

**Information requested by the Bills Committee
at its meeting held on 8 April 2002 regarding
the Karaoke Establishments Bill**

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

1. On clause 16(1)(c), to explain

- (i) the circumstances under which prosecution would be taken against a person and the circumstances under which the licensing authority would exercise its discretion not to prosecute;**

In exercising its power and enforcing the provision, the licensing authority will consider all the facts taking into account the circumstances of each case and having regard to reasonableness before deciding whether or not to take prosecution action.

It is not envisaged that a first offence involving a minor deviation from the registered name of a KE will be prosecuted. However, the licensing authority may take a serious view in the case of the use of a substantially different name.

If a KE wishes to use a name other than the one indicated on the permit or licence, it can apply to the licensing authority for endorsement of a change of name on the permit or licence. Applications involving only a change of name will be processed within a short period of time. The licensing authority will promulgate guidelines on application procedures to facilitate compliance.

- (ii) the reasons for the Administration not to adopt the arrangement applicable to food premises i.e. food premises using a name different from that indicated in the licence concerned would not constitute an offence;**

A KE is identified or known by the name under which it operates. Generally speaking, it is more convenient for consumers to ascertain the licensing status of a KE from the exhibited licence or permit by referring to the name of the KE rather than to the address of the place at which it operates. Customers identify

KE by their name and not by the name of the licensee. For better protection of consumers' interest, it is necessary and not unreasonable to ask for the name under which the KE will be operated to be provided in the application form submitted to the licensing authority under clause 5(1)(i) of the Bill. The name will be indicated in the licence or permit in the form determined by the licensing authority under clause 5(8)(a). Complaints can be followed up more easily if there is a proper record of the name of KE.

In most cases, a change of name of a business establishment indicates a change of ownership, a change of management or a change in the type of business. Very often, this will incur a change of decorations or layout. Given that the licence or permit of a KE is not transferable unless allowed by the licensing authority under clause 6 and an alteration to the layout has to be permitted in writing by the licensing authority, the operation under the registered name of the KE will help ensure compliance with the provisions of the Ordinance and the licensing conditions and facilitate effective enforcement. It will help alleviate any disputes that may arise in the course of inspection and enforcement and reduce the time and resources for clarifying the evidence of the commission of an offence.

Furthermore, the name of the KE will be included in warrants and orders in enforcement action. If a licensee can change the name of the KE at will, it will hinder the execution of such warrants and orders.

As similar provisions have been included in other licensing regimes (see (iii) below), it is desirable for ease of compliance and enforcement, to maintain consistency in adopting a uniform approach and to avoid confusion.

(iii) to provide examples of similar provisions in other Ordinances and the penalty imposed by those provisions;

Examples of similar provisions can be found in s.21 of the Clubs (Safety of Premises) Ordinance (Cap.376), s.21 of the Hotel and Guesthouse Accommodation Ordinance (Cap.349), s.16 of the Child Care Services Ordinance (Cap.243), s.29 of the Money Lenders Ordinance (Cap.163), s.21 of the Residential Care Homes (Elderly Persons) Ordinance (Cap.459) and s.55 of the Estate Agents Ordinance (Cap.511).

The penalty imposed by the majority of the above provisions is a fine at level 6 and imprisonment for 2 years and a fine of \$10,000 for each day during which the offence continues.

- (iv) to consider the Chairman’s suggestion that a licensee/grantee should be allowed to provide a few different names for his karaoke establishment (KE) to the licensing authority for registration and the KE could operate under any of those names; and**

It would cause confusion to consumers and the enforcement officers if more than one name are registered on the licence or permit. This will also create loopholes and impede enforcement as it would be more difficult for the enforcement officers to collect evidence and prove the commission of an offence in a prosecution.

As stated above, applying to the licensing authority for change of name of a KE is a relatively simple matter.

- 2. To review the drafting of the English version of clause 16(1)(a) and (c) to improve clarity;**

We have reconsidered the drafting of clause 16(1)(a) and (c) and remain of the view that the existing wording of the clause is able to clearly and accurately reflect the policy intent. As such, we do not think that an amendment is necessary.

- 3. To review the drafting of clause 16(2) to reflect the policy intent that “the person” referred therein should be construed to mean a natural person only;**

We propose to amend clause 16(2) by way of Committee Stage amendments to clarify that individual licensees or grantees and authorized representatives of corporations and partnerships will be allowed the defence provided under clause 16(2).

- 4. On members’ concern that articles seized under clause 13(1)(iii) were subject to forfeiture under clause 19, to provide the following information-**

- (i) court cases illustrating the matters the court would consider**

in exercising its discretion to order forfeiture under other Ordinances;

A summary of examples of cases involving seizure and forfeiture of articles under other Ordinances is provided at the Annex.

Most of the ordinances that authorize seizure and forfeiture of seized property by order of court in connection with or on conviction of offences confer discretion on the court in exercising the power of forfeiture. The primary consideration in exercising this judicial discretion is to recognise the purpose for which the forfeiture provisions were enacted which is to enforce the ordinance and to serve as a deterrent against its contravention, and that forfeiture orders must not frustrate the object of legislation.

The court will apply the test of reasonableness and proportionality having regard to the circumstances and the purpose of the ordinance to achieve a just and fair result when determining a forfeiture application. The interest of innocent party will be taken care of when deciding if an order is to be made. Where the party is culpable of the offence concerned, the court will apply the proportionality test to ensure that the value of the goods or the property to be forfeited will not have a punitive effect far out of the proportion to the gravity of the offence committed. An example of this can be found in a case involving forfeiture of property connected with hawking offence under the Public Health and Municipal Services (Cap. 132) in which the Court of First Instance quashed a forfeiture order of a goods van involved in a hawking offence for which the offender was fined only a few hundred dollars.

(ii) the criteria adopted by enforcement officers in deciding on the scale of seizure when exercising the power to seize articles under other Ordinances and official guidelines (if any) issued in this regard for reference of enforcement officers;

There are no specific guidelines on the seizure of items as court exhibits. Enforcement officers are instructed to exercise their power in a cautious and reasonable manner. The general principle is to collect evidence and take away items of property that are sufficient and relevant for proving the alleged offences.

Very often, it is not necessary for enforcement officers to seize

operational equipment especially those of large size or great monetary value. Instead, they may take photographs of the premises including the layout, equipments, utilities, settings and furniture; make sketch plans with dimensions; mark on plans the positions of the photographs taken, take cautioned statements from the responsible persons and witnesses.

For example, while s.133 of the Public Health and Municipal Services Ordinance (Cap. 132) can be relied upon for removal of items from unlicensed restaurants, enforcement officers of the Food and Environmental Hygiene Department will only invoke such power when the hygienic condition of the premises are very poor or the continued operation of the premises pose significant health hazard.

5. **To provide examples of provisions in other Ordinances which were similar to clause 20(3) in respect of the discretion of the licensing authority to waive the requirements of any regulation made under the principal Ordinance. (Hon. Howard YOUNG suggested that the Administration make reference to the Hotel and Guesthouse Accommodation Ordinance (Cap.349)).**

Examples of similar provisions can be found in s.22 of the Hotel and Guesthouse Accommodation Ordinance (Cap.349), s.22 of the Clubs (Safety of Premises) Ordinance (Cap.376), s.125 of the Public Health and Municipal Services Ordinance (Cap.132), s.23 of the Residential Care Homes (Elderly Persons) Ordinance (Cap.459), s.18 of the Child Care Services Ordinance (Cap.243) and s.35 of the Bedspace Apartments Ordinance (Cap.447).

Security Bureau
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Summary of examples of cases involving seizure and forfeiture of articles under other Ordinances

Public Health and Municipal Services Ordinance (Cap. 132)

- (a) When taking enforcement actions on hawkers, enforcement officers can, under s.86, seize hawker equipment and commodities in respect of which they have reasons to believe that a hawker offence has been committed. From past experience, the court will, on conviction of the offence, normally order forfeiture of all the equipment and commodities so seized.
- (b) When taking enforcement action on unlicensed food premises such as meat roasting factory, food factory or slaughterhouse, enforcement officers can, under s.133, remove equipment and commodities in respect of which they have reasons to believe that the relevant offence has been committed. The food items removed that are perishable will be disposed of except for pig carcasses which are of greater value and are stored away awaiting court decision. From experience, the court will, on conviction of the offence, order forfeiture of all the equipment and commodities so removed such as the pig carcasses, the meat roasting ovens and the refrigerator used.

Dutiable Commodities Ordinance (Cap. 109)

In a case of ‘Selling Liquor without a licence’ and ‘Possession of Liquor for Sale without a Licence’, a total of 12 items were seized from the premises including the marked money, change money, the bill, the menu, two plastic bottles containing alcohol, two glasses, nine bottles of red wine, one bottle of wine, one bottle of vodka and one bottle of beer. The defendant was fined HK\$2,000.- for each offence with the exhibits confiscated.

Massage Establishment Ordinance (Cap. 266)

The licensee was arrested for ‘Breach of Licensing Condition’ and the masseuses for the offence of ‘Soliciting for an Immoral Purpose’. Marked money, change money, invoices and the licence were seized as evidence to support the case. At the conclusion of the case, the licensee was fined HK\$20,000.- and the masseuses at HK\$5,000.- each. Only the changed money and the invoices were confiscated.

Dangerous Goods Ordinance (Cap. 295)

Out of the 90 prosecutions taken under the Ordinance with identifiable defendants during the period from 1 April 2001 to 31 March 2002, eight cylinders of Cat. 2 dangerous goods, 150 litres of Cat.3 dangerous goods and about 5500 litres of Cat. 5 dangerous goods were seized. Only two cases with a total of 240 litres of Cat. 5 dangerous goods were confiscated.

Hotel and Guesthouse Accommodation Ordinance (Cap.349)

Receipts, marked money, books and records of guests, daily rental statements, room keys, publicity materials or pamphlets were seized as evidence.

Clubs (Safety of Premises) Ordinance (Cap.376)

Membership cards, membership records, books and records, membership rules and conditions, marked money, publicity materials or pamphlets were seized as evidence.

Bedspace Apartments Ordinance (Cap.447)

Rental agreements, rental receipts, books and records were seized as evidence.