is essential.

During the deliberations by the Bills Committee, Members raised the concern that certain small-scale karaoke activities which are ancillary to another trade or business activity might also be caught by the definition of KE and subject to control under the Bill. Even though exemption order may eventually be granted under clause 3(1)(e) for these premises “for reasons connected with the situation, means of ingress or egress, design, construction, size or equipment, installations or facilities therein”, the situation is not entirely satisfactory.

We have explored the feasibility of amending the definition of KE with a view to narrowing its scope. Options considered include the deletion of “in association or connection with any other trade or business activity”; adding the term “mainly” or the like to qualify the proportion of KE activity permitted; introducing references to “small cubicles” or “long and narrow corridors” etc. However these options would either create ambiguities and loopholes rendering the effective administration of the licensing regime impracticable, or would require translation into precise legal wording of countless possible layouts and scenarios within the premises of karaoke establishments. The clear-cut interpretation of some commonly used adjectives such as “small”, “long” and “narrow” also proves to be extremely difficult.

Having re-considered the definition of KE and the exemption provision in clause 3(1), the Administration proposes to narrow the scope of control of KE under the Bill by adopting the exemption criteria originally proposed for certified clubhouses and making it applicable to all types of premises. The rationale is that premises having not more than 3 rooms for karaoke activity with aggregate floor area not exceeding 30 square metres are unlikely to pose unacceptably high risk in case of fire. The proposed exemption provision should address the issue of small-scale karaoke activity ancillary to another trade or business activity or even a very small KE itself. A paper explaining in more detail the rationale behind the exemption criteria is at Annex A.

As explained in LC Paper No. CB(2) 832/01-02(01) on the application of exemption criteria for certified clubhouses, the setting of the proposed criteria will not prevent premises which do not meet any of the criteria from being considered for the grant of an order made under clause 3(1)(e) by the licensing authority. The licensing authority will be able to consider an application from any type or description of KE not meeting the above exemption criteria and to exercise discretion in its favour on a case-by-case basis, having regard to the merits of each case.

As a result of narrowing the scope of applicability of the Bill, amendments to clause 3(1) are proposed to reflect this change and to rationalize the types of premises that will be exempt under the Bill, as follows -

- (a) The “3 rooms/30 square metres” exemption provision is included in clause 3 as new clause 3(1)(a).
- (b) We propose to delete the existing sub-clauses 3(1)(a) and (b) as the number of KE in these premises will be negligible, so that

there is not much reason to highlight them as a group of KE for exemption. Moreover the presence of karaoke activity on these premises, if any, will likely be addressed by the “3 rooms/30 square metres” exemption provision. If not, the premises should be subject to the same treatment as any others regardless of the status of the operators.

- (c) We propose to keep sub-clause 3(1)(c) as presently drafted. These premises may have karaoke activity but in view of the provision of means of escape in these purpose-designed buildings, there is little concern that unacceptable fire and building risk may arise from the minimal karaoke activity which may be present.
- (d) We propose to keep sub-clause 3(1)(d) in respect of “bona-fide” restaurants as presently drafted.
- (e) We propose to delete proposed new sub-clause 3(1)(da) for certified clubhouses as this has already been taken care of by the “3 rooms/30 square metres” exemption provision applicable to all.
- (f) We propose to revise clause 3(1)(e) as set out in Item 3 of LC Paper No. CB(2) 894/01-02(01). In addition, we also propose to include the element that the licensing authority is satisfied that the safety of a person using a karaoke establishment will not be adversely affected (see Item 6 below).

A working draft of new clause 3(1) reflecting the above is attached at Annex B for easy reference. With the above proposals, we consider the scope of control for KE is appropriate and a balance maintained between effective regulatory control and facilitation in general.

2. **To consider some members’ view that clause 4(4) which sought to exempt residential premises from the application of the Bill was redundant, and a member’s suggestion that the words “no fee is charged for the activity of karaoke” should be deleted;**

Clause 4(4) was intended to state, for the avoidance of doubt, that karaoke activity conducted in a separate household unit would not be subject to control under the Bill, provided that it is not run by way of trade or business. Whilst there is no direct linkage between charging of fee and fire risk associated with karaoke activity, the inclusion of the words “no fee is charged for the activity of karaoke” aims to prevent

loopholes for operating commercial karaoke activities in residential premises without a licence or permit. In the light of Members' concern, the Administration proposes to delete clause 4(4), so that any KE falling within the definition and not eligible for exemption under clause 3 will have to apply for a licence/permit .

3. To explain whether the Bill, as presently drafted, applied to the following premises-

(a) food establishments such as “私房菜” which operated in residential premises and had ancillary karaoke activities;

As a result of the proposed revised exemption provision of karaoke establishments in Item 1 of this Paper, premises with not more than 3 rooms and floor area not more than 30 square metres will be exempted from application of the Bill. This would take care of many minor ancillary karaoke activity conducted in association with other trade or business, such as “私房菜”.

(b) premises where fees were charged for karaoke activities for the purpose of cost-recovery and maintenance e.g. staff mess, offices of LegCo/District Council members and offices of mutual aid committees;

As a result of the proposed revised exemption provision of karaoke establishments in Item 1 of this Paper, premises with not more than 3 rooms and floor area not more than 30 square metres will be exempted from application of the Bill.

4. To consider the suggestion made by the legal adviser to the Bills Committee that the definition of “karaoke establishment” could be revised to the effect that it only applied to any place used for the purpose of karaoke by way of trade or business *with a view to gain*;

The meaning of “trade or business” is not restricted only to “gain or profit” though if those elements are present, they would show the fact of “trade or business”. The addition of “with a view to gain or profit” would require the licensing authority to first establish the intention of the operator before seeking to act under the Ordinance. In the absence of an admission or direct evidence from the operator, this would be impractical. Besides it is arguable if there is any direct link between “with a view to gain” and the fire risk associated with karaoke activity

on the premises.

For the above reasons, we do not consider it appropriate to qualify “trade or business” by adding the phrase “with a view to gain” in the definition of “karaoke establishment”.

5. In other Ordinances where the expression “by way of trade or business” was adopted, to advise how the expression had been defined or construed;

The term “trade or business” is well established in Hong Kong law including the Companies Ordinance (Cap. 32), the Inland Revenue Ordinance (Cap. 112), the Gambling Ordinance (Cap. 148), the Summary Offences Ordinance (Cap. 228), the Firearms and Ammunition Ordinance (Cap. 238), the Census and Statistics Ordinance (Cap. 316), the Supplementary Professions Ordinance (Cap. 359) and the Noise Control Ordinance (Cap. 400).

Where the term is defined in the statute, it may carry different meanings for the purpose of different Ordinances. A comparison table showing some of the interpretations is provided at Annex C.

Clause 3(1)(e)

6. On the Administration’s proposed amendment to clause 3(1)(e) as set out in LC Paper No. CB(2)894/01-02(01), to expressly provide that the factors taken into consideration in granting an exemption order were related to fire safety or the prevention of danger;

In response to Members’ comment, we propose to include the element “he [licensing authority] is satisfied that the safety of a person using a karaoke establishment will not be adversely affected” in the sub-clause.

Thus, the revised sub-clause will now read “exempted by the licensing authority, by order in writing that is for the time being in force, where for reasons connected with the situation, means of ingress or egress, design, construction, size or equipment, installations or facilities therein, he is satisfied that the safety of a person using a karaoke establishment will not be adversely affected.”

Clause 5(2)

7. **To consider a member’s suggestion that “such conditions” to be imposed by the licensing authority under clause 5(2) should be replaced with “reasonable conditions”, and some members’ view that a consistent drafting approach should be adopted for similar provisions taking into account the implications of such an amendment on existing Ordinances;**

During the Bills Committee meeting on 24 January 2002, the Mandatory Provident Fund Schemes legislation has been cited as precedent in which the word “reasonable” was used to describe the conditions to be imposed. This appears to be the example in section 195(3) of the Mandatory Provident Fund Scheme (General) Regulation which provides for the consent of the Authority to the winding up of employer sponsored schemes – subject to “reasonable conditions”. There can be no valid comparison with the regulatory licensing scheme of the sort as manifested in the Karaoke Establishments Bill.

Leading textbooks on judicial review (Fordham, Judicial Review Handbook, 3rd Edition, pages 685 to 798) are sufficient authority for the well-established proposition that “reasonable administrative action” is not something that has to be the subject of express legislative provision and normally is not. The major drawback in making express provision is that it ignores and disregards the linkage between common law and statute in this area, and if it occurs in some circumstances could lead to a presumption that “reasonableness” is of **less importance** in provisions where it is not expressly mentioned. There are numerous instances in the Bill which require the exercise of a discretion – clauses 2(2), 3(2), 5(1), 5(8), 6(2), 14, 20(2) to name just a few. If the word “reasonable” is not expressed in these provisions but only expressed in clause 5(2) “...reasonable conditions”, the implication may be that “reasonableness” is not required in relation to the exercise of the other discretions.

There could be impediments to enforcement, for example, in relation to clause 16(2) of the Bill and the offence of contravention of a condition. It may be open to argument that a person could not be prosecuted for an offence unless the prosecution first shows that the condition was a “reasonable condition” and it was one that ought reasonably to have been complied with.

In administrative law, the element of “reasonableness” is but one of a number of obligations that are required of a public officer in the exercise of a discretion relating to a statutory duty. Others include

“proportionality”, “certainty”, “consistency” and “rationality”. If only “reasonable” is to be expressed, this may imply no obligation for the exercise of discretion in relation to the other equally important elements.

For the above reasons, we do not consider it appropriate to expressly state in the statute that “reasonable conditions” are to be imposed.

8. To provide details on the licensing conditions to be imposed under clause 5(2), and to advise whether these conditions would apply generally to all karaoke establishments; and

The two licensing authorities under the proposed Bill i.e. the Secretary of Home Affairs and the Director of Food and Environmental Hygiene have arrived at a set of common conditions for the karaoke establishments (KE) licences or permits. These conditions will be applicable to all applications with slight variation according to the licensing authorities.

In some cases, there may be special conditions to be imposed, for example, the submission of certain documents by a certain date regarding fire service installations or ventilating systems etc. All special conditions are specific requirements relating to the premises itself on building and fire safety aspects and shall be considered on a case-by-case basis. We would like to emphasise that all licensing conditions to be imposed would be **reasonable** and **relevant**.

The draft common conditions for the KE licences or permit are at Annex D. The draft may be further revised to tie in with the KE (Licensing) Regulations to be enacted in the future.

9. To advise whether and how members of the public would be made aware of the licensing conditions imposed on a particular karaoke establishment;

As described in Item 8 above, most licensing conditions are standard ones and would be attached to the Guide for Application for Karaoke Establishments (KE) Licence/Permit (to be published) and made known to all concerned. Other special conditions are specific requirements relating to the premises itself on building and fire safety aspects and shall be considered on a case-by-case basis. These conditions are meant for observance by the licensee or grantee of the KE. Should

members of the public be interested to know more about any special licensing conditions that may have been imposed, they may approach either the KE operators concerned or the licensing authority for enquiry.

10. On the provision that “the licensing authority ... may impose such licensing conditions ... as he thinks fit”, to provide a comparison table on the following information in respect of different licensing regimes under existing Ordinance –

- (a) whether similar provision was provided in existing Ordinances and the wording of the provision; and**
- (b) the mechanism for an applicant to appeal against the conditions imposed by the licensing authority, e.g. how representations were considered and whether any hearing was held.**

The expression “as it thinks fit” is a well-established statutory formula for the exercise of a discretion. More than 250 Hong Kong statutes contain the term. A similar expression “as it considers appropriate” appears in more than 50 Hong Kong statutes.

A comparison table providing the above information in respect of different licensing regimes under existing Ordinances is at Annex E.

Exemption Criteria for Karaoke Establishments

Introduction

Making reference to the exemption criteria proposed earlier on for certified clubhouses, the Administration is prepared to extend the same exemption criteria to all types of premises such that those karaoke activities which are unlikely to pose unacceptably high risk in case of fire will be exempt from the application of the Bill. In formulating the criteria for exemption, stringent criteria are adopted to ensure public safety is not compromised and that the blanket exemption would not be abused. Exemption for other KE activities not covered by the proposed exemption criteria will be considered, upon application, under section 3(1)(e).

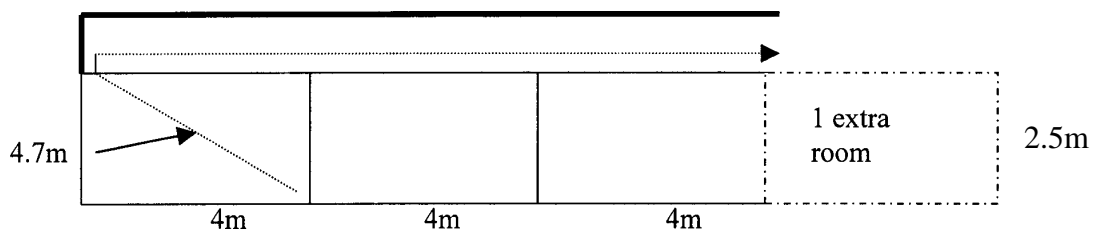
Exemption Criteria

2. The Administration proposes that the proposed Bill will not apply to premises satisfying the following criteria:
 - (a) the sum of the internal floor areas of the karaoke rooms is not more than 30m²; and
 - (b) the number of rooms used for karaoke activities does not exceed three.

Rationale

3. In the current fire safety codes, only one exit door is required to serve a room which accommodates not more than 30 persons. However, for rooms accommodating more than 30 persons, more stringent requirements are imposed, namely, they are required to be provided with a minimum of two exit doors opening in the direction of exit. We therefore propose that the total number of population qualified for exemption be pitched at 30 persons. As the population density for karaoke activity is 1 person/m², the total floor areas for these rooms are fixed at 30m².

4. We believe that it is unlikely that there would be a long corridor scenario with three rooms. In the worst scenario, the maximum travel distance for a layout with three rooms would not exceed 18m. (Figure 1) Hence we propose that the number of rooms qualified for exemption should be pitched at three.



Worst scenario: total travel distance = 16.7m

Figure 1

5. From the fire fighting perspective, for 3 karaoke rooms located in close proximity with each other, staff of the establishment can quickly and conveniently alert the patrons in case of emergency. Within an area of 30m², staff of the establishment can easily spot any outbreak of fire and make use of the extinguishers and/or hose reel to put out the fire in the incipient stage. In addition, the search and rescue and fire fighting tactics for such an area are straightforward. The fire can adequately be dealt with by Fire Services personnel with the application of one or two fire fighting jets.

Working Draft of New Clause 3(1)

3. Application, exemption and transitional

- (1) This Ordinance shall not apply to any karaoke establishment –
- (a) in premises where the karaoke activity occurs in not more than 3 rooms with a floor area, in the aggregate, of not more than 30 square metres;
 - (b) in concert halls, theatres, auditoria and community halls in respect of which a licence has been granted and is for the time being in force under section 4 of the Places of Public Entertainment Ordinance (Cap. 172) or which are the subject of an order made under section 3A of that Ordinance that is for the time being in force;
 - (c) in premises in respect of which a licence for the operation of a restaurant has been granted under the Public Health and Municipal Services Ordinance (Cap. 132) which are the subject of an order made under paragraph (d) that is for the time being in force; or
 - (d) exempted by the licensing authority, by order in writing that is for the time being in force, where, for reasons connected with the situation, means of ingress or egress, design, construction, size or equipment, installations or facilities therein, he is satisfied that the safety of a person using a karaoke establishment will not be adversely affected.

Ordinance	Interpretation of “trade” or “business” in the Ordinances
Transfer Of Businesses (Protection Of Creditors) Ordinance (Cap. 49)	"business" (業務) means a business, or any part thereof, consisting of a trade or occupation (other than a profession) whether or not it is carried on with a view to profit (s.2)
Employment Ordinance (Cap.57)	"business" (業務) includes a trade or profession and any like activity carried on by a person (s.2)
Inland Revenue Ordinance (Cap. 112)	<p>"trade" (行業、生意) includes every trade and manufacture, and every adventure and concern in the nature of trade (s.2)</p> <p>"business" (業務) includes agricultural undertaking, poultry and pig rearing and the letting or sub-letting by any corporation to any person of any premises or portion thereof, and the sub-letting by any other person of any premises or portion of any premises held by him under a lease or tenancy other than from the Government (s.2)</p>
Summary Offences Ordinance (Cap. 228)	"business" (業務) includes any services provided by way of trade or business (s.6A)
Business Registration Ordinance (Cap. 310)	"business" (商業、業務) means any form of trade, commerce, craftsmanship, profession, calling or other activity carried on for the purpose of gain and also means a club (s.2)
Sex Discrimination Ordinance (Cap. 480)	"trade" (行業) includes any business (s.2)

**Drafts Standard Conditions for
Karaoke Establishment Licences [or Permits]**

1. This Licence [or Permit] or a certified true copy issued by the Karaoke Establishment Authority (hereinafter referred to as the Authority) shall be displayed in a prominent position at the licensed [or permitted] premises and must be produced for inspection on demand.
2. Except with the written permission of the Authority, the licensee [or grantee] shall not alter, amend or otherwise change the layout of the premises from the plans approved by the Authority.
3. The operation, keeping, management and other control of the karaoke establishment shall be under the supervision of the Responsible Person specified on this Licence [or Permit].
4. The licensee [or grantee] shall comply with the requirements of the Karaoke Establishments Ordinance and its regulations at all times.
5. The maximum number of persons to be allowed in the premises at any one time (including staff) shall be () .
(Note: This condition will not be applied to restaurants.)
6. The licensee [or grantee] shall notify the Authority in writing not more than 14 days to the change of the Responsible Person specified on this Licence [or Permit].
7. Wash-hand basin must be provided with adequate supply of liquid soap in dispensers and clean paper towel or cloth towel rolls in dispensers or electric hand drier.

If cloth towel rolls in dispensers are used,

- (a) the dispensers should be designed in such a way that the users can only retrieve the clean and unused portion of the cloth towel roll therein; and

- (b) the towels or towel rolls provided through the dispensers must be dry, clean, sanitized, unworn, stainless and good quality.

If electrical hand dryers are provided, they must be in good working condition at all times.

- 8. Each water closet must be provided with an adequate supply of toilet paper and kept clean at all times.
- 9. The ventilating system must be kept fully in operation at all times when the premises are open to the customers.
- 10. The licensee [or grantee] is required to provide proper maintenance of the approved means of escape and of any other required works. The provision and maintenance of all self-closing fire-resisting doors is an essential feature of the arrangements and on no account should such doors be permitted to be held open other than by devices approved by the Authority. All exit routes are to be kept free from obstructions at all times and exit doors should be maintained openable from inside without the use of a key.
- 11. The licensee [or grantee] is required to provide proper maintenance of the approved Fire Service Installations and Equipment and to ensure they are free from obstruction at all times.
- 12. The licensee [or grantee] should make arrangement to ensure that all employees must have received fire safety training provided by their management at least once in every 12 months.
- 13. A short fire safety film must be shown to the customers before the karaoke activity is started.
- 14. The karaoke establishment must be operated within the licensed [or permitted] area as shown on the approved plans of this Licence [or Permit].

For Permits issued in respect of Restaurants:

- 15. This Karaoke Establishment Permit shall be valid for so long as the connected Restaurant Licence remains valid.

For Permits issued in respect of Hotels and Guesthouses:

15. This Permit is valid provided that the premises in which the karaoke establishment is situated have been issued with a valid licence under the Hotel and Guesthouse Accommodation Ordinance (Cap.349)

For Permits issued in respect of Clubs:

15. This Permit is valid provided that the premises in which the karaoke establishment is situated have been issued with a valid Certificate of Compliance under the Clubs (Safety of Premises) Ordinance (Cap 376).

Ordinance	“As he thinks fit”	Appeal Mechanism on Appeal Against Licensing Conditions
Hotel And Guesthouse Accommodation Ordinance (Cap. 349)	The Authority shall ... determine the application by issuing ... a licence for the hotel or the guesthouse imposing such conditions as he thinks fit . (s.8)	Under s.13, any person aggrieved by a decision of the Authority in relation to imposition of licensing conditions may appeal to the Appeal Board established under the Ordinance.
Clubs (Safety Of Premises) Ordinance (Cap. 376)	The Secretary shall ... determine the application- (a) by issuing to and in the name of the applicant, a certificate of compliance for the club-house imposing such conditions as he thinks fit ; (b) by issuing to and in the name of the applicant, a certificate of exemption for the club-house imposing such conditions as he thinks fit . (s.5)	Under s.13, any person aggrieved by a decision of the Authority in relation to imposition of licensing conditions may appeal to the Appeal Board established under the Ordinance.
Residential Care Homes (Elderly Persons) Ordinance (cap. 459)	The Director may issue a certificate of exemption and impose such conditions, in relation to the operation, keeping, management or other control of a residential care home, as he thinks fit . (s.7)	Under s.12, any person aggrieved by a decision of the Authority in relation to imposition of licensing conditions may appeal to the Appeal Board established under the Ordinance.
Massage Establishments Ordinance (Cap. 266)	...the licensing authority may, in his absolute discretion, grant a licence and may impose such conditions as he thinks fit . (s.6)	Under s.10, any person who is aggrieved by a decision of the licensing authority in relation to imposition of licensing conditions may appeal to the Administrative Appeals Board.
Amusement Games Centres Ordinance (Cap. 435)	Subject to subsection (4), the Commissioner may grant a licence, and may impose such conditions in relation to the operation, keeping, management or other control of the amusement game centre as he thinks fit . (s.5)	Under s.11, any person aggrieved by a decision of the Commissioner in relation to imposition of licensing conditions may appeal to the Appeal Board established under the Ordinance.