

LEGISLATIVE COUNCIL BRIEF

Massage Establishments Ordinance (Chapter 266)

MESSAGE ESTABLISHMENTS (AMENDMENT) BILL 2001

INTRODUCTION

At the meeting of the Executive Council on 24 April 2001, the Council ADVISED and the Chief Executive ORDERED that the Massage Establishments (Amendment) Bill 2001 (the Bill), at Annex, should be introduced into the Legislative Council, to narrow down the scope of control of massage establishments to those premises offering full-body massage by persons to customers of the opposite sex and to allow massage establishments licences to be renewed for two years subject to certain condition.

BACKGROUND AND ARGUMENT

General Background

2. The Massage Establishments Ordinance (the Ordinance) was enacted in 1983 with the primary objective of controlling vice activities in massage establishments through licensing. Under the Ordinance, massage establishments are defined as any places used for the reception or treatment of persons requiring massage services or similar treatment. However, it does not apply to massage treatment provided by hospitals, clinics, maternity homes or physiotherapy centres, or hairdressing or beauty parlours where face or scalp massage is administered to female customers only or in full view of customers.

3. Under the Ordinance, the Commissioner of Police, as the licensing authority, may issue a massage establishment licence subject to the applicant satisfying certain prescribed conditions. The Police may also impose appropriate licensing conditions. Penalties are prescribed for breach of licensing conditions and the operation of an unlicensed

massage establishment. A massage establishment licence is valid for one year and may be renewed upon expiry.

4. In recent years, a myriad of massage services have flourished which include foot massage, massage in spa, health clubs and beauty parlours, etc. We have received a number of complaints from massage operators, especially foot massage operators, that the licensing control is unnecessary and too stringent for them. Since the primary objective of the licensing scheme is to combat vice activities in massage establishments, it is inadvisable for the Administration to regulate bona fide massage businesses which promote health and relaxation.

Consultancy Study

5. In February 1999, the Business and Services Promotion Unit commissioned a consultancy study to review the Ordinance and the related regulatory controls exercised by the Police. The study sought to ensure that the regulatory regime would be kept to the minimum necessary for preventing and combating vice activities while reducing inconvenience to legitimate businesses and minimising cost to both the industry and the Government.

6. As a result of the review, the Police have implemented a number of procedural or administrative changes to improve the licensing arrangements. These changes include streamlining the application procedures and shortening the time required for processing applications. In particular, the consultant pointed out that the present scope of control is too wide, thus unnecessarily regulating and inhibiting the growth of bona fide massage businesses that do not appear to be prone to vice activities.

The Proposals

Scope of licensing

7. To strike a proper balance between the need to control vice activities and not inhibiting bona fide massage businesses, we propose to narrow down the scope of control of massage establishments. It is proposed that only massage establishments offering full-body massage to customers of the opposite sex will be required to obtain a licence. Full-body massage is defined as a massage treatment provided to a person covering that part of the body between the neck and the knees, including or excluding arms. In other words, should this proposal be adopted, those premises where only face, scalp, neck, hand, arm or foot (up to

knee) massage is administered to customers, or where no full-body massage is administered to a customer by a person of different sex, may operate without a massage establishment licence.

8. According to the enforcement experience of the Police, vice activities are not commonly found in foot massage establishments or spa and health clubs where full-body massage services are provided to customers by massage assistants of the same sex. The narrowing down of the scope of control would promote the development of these kinds of massage businesses which have demonstrated tremendous potential for growth due to greater demand by the increasingly health-conscious public.

9. As at April 2001, there are around 220 licensed massage establishments in Hong Kong. If the above proposal is implemented, approximately 29 currently licensed massage establishments will no longer be required to obtain licences for their business. Among these establishments, 4 are foot massage parlours and 25 are massage establishments where full-body massage is provided to customers of the same sex.

10. Although we believe that these exempted establishments are less prone to vice activities, we cannot discard such a possibility completely. The Police will continue to act on complaints and take appropriate enforcement action should intelligence reveal that vice activities or other criminal activities take place in these establishments.

Licence Renewal

11. Another proposal to facilitate massage business is to grant a licence for two years upon renewal, if considered appropriate by the licensing authority. The current licensing regime requires a licence to be renewed each year. It is proposed that renewal may be granted for an extended period of two years if the relevant licensee has not breached any licensing conditions during the preceding licensing period. However, should any adverse record be found, the licensing period may be reduced to one year upon the next renewal.

THE BILL

12. The main provisions of the Bill are -
- (a) Clause 2 provides a definition of “full-body massage” as a massage treatment provided to a person covering that part of his body below the neck and above the knees, including or excluding arms;
 - (b) Clause 3 provides that the Ordinance shall not apply to those massage establishments where face, scalp, neck, hand, arm or foot (up to knee) massage is administered to customers; or where no full-body massage is administered to a customer by a person of different sex; and
 - (c) Clause 4 provides that a licence can be renewed for 24 months if the licensee has not breached any licensing conditions during the preceding licensing period.

PUBLIC CONSULTATION

13. A public consultation exercise was conducted from 23 February to 22 March 2001 on the legislative proposals summarized in paragraph 2. The vast majority of comments received support our proposed legislative amendments. In particular, the trade welcomes the proposal which may facilitate the development of bona fide massage businesses by exempting them from licensing control. Some commentators have asked for further relaxation of the scope of control but we consider the proposed approach as striking the right balance between providing appropriate regulation of the massage business and the need to combat vice activities. Further relaxation is therefore not considered appropriate.

14. We consulted the Legislative Council Panel on Security at its meeting on 3 April 2001. Members did not object, in principle, to the proposed legislative amendments. Some Members commented on the definition of full-body massage, licence renewal periods, the effectiveness of the licensing scheme to control vice activities, and potential law enforcement difficulties. We explained the various matters to Members at the meeting and considered their advice as appropriate.

BASIC LAW IMPLICATIONS

15. The Department of Justice advises that the proposed amendments do not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

16. The Department of Justice advises that the proposed amendments are consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

17. The amendments will not affect the current binding effect of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

18. The implementation of the narrowing down of the scope of licensing control of massage establishments will reduce revenue by about \$190,000 per annum. The anticipated reduction in the number of licensable establishments under the proposed Bill will only bring about notional savings in staff efforts. As such, there will be no staffing implications for Government arising from the legislative amendments.

ECONOMIC IMPLICATIONS

19. Reduced regulation in appropriate circumstances is conducive to the development of legitimate business. This accords with the spirit of keeping Government interference in business to a practical minimum.

LEGISLATIVE TIMETABLE

20. The legislative timetable will be -

Publication in the Gazette	4 May 2001
----------------------------	------------

First Reading and commencement of Second Reading debate	16 May 2001
--	-------------

Resumption of Second Reading debate, committee stage and Third Reading	to be notified
---	----------------

PUBLICITY

21. A press release will be issued on 2 May 2001. A spokesman will be available to handle media enquiries.

ENQUIRIES

22. Enquiries on this brief may be directed to Miss Eliza Yau, Principal Assistant Secretary for Security, at 2810 2632.

Security Bureau
2 May 2001

A BILL

To

Amend the Massage Establishments Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Massage Establishments (Amendment) Ordinance 2001.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

2. Interpretation

Section 2 of the Massage Establishments Ordinance (Cap. 266) is amended by adding -

""Full-body massage"(全身按摩) means a massage service or treatment provided to a person covering that part of his body below the neck and above the knees, including or excluding arms;"

3. Application of Ordinance

Section 3(c) is repealed and the following substituted -

"(c) a massage establishment where -

(i) face, scalp, neck, hand, arm or foot (up to knee) massage is administered to customers; or

(ii) no full-body massage is administered to a

customer by a person of the opposite sex; or".

4. **Renewal of a licence**

Section 7 is amended -

- (a) in subsection (4), by adding "(3)," before "(6)";
- (b) by adding -

"(7) Subject to subsection (8), a renewal of a licence granted under this section shall be for a period of 12 months from the date on which the renewal is granted.

(8) The licensing authority may renew a licence under this section for a period of 24 months if the licensee has not been in breach of any conditions of the licence."

Explanatory Memorandum

The purpose of this Bill is to amend the Massage Establishments Ordinance (Cap. 266) ("the Ordinance") so as to -

- (a) add a new definition of "full-body massage";
- (b) exclude those massage establishments from the application of the Ordinance where face, scalp, neck, hand, arm or foot (up to knee) massage is administered to customers or where no full-body massage is administered to a customer by a person of the opposite sex; and
- (c) empower the licensing authority to renew a licence for a period of 24 months subject to certain conditions.