

**Information requested by the Bills Committee  
at its meeting held on 13 May 2002 regarding  
the Karaoke Establishments Bill**

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

**1. On clause 15, to consider**

- (i) **amending the clause to expressly provide that the closure order made under the clause would not operate to prevent human habitation on the premises concerned (reference should be made to a similar provision in the Public Health and Municipal Services Ordinance);**

Taking reference from the Public Health and Municipal Services (Amendment) Ordinance 2002, we will introduce a committee stage amendment to amend clause 15 to the effect that, if at the date of application for the order, any part of the premises is used for human habitation, the closure order will not operate to prevent such habitation in that part.

- (ii) **whether an express provision should be added to the Bill to stipulate that the District Court, in considering to order closure of a KE, would take into account the presence of any common areas/structures (such as staircase) in the KE concerned for shared use by tenants of the same building and whether other people's interests would be affected by the closure;**

When a licensing authority applies for a closure order, the application would be made in respect of the KE premises only. Since it is not envisaged that karaoke activity will be carried on in common areas of a building, it is unlikely that a closure order affecting common areas would be made.

To address members' concern, we propose to introduce a committee stage amendment to provide to the effect that a closure order shall not operate to affect the use of any common area in any building or public place so as to cause obstruction to public passage or fire escape.

- (iii) whether an express provision should be added to the Bill to the effect that the District Court would be empowered to award a licensee compensations for any loss or damage caused to him by the licensing authority's delay in discharging a closure order that had been served on his KE;**

Adequate internal procedures and guidelines will be set up by the licensing authorities to ensure that there is no undue delay to the discharge of the closure order made under clause 15. In any case, we have proposed committee stage amendments to institute a system for the due processing of requests for the discharge of a closure order. Under the new clause 15(6) as it is currently drafted, there is clear pressure on the licensing authority to conclude the processing of a request for the discharge of the closure order within 28 days either by discharging it or by rejecting the request. An avenue is further stipulated in the same clause for the person who made the request to then apply to the District Court for the discharge of the order.

The committee stage amendment is aimed at striking a balance between safeguarding the practical needs and interests of the licensing authority on the one hand and the commercial interests of the person making the request for the discharge of the closure order on the other. We do not think that it is appropriate to go overboard in promoting the interests of the person making the request by empowering the District Court to award him with compensation for any loss or damage caused by the licensing authority's "delay" in discharging a closure order. After all, one should not overlook the fact that the making of a closure order by the District Court will primarily be on the basis of danger or risk of danger to the public which is a serious matter. This would not have happened in the first place had it not been for the danger or risk of danger posed by the KE or the non-compliance by the KE operator with certain statutory directions of the licensing authority. It is a case of the KE operator ignoring or failing to live up to the statutory obligations imposed upon him with the grant of the licence to him which is a privilege. It would therefore not be reasonable for the law to be drafted in such a way as to be overly in favour of the operator in these circumstances, to the disadvantage or at the expense of difficulties being caused to the licensing authority.

Difficulties would be caused to the licensing authority if the licensee could easily seek compensation for "delay" in discharging the closure order. In view of the seriousness of the matter of ensuring the safety of the public, the licensing authority has to exercise his duty of discharging the closure order with great care, lest danger is caused to any person as a result. Inspections and assessments or re-assessments have to be made, and in certain cases,

additional information may be needed from the licensee before the licensing authority could be satisfied that the closure order could be discharged. The licensing authority can therefore only discharge the closure order “as soon as practicable”, upon being satisfied that the circumstances that gave rise to the making of the order no longer exist. The avenue for redress provided in the statute is application to the District Court for the discharge of the closure order. Should there be proof of malice or deliberate abuse of power resulting in losses, a licensee is not precluded from initiating a civil action against the licensing authority.

- (iv) shortening the currently proposed 28-day period within which the licensing authority would have to discharge a closure order after the requirements of a direction given under clause 14 had been complied with and a request for the discharge had been made to the licensing authority;**

Under clause 15(5) proposed in the committee stage amendment to be moved by the Administration, the licensing authority shall as soon as practicable discharge the closure order if it is satisfied that the circumstances that led to the making of the order no longer exist. It is expected that the licensing authority will take no more than 28 days to approve or reject the discharge.

We consider that a 28-day period is reasonable bearing in mind the need for inspections and assessments, and in some cases, re-assessments. The licensing authority may have to ask the operator of a KE to undertake outstanding remedial works before discharging the closure order. Allowing sufficient time would enable both sides to work towards the smooth discharge of the closure order within the time limit.

A shortened time period may operate to the disadvantage of the person requesting the discharge, where remedial works have not been satisfactorily carried out and there is insufficient time for it to be re-done. In such circumstances the only option open to the licensing authority would be to reject the request. The licensee would then have to apply afresh and the whole process subject to the 28-day period would start all over again, or to apply to the District Court for discharge of the order.

In view of the foregoing, we are of the view that the proposed 28-day period should be maintained. The licensing authority will act conscientiously and reasonably, and as soon as practicable discharge the closure order where circumstances permit.

- (v) **to provide legal advice as to whether the Government was liable for the loss and damage caused to persons due to negligence on the part of the Government in the exercise of statutory duty if the relevant Ordinances did not include any provisions on indemnity.**

The liabilities of the Government in respect of civil wrongs (torts) committed in its own name or by its officers, servants or agents including public officers in exercise of statutory duties or functions (including common law duties) are provided for in the Crown Proceedings Ordinance (Cap. 300). A civil action for damage may lie against the Government where liability for tort is imposed by virtue of the Ordinance. In brief, the Government is subject to the civil liabilities as if it were a private person of full age and capacity in respect of, inter alia, torts committed by its servants or agents (public officers) in discharge or exercise of statutory or common law duties, powers or functions etc. – section 4(1)(a).

A civil action for damage may be filed against the Government in the following situations arising from the wrongful act of the public officer.

- (a) if it involves the commission of a recognized tort e.g. trespass (unlawful entry to premises), false imprisonment (detention without lawful authority) or **negligence** (failure to use reasonable care and attention in the manner of execution of power), etc;
- (b) if it is actuated by malice, i.e. the public officer has a personal spite or a desire to injure the affected party for improper reasons (abuse of power);
- (c) if the public officer knows that he does not possess the power to take the action in question or that he is recklessly indifferent to the existence of lawful power in this respect.

Thus, depending on the circumstances of an individual case, action against the Government may be initiated where there is proof of failure to use reasonable care and attention (negligence) on the part of its officers in carrying out their duties resulting in loss or damage to a person.

2. **On clause 16,**

- (i) **to stipulate in the guidelines to be promulgated by the licensing authority that it would take no more than two weeks for the licensing authority to complete endorsement of a change of name on the permit or licence and to spell out the time required for the endorsement in general;**

It is estimated that an application for change of name of a KE will be processed within two weeks under normal circumstances. This will be set out in the guidelines to be promulgated by the licensing authority.

- (ii) **to explain the matters that the licensing authority would consider in endorsing or rejecting an application for a change of name on the permit or licence;**

The licensing authority will not conduct content vetting of a name, and the Bill has not provided for vetting of names used by KE.

- (iii) **to provide examples of other licensing regimes under which the licensing authorities conducted content vetting of the name of a shop/institute/organization applying for a licence.**

Under the Massage Establishments Ordinance (Cap. 266), a licensee has to apply to the licensing authority for amendment of its registered particulars including the name of the massage establishment (shop sign). A massage establishment licence is normally issued with a standard condition stating “no wording or illustration which is likely to arouse prurient interest may be used” in the name. In considering a request for amendment of shop sign, the licensing authority will also make reference to the Companies Ordinance (Cap. 32), namely section 20(1) (whether the name is the same as an existing name, whether the use of the name would constitute a criminal offence, or whether the name is offensive or contrary to the public interest) and section 20(2) (whether the name would suggest connection with the Central Government or the HKSAR Government).

Under s.8(3)(d) of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459), the licensing authority may refuse to issue a

licence if it appears to him that the proposed name of the residential care home is unsuitable or is the same or similar to the name of any other residential care home, or the name of a residential care home in respect of which the licence has been cancelled. Similar provision is found in s. 7(3)(e) of the Child Care Services Ordinance (Cap. 243).

**3. On members' concern that articles seized under clause 13(1)(iii) might be subject to forfeiture under clause 19, to provide the respective internal instructions issued by the Food and Environmental Hygiene Department and Hong Kong Police Force for reference of enforcement officers in exercising the power to seize articles under various Ordinances.**

The powers of seizure by the Police and by Food and Environmental Hygiene Department officers are set out in section 50(6) or (7) of the Police Force Ordinance, Cap. 232 and section 133 of the Public Health and Municipal Services Ordinance, Cap. 132 respectively. The powers and objective of seizure are clearly stated, and circumstances differ in every case. Thus, there are no further specific guidelines on what to seize during law enforcement operations. In general, however, officers have been instructed and are aware that they should, where it is necessary to seize articles which may provide evidence of an offence, take away items of sufficient number or quantity and of relevance for proving the alleged offences. Enforcement officers are instructed to exercise their power in a cautious and reasonable manner. There are avenues for lodging complaints against inappropriate use of power by enforcement officers.

Security Bureau  
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