

Bills Committee on Karaoke Establishments Bill
Summary of the Administration's response to queries/comments
raised by the Legal Service Division (LSD) on the
Karaoke Establishments Bill

Issues	Clause	Queries/comments raised by LSD	Administration's Response
Exemption from the application of the Bill	3	(a) Subclause (1)(a) excludes karaoke establishments in premises under the management of Government and certain organizations from the application of the Bill. However, it is not entirely clear as to what are premises under the management of the Government. For example, do premises owned by the Government but managed by an independent contractor fall within this category? Does the Bill apply to premises which are under the management of the Government but the trade or business in the premises is operated by another person? To avoid arguments in courts on the scope of application of the Bill, should the exempted premises be specified precisely in the Bill, for example, by subsidiary legislation ¹ .	(a) Whether or not premises are under the management of the Government is a question of fact.

¹ In the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) and the Clubs (Safety of Premises) Ordinance (Cap. 376), hotels and club-houses which are excluded from the application of the Ordinances concerned are specified by order which is subsidiary legislation.

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		<p>(b) What is the rationale for disapplying the Bill to karaoke establishments in premises referred to in subclause (1)(a) to (c)? What measures are now in place to safeguard fire and public safety in karaoke establishments in those premises?</p>	<p>(b) The layout of most of the premises specified in subclause (1)(a) and (b) are not of "closed-cubicle" type and their fire load is low because of the simple decoration and compartmentation. Also, the karaoke activities carried out therein are usually on an ad hoc basis and are of a small scale. Unlike commercial karaoke establishments, this type of establishments is not open for the admittance of a large number of customers. The existing general building and fire safety requirements under the Buildings Ordinance (BO) are applicable to these premises, except those buildings belonging to the Government which are exempted from the BO.</p> <p>For subclause (1)(c), performances given in a place of public entertainment (PPE), e.g. a vocal recital, are caught by the definition of "karaoke" but they are not the type of karaoke which the Bill is intended to control. There are existing specific building and fire safety requirements under the BO which are applicable to PPE and these requirements are considered adequate.</p>

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		<p>(c) What factors will the licensing authority take into account in making an exemption order under subclause (1)(e)? Should those factors be stipulated in the clause²?</p> <p>(d) Is an "order" referred to in subclause (1)(e) subsidiary legislation? Such an order could have legislative effect if it has general application to the public or a class as opposed to individuals. It appears from subclause (2)(a) that an order so made may apply to at least a class of karaoke establishments and hence could be subsidiary legislation. Should an express provision stipulating the nature of the order be included in line with the current drafting practice?</p>	<p>(c) Many factors are to be considered in making an exemption order under subclause (1)(e). The main factors are the scale and layout of the establishments. Nonetheless, we cannot draw up an exhaustive list of factors. The stipulation of such factors in the Bill will restrict the licensing authority's flexibility in granting exemption. The objective of the Bill is to regulate karaoke establishments under a licensing regime. The rationale behind is that life risk due to a fire may be high because of the unique characteristics of the activities carried out therein. The alertness of the users may be affected by the consumption of alcoholic drinks and the loud music. Such premises are partitioned into small entertainment rooms and accessed through long and narrow passages. The special closed-cubicle layout will make staff and customers more difficult to escape in case of fire.</p> <p>(d) An order does not have legislative effect and is therefore not subsidiary legislation, nor is it published in the Gazette.</p>

² The Hotel and Guesthouse Accommodation Ordinance (Cap. 349) and the Clubs (Safety of Premises) Ordinance (Cap. 376) respectively provide that the Secretary for Home Affairs may by order exclude any hotel or club-house from the application of the Ordinances concerned for reasons connected with the situation, means of ingress or egress, design, construction, size or equipment in the hotel or club-house. The Secretary for Home Affairs may also by order exclude any type or description of hotel or club-house from the application of the two Ordinances for reasons connected with such type or description.

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		(e) In subclause (4), in order to ensure consistency and certainty, could "form and manner" be specified by law, for example, by regulation to be made under clause 20?	(e) Current drafting practice is to not prescribe forms where they may more conveniently be provided for administratively. Legislation is desirable if the objective to be achieved can only be so achieved by legislative means. A great deal of consistency and certainty is able to be achieved just as effectively through administrative means which have to be rational and relevant to current policy in this regard.
Application for permit or licence	5	How can the licensing authority ensure that the person making the application for a permit or licence will continue to be a fit and proper person after the grant or issue of the permit or licence? Is the grantee or licensee under a duty to inform the licensing authority any change in circumstances after the grant or issue of the permit or licence? If so, where will such duty be provided for?	The licensing authority may call in aid the provisions of clause 10 which enable revocation, suspension and non-renewal where, under clause 10(iv), he ceases to be satisfied of any matter in respect of which he is required to be satisfied under clause 5(3) - including whether or not the person continues to be fit and proper. In forming that opinion, he will have regard to all such information as is available to him, including information from the Police and other public officers.
Transfer of permit and licence	6	In subclause (5), what is "an adequate statement of the reasons"? Is the statement of reasons adequate when, for example, 3 out of 5 reasons for the refusal are given in the statement? To avoid arguments on what is "an adequate statement of the reasons", should the statement set out all the reasons for the refusal instead?	A statement of the reasons for the refusal is such statement as is adequate to inform the person in receipt of the statement of the reasons for the refusal. If there are, in fact, 5 reasons and the statement discloses only 3 of them, then the statement is an inadequate statement.

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Grant or issue or transfer of a permit or licence to bodies corporate or partnerships	7	<p>(a) It appears possible from a literal interpretation of subclause (1) to construe "a person authorized by the body corporate or the partnership" to include a legal person. As the Administration's intention is to exclude a legal person to be such authorized person, should "a natural person" be used for the avoidance of doubt, in line with the approach adopted in existing legislation³?</p> <p>(b) If it is intended that the authorized person is to be the grantee or licensee, what will happen to the permit or licence if the body corporate withdraws the authorization after the permit or licence has been granted or issued? Does the permit or licence cease to have effect in such circumstances?</p>	<p>(a) In the context of subclause (1), the word "person" means a person other than a body corporate or a partnership. It is true that the definition of "person" in Cap. 1 includes a body corporate or a partnership, but that meaning applies save where the contrary intention appears from the context. Given the juxtaposition of the words "body corporate", "partnership" and "person", it seems very clear that in the context of the provision, "person" is to be construed as not including a "body corporate" or a "partnership".</p> <p>It is true that various provisions drafted some years ago refer to "natural person" and "individual person". They add nothing to the meaning that is already plain when taken in context and only beg further questions as to the meanings of "natural" and "individual".</p> <p>(b) If an authorization is withdrawn, it is open to the licensing authority to call in aid clauses 10(iv) and 5(3)(a)(ii) and revoke or suspend the permit or licence on the basis that he has ceased to be satisfied that the authorized person will adequately supervise or, ensure the adequate supervision of the operation of the karaoke establishment.</p>

³ The Amusement Game Centres Ordinance (Cap. 435) contains a provision similar to clause 7(1) of the Bill. However, in the context of that Ordinance, the authorized person must mean a natural person as section 5(4) of Cap. 435 provides that the person applying for a licence must be an individual person. In the Mandatory Provident Fund Schemes Ordinance (Cap. 485), reference is made to a "natural person" in the context of application to be an approved trustee and there is also an express provision that the directors of a corporate applicant must be natural persons.

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		(c) Is it necessary to prescribe requirements as to who may be a person authorized by a body corporate or partnership? For example, must such authorized person be a director of the body corporate, a partner of the partnership or an officer of the body corporate or partnership responsible for its management?	(c) The person so authorized will be any person having capacity to act as the representative of the body corporate or the partnership. It may well be a director, a partner or an officer of the body corporate. On the other hand, it could also be an employee or someone who will act as manager. The only requirement is that they have the capacity to and are authorized by the body corporate or partnership to act as its representative.
Inspection of karaoke establishments	13(2)	(a) Should a court warrant be required to authorize entry and search of premises used wholly for residential purposes? In existing legislation, for example, the Telecommunications Ordinance (Cap. 106), a warrant issued by a magistrate is required to authorize entry and search of premises used for dwelling purposes.	(a) The provision allows a warrantless entry, only with the <u>consent</u> of an adult occupier, to premises used wholly for residential premises and constituting a <u>separate</u> household unit. If consent cannot be obtained, then application for entry pursuant to a warrant is able to be made under the general power in section 50(7) of the Police Force Ordinance (Cap. 232) ⁴ . The provision is consistent with ICCPR Article 17 which guarantees that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence" and with Article 29 of the Basic Law which prohibits "arbitrary or unlawful search of, or intrusion into, a resident's home or other premises". If there is "consent" or, if no consent there is a "warrant" then entry is neither arbitrary nor unlawful.

⁴ Section 50(7) of the Police Force Ordinance (Cap. 232) provides that whenever it appears to a magistrate upon the oath of any person that there is reasonable cause to suspect that there is in any building, vessel or place any newspaper, book or other document or any article or chattel which is likely to be of value to the investigation of any offence that has been committed, or that is reasonably suspected to have been committed or to be about to be committed or to be intended to be committed, such magistrate may by warrant directed to any police officer empower him with such assistants as may be necessary by day or by night-(a) to enter and if necessary to break into or forcibly enter such building, vessel or place and to search for and take possession of any such newspaper, book or other document or any such other article or chattel found therein; and (b) to detain, during the search, any person who may appear to have such newspaper, etc. in his possession or under his control and who, if not so detained, might prejudice the purpose of the search.

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		<p>(b) Who is an "occupier" of the premises? Does it mean any person who has control of the premises at the material time? Is the consent of one occupier sufficient when there are more than one occupier in the premises?</p>	<p>(b) The word "occupier" by virtue of the definition of "occupy" in section 3 of Cap. 1 and of section 5 as regards the meaning of grammatical variations and cognate expressions, includes any adult person who uses, inhabits, is in possession of or enjoys the residential premises, otherwise than as a mere servant or for the mere purpose of the care, custody or charge of the residential premises. The consent of <u>any</u> adult occupier is sufficient.</p> <p>It has to be remembered that by virtue of clause 4, the penal restriction imposed by clause 4 does not apply to premises used wholly for residential purposes and constituting a separate household unit to which only persons residing in the premises and their guests are admitted and where no fee is charged for the activity of karaoke. For this reason, provision for warrantless entry but only with consent is justified.</p>
Offences in relation to permits and licences	16	<p>(a) The way subclause (3) is drafted appears to suggest that employees who are not in a managerial capacity may be convicted of an offence under subclause (1). Does this reflect the Administration's intention?</p> <p>(b) In subclause (4)(e), there is a discrepancy between the Chinese and English texts in that the elements of the offence created are not stated in the Chinese text. The effect of such discrepancy is that the drafting of the statement of offence and particulars of offence based on the English text may differ from that based on the Chinese text. Should both texts be made consistent to avoid this problem?</p>	<p>(a) Yes. The objective of clause 16(3) is that any defendant who did any act in connection with the operation, keeping, management or other control of a karaoke establishment should, in the absence of proof to the contrary, be deemed to be the operator, keeper, manager or controller and liable to prosecution under clause 16(1).</p> <p>(b) The Chinese text of subclause 4(e) is in effect the same as and carries the same meaning as that of the English text. However, to ease the concern raised as regards the possible hindrance in asserting the prosecution case in court, the Administration would further consider amending the Chinese text to mirror the manner of presentation adopted for the English text.</p>

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Disclosure of information	N/A	Is a person who obtains information while exercising or performing a function conferred or imposed on the person by the Bill under a duty not to disclose the information so obtained? Will the Administration consider adding a provision governing the disclosure of information obtained in the course of exercising or performing a function under the Bill?	The information to be collected by the licensing authorities relates to the licence/permit application only. Similar to other licensing regimes, existing provisions such as those of the Personal Data (Privacy) Ordinance (Cap. 486) regulating the confidentiality of personal data collected shall apply.
Drafting matters	2, 3(3), 5(3)(a), 5(8)(c), 9(3) and 10(v)	<ul style="list-style-type: none"> ● Clause 4 provides that it is an offence for a person to operate, keep, manage or otherwise have control of a karaoke establishment without a licence or permit⁵. It would appear that the licence or permit, if issued or granted, should allow the licensee or grantee to operate, keep, manage or otherwise have control of a karaoke establishment. However, in clauses 2, 5, and 9, reference is made to operating a karaoke establishment only. It would therefore appear that the word "operate" when used independently may have to be read differently from the word "operate" when used alongside "keep, manage or otherwise have control of". 	Clause 4 is a restriction provision of a penal nature which will be strictly construed by the courts. The restriction is, for obvious reasons, therefore cast as widely as is possible and is such that no person may operate, keep, manage or otherwise have control of a karaoke establishment except with a permit or licence granted or issued as mentioned in clause 4(2). In provisions where reference is made to "operate" only, the ordinary dictionary meaning of "operate" applies and is sufficient since this includes "manage, work, control, put or keep in a functional state".

⁵ Clause 4 of the Bill is similar to section 5 of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) and section 4 of the Clubs (Safety of Premises) Ordinance (Cap. 376). A licence issued under Cap. 349 or a certificate of compliance issued under Cap. 376 will authorize the person in whose name it is issued to "operate, keep, manage or otherwise have control" of a hotel or a club-house. Other provisions of Cap. 349 and Cap. 376 make full reference to operating, keeping, managing or otherwise having control of a hotel or a club-house instead of referring to operating alone. However, under this Bill, a licence or permit will authorize the licensee or grantee to "operate" a karaoke establishment only and unlike Cap. 349 and Cap. 376, no reference is made to "keep, manage or otherwise have control of".

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		<ul style="list-style-type: none"><li data-bbox="407 263 1238 592">● In clause 3(3), the juxtaposition of the words "may continue to operate" and "was operating, keeping, managing or otherwise controlling" may throw doubt on whether what may be continued is confined to the activity of operating. It may also create problems of construction when the ordinary dictionary meaning of "operate" is relied on in the context of "may continue to operate" while the beginning of the clause makes reference to the full range of activities without adopting the same ordinary dictionary meaning.<li data-bbox="407 635 1238 770">● In clause 10(v), if the karaoke establishment has been kept or managed in a manner contrary to the public interest, will the licensing authority revoke, suspend or refuse to renew the permit or licence?	<p data-bbox="1256 263 1951 300">The ordinary dictionary meaning of "operate" applies.</p> <p data-bbox="1256 635 2020 742">Yes. Having regard to the ordinary meaning of "operate", the licensing authority remains able to call in aid the provisions of clause 10.</p>

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