

**Information requested by the Bills Committee
at its meeting held on 14 January 2002 regarding
the Karaoke Establishments Bill**

The information requested by the Bills Committee on clauses 13 and 19 is set out in the following paragraphs –

To provide detailed information to substantiate the need to have the powers under clauses 13 and 19 including references to other similar offences, legislation and actual experience of enforcement agents.

Clause 13

The powers provided under clause 13 are for the effective administration of the regulatory regime and for the investigation of offences or suspected offences under clause 4 (operation without a permit or licence) and clause 16 (breach of conditions; failure to comply with directions; obstruction) of the Bill. The powers in this clause (clause 13(1)(i) to (iv)) mirror those in other licensing regimes, for example, section 18 of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349), section 18 of the Clubs (Safety of Premises) Ordinance (Cap. 376) and section 18 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459). The licensing authority and the Police will exercise due diligence and act in good faith when invoking any of these powers in administering the licensing regime.

Hon. Members have expressed concern that the powers, particularly that of seizure under clause 13(1)(iii), may be too draconian in relation to the nature of the offences under the Bill. As requested by Hon. Members, we have carefully reviewed the provision in the light of the actual experience of the enforcement agents and are of the view that the exercise of the power of seizure under clause 13(1)(iii), while it should remain, is one that can be made subject to a warrant being obtained from a magistrate. The other powers under the existing clause 13(1) should remain unchanged.

Having considered the concern of Hon. Members, the Administration is of the view that providing for the power under the existing clause 13(1)(iii) to be exercised only under warrant will strike a balance between safeguarding the needs of effective enforcement and the commercial interests of the operators of karaoke establishments. While the relevant

authorities will still have the power to seize articles believed to be evidence of the commission of offence against the Bill, which is absolutely necessary in the interests of effective enforcement, that power would be subject to the involvement of a third party, i.e. a magistrate, which will inject an element of check and balance to the system.

In the light of the foregoing, if Members so wish, the Administration is prepared to move a Committee Stage Amendment to the effect that the existing clause (13)(1)(iii) will be exercised only under warrant.

Clause 19

As explained in Item 7 of the Administration's response to information requested by the Bills Committee at its meeting held on 29 November 2001 (LC Paper No. CB(2)747/01-02(03)), under clause 19 of the Bill, items are liable to be forfeited **only upon the conviction** of any person of an offence under clauses 4 and 16 of the Bill. Whether or not to order forfeiture is entirely a matter for the court. Regarding the power of forfeiture in other legislation, please see Item 6 of the Administration's response to information requested by the Bills Committee at its meeting held on 18 May 2001 (LC Paper No. CB(2)502/01-02(02)).

We consider it appropriate to maintain clause 19 in its present form, subject only to any technical amendment consequential to an amendment to clause 13(1)(iii).