

**Information requested by the Bills Committee
at its meeting held on 22 May 2002 regarding
the Karaoke Establishments Bill**

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

1. On clause 13,

- (i) to explain the purpose of the reference to “or to any other activity in respect of the karaoke establishment” in clause 13(1)(ii);**

Under Clause 13(1)(ii), an authorized public officer may require the production for inspection any record or article “relating to the operation or management of that karaoke establishment or to any other activity in respect of the karaoke establishment” or the furnishing of any information “relating to such operation, management or activity”.

Apart from inspecting the record of the operation and management of the KE, there may be a need to inspect the record of other relevant activities of the KE. For example, maintenance or renovation of the KE, any activity that might cause risk to the occupants or nuisance to the public, and ones that might violate the conditions of the licence. Without such a provision, the inspecting power of the licensing authorities may be unnecessarily or inadvertently restricted, and the effective enforcement of the licensing regime hampered.

Similar reference to “any other activity” is found in s. 18(b) of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349), s. 18(b) of the Clubs (Safety of Premises) Ordinance (Cap. 376) and s. 18(b) of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459).

- (ii) to consider drawing up specific internal guidelines for reference of the Police on the seizure of articles under clause 13(1)(iii);**

The power and objective of seizure are clearly stated in the Police Force Ordinance, Cap. 232 and various other Ordinances. As circumstances differ in each case, and the items and the quantities of articles to be seized depend on the nature and degree of seriousness of the offence and other factors relevant to the case, it is not appropriate to draw up **specific** guidelines on how and what to seize in respect of karaokes, or any other types of premises.

The **general** guideline for such operation is that there must be reasonable grounds that the seizure will help with police enquiries or the article is in some way connected with the offence (*Ref. Force Procedures Manual – Chapter 44*). To allay Members' concern, the Police will consider strengthening the guidelines to state that the power of seizure should be exercised in a cautious and reasonable manner.

- (iii) **to consider Mr. Tommy CHEUNG's suggestion that clause 13(1)(iii) should be amended to stipulate that the Police would exercise the powers of seizure in a "cautious and reasonable manner" and they would only take away items "of sufficient number or quantity and of relevance to the alleged offences";**

We have proposed Committee Stage Amendment to replace clause 13(1)(iii) with clause 13(3). The new clause 13(3) will require a warrant as authority for authorized officers or police officers to search and seize evidence of the commission of an offence or evidence for revocation or suspension of a permit or licence. A warrant validly issued by the court under clause 13(3) will provide lawful authority to authorized officers to search and seize the evidence for these purposes.

As regards the manner of execution of a warrant for the seizure of evidence, it is controlled by general principles of public law (administrative law). Such power must be exercised **reasonably** within the terms set out in the warrant, and the power must be used **for the purpose for which it was given** under clause 13 and not for any other ulterior purpose. Thus, in regard to items or articles to be seized or removed, the authorized officers must have reasonable ground to believe at the time of seizure that they contain evidence within the meaning of new clause 13(3) or that they may assist with the investigation. The principle of reasonableness in execution of a warrant for seizure of evidence is clearly implied and applicable by operation of administrative law, without the need to stipulate it in the clause.

Furthermore, the provisions for the power of seizure under other Ordinances contain no such stipulation. (For example, s.18(c) of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349), s.18(c) of the Clubs (Safety of Premises) Ordinance (Cap. 376) and s.18(c) of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459)). Adding such words to the Bill may cast doubt on the other legislative provisions that seizure carried out thereunder need not be "reasonable, sufficient or relevant".

In view of the above, we do not consider it appropriate to expressly provide for these requirements in the Bill.

- (iv) **to consider Mr Tommy CHEUNG’s suggestion of deleting “or is evidence of a ground for the revocation or suspension of a permit or licence granted or issued in respect of a karaoke establishment” in clause 13(1)(iii).**

As stated in item 1(iii) above, Committee Stage Amendment will be proposed to replace clause 13(1)(iii) concerning power of seizure for evidence in support of revocation or suspension of a permit or licence by the new clause 13(3)(b). Under the new clause 13(3)(b), this power will be exercised under a warrant and thus the principle of reasonableness will apply to govern the manner of its execution to prevent abuse of power, if any.

Evidence of possible grounds for revocation or suspension of a permit or licence as set out in clause 10 may not be the same as the evidence of commission of an offence against the Bill. Accordingly, the licensing authority cannot rely solely on the power of seizure for evidence of commission of an offence under clause 13(3)(a) to seize evidence in support of the revocation or suspension of a permit or licence. Express statutory provision is therefore required to empower the licensing authority for such search and seizure under warrant.

We therefore consider that there is a need to retain this power of seizure under the new clause 13(3)(b).

2. On clause 19, to consider

- (i) **deleting “unless the owner of the apparatus, equipment or any other article, satisfies the court that there is special and exceptional reason not to order forfeiture, such as that the apparatus, equipment or other article had been stolen and the theft reported to the police as soon as practicable; but ownership of itself of any apparatus, equipment or other article by a person other than the person convicted or financial hardship to any person shall not be special and exceptional reason”;**

Our policy intent is that the court should be given a judicial discretion on the matter of forfeiture. We will revise the current draft of clause 19 to better reflect this policy intent, by deleting the part referred to in the question.

- (ii) to consider the Assistant Legal Adviser's suggestion of making reference to section 102 of the Criminal Procedure Ordinance (Cap. 221) when reviewing clause 19.**

We have reviewed clause 19 in the light of suggestion to make express reference to section 102 of the Criminal Procedures Ordinance (Cap.221) concerning disposal of property by the Court. In particular, we have considered the option to replace clause 19 by a provision making specific reference to section 102 of Cap. 221 along the lines of section 133 of the Public Health and Municipal Services Ordinance (Cap. 132.) However, we do not prefer this option given that it is better to have an independent provision in the Bill to govern the matter concerning disposal of seized property by the court. Besides, provided that clause 19 is amended clearly to give a judicial discretion to the court on the matter, the court's power to order disposal of seized property will be in line with that in section 102 of Cap.221.

To reflect our policy intent that the court should be given a discretion on disposal of property and to avoid the impression that the court upon conviction of an offence is required to order forfeiture of seized items or articles under clause 19 unless there is special or exceptional reason not to do so, we have agreed to revise clause 19 to make it clear that the court will have a discretion to order disposal of seized property including an order of forfeiture as it thinks fit.

In view of the above, we consider it inappropriate to make specific reference to section 102 of Cap. 221 in clause 19 of the Bill in the circumstances.

Security Bureau
May 2002