

Legislative Council Panel on Security

**Provisions of the Public Order Ordinance before and after
the enactment of the Public Order (Amendment) Bill 1997**

Purpose

The purpose of this paper is to compare the major provisions of the Public Order Ordinance (Cap.245) relating to the regulation of public meetings and processions before and after the enactment of the Public Order (Amendment) Bill 1997 (referred as the 1997 Amendments below).

Background

2. The Public Order Ordinance was originally enacted in 1967. It has been amended on a number of occasions, more recently in 1995 and 1997. Upon Members' request, a comparison of the major provisions of the Ordinance relating to the regulation of public meetings and processions before and after the enactment of the Public Order (Amendment) Bill 1997 is set out in the ensuing paragraphs.

Comparison of the major provisions before and after the 1997 Amendments

3. In the recent public debate on the Public Order Ordinance, some people criticize the 1997 Amendments (i.e. the current legislation) as a resurrection of the "evil law" (i.e. the pre-1995 law). However, in respect of regulation of public meetings and processions, the 1997 Amendments had in fact introduced only two major changes. The first change was the addition of two new grounds on which the Commissioner of Police may object to the holding of a public procession. These are national security and the protection of the rights and freedoms of others. Both grounds are permissible for restricting the right of peaceful assembly under Article 21 of the International Covenant on Civil and Political Rights.

4. The second change was the introduction of a "notice of no objection" system for public processions. Under the new system, after the Commissioner of Police receives a notice of intention to hold a public procession, he is required to notify the person concerned of his decision

within the specified time limit. If he objects to the procession, he is required to issue a notice of objection as soon as is reasonably practicable and within the time limit as set out below -

- (a) 48 hours before the notified commencement time of the procession if 7-day notice is given;
- (b) 24 hours before the notified commencement time of the procession if shorter notice of 72 hours or more is accepted; and
- (c) before the notified commencement time of the procession if shorter notice of less than 72 hours is accepted.

If he does not object to the procession, he is required to issue a notice of no objection as soon as is reasonably practicable and within the same time limit. If the Commissioner does not issue either a notice of no objection or a notice of objection within the time limit, he is taken to have issued a notice of no objection and the procession can proceed.

5. The 1997 Amendments did not change the notification system in respect of public processions. Instead, a positive duty is placed on the Commissioner of Police to notify an organizer of his decision, i.e. whether he objects to the notified procession or not, within a tight time limit. The Commissioner's power to prohibit or object to a public procession has been provided in the Ordinance before the 1997 Amendments. A notice of no objection is definitely not a permit. It should be noted that the Commissioner of Police is taken to have issued a notice of no objection for a notified public procession if he does not raise objection within the specified time limit.

6. In order to provide Members with a clearer picture about the issue, major provisions of the Ordinance relating to the regulation of public processions and meetings before and after the 1997 Amendments are compared at the table at Annex A.

7. Relevant extracts of the Public Order Ordinance before and after the 1997 Amendments are at Annex B and C respectively for easy reference.

Security Bureau

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**Comparison of major provisions of the Public Order Ordinance relating to
the regulation of public meetings and processions before and after the 1997 Amendments**

	<u>Before the 1997 Amendments</u>	<u>After the 1997 Amendments</u>
General powers of the Commissioner of Police (CP) in control of public gatherings	<p>Relevant clause: section 6</p> <ul style="list-style-type: none">• CP is empowered to control and direct the conduct of all public gatherings including public meetings and processions and specify the route by which, and the time at which, any public procession may pass if he reasonably considers it to be necessary in the interests of public safety or public order.	<p>Relevant clause: section 6</p> <ul style="list-style-type: none">• CP's powers remain unchanged except that "national security" and "the protection of the rights and freedoms of others" were added as grounds on which CP can exercise the powers.
Notification systems	<p>Relevant clauses: sections 7, 8, 13, 13A</p> <ul style="list-style-type: none">• The Ordinance imposes a notification requirement in respect of most public meetings of over 50 persons and public	<p>Relevant clauses: sections 7, 8, 13, 13A, 14</p> <ul style="list-style-type: none">• The notification systems for holding of public meetings and processions remain unchanged except that a system of "notice

	<u>Before the 1997 Amendments</u>	<u>After the 1997 Amendments</u>
	<p>processions of over 30 persons. Normally, 7 days' written notice of the intention to hold such a meeting or procession has to be given to the Commissioner of Police (CP). If CP is reasonably satisfied that earlier notice could not have been given, he must accept shorter notice. He is required to give reasons if shorter notice is not accepted.</p>	<p>of no objection" is introduced for public processions. Under the new system, after CP receives a notice of intention to hold a public procession, unless he objects to the procession, he must issue a notice of no objection as soon as is reasonably practicable and within the specified time limit for him to give notice of objection (48 hours before the commencement of the event if 7 days' notice is given). The procession can take place after CP issues a notice of no objection. If CP does not issue either a notice of no objection or a notice of objection within the specified time limit, he is taken to have issued a notice of no objection and the procession can take place.</p>
<p>CP's powers to prohibit public meetings and object to public processions</p>	<p>Relevant clauses: sections 9, 14</p> <ul style="list-style-type: none"> • CP may prohibit the holding of any public meetings or processions notified under the 	<p>Relevant clauses: sections 9, 14</p> <ul style="list-style-type: none"> • CP may prohibit any public meetings and object to any public processions notified

	<u>Before the 1997 Amendments</u>	<u>After the 1997 Amendments</u>
	<p>Ordinance if he reasonably considers such prohibition to be necessary in the interests of public safety or public order. Notice of a prohibition has to be issued within a specified time limit (48 hours before the commencement of the event if 7 days' notice is given).</p> <ul style="list-style-type: none">• CP cannot exercise the prohibition powers if the interests of public safety or public order can be met by imposition of conditions.	<p>under the Ordinance if he reasonably considers such prohibition or objection to be necessary in the interests of national security or public safety, public order or the protection of the rights and freedoms of others. Notice of a prohibition (in respect of public meetings) and notice of objection (in respect of public processions) has to be issued within a specified time limit (48 hours before the commencement of the event if 7 days' notice is given). CP's powers in this aspect remain unchanged. The only change was the addition of "national security" and "the protection of the rights and freedoms of others" as grounds on which CP can prohibit a public meeting or object to a procession.</p> <ul style="list-style-type: none">• CP cannot exercise the prohibition/objection powers if such interests can be met by imposition of conditions.

	<u>Before the 1997 Amendments</u>	<u>After the 1997 Amendments</u>
Imposition of conditions	<p>Relevant clauses: sections 11, 15</p> <ul style="list-style-type: none">• CP may impose conditions in respect of any public meetings or processions notified under the Ordinance if he reasonably considers it necessary in the interests of public safety or public order.	<p>Relevant clauses: sections 11, 15</p> <ul style="list-style-type: none">• CP’s powers remain unchanged except that “national security” and “the protection of the rights and freedoms of others” are added as reasons for him to impose conditions in respect of any public meetings or processions.
Appeal system	<p>Relevant clauses: sections 16, 43, 44, 44A</p> <ul style="list-style-type: none">• Any person, society or organization concerned can appeal in writing to an appeal board set up under the Ordinance if he is aggrieved by CP’s decision to prohibit the holding of a public meeting or procession; or to impose conditions on a public meeting or procession.• Under the Ordinance, the Chairman of the	<p>Relevant clauses: sections 16, 43, 44, 44A</p> <ul style="list-style-type: none">• The appeal system remains unchanged. Any person, society or organization concerned can appeal in writing to the independent appeal board if he is aggrieved by CP’s decision to prohibit the holding of a public meeting, to object to the holding of a public procession; or to impose conditions on a public meeting or procession.

	<u>Before the 1997 Amendments</u>	<u>After the 1997 Amendments</u>
	appeal board is a retired judge and the board consists of members from different sectors of the society. No public officer is on the board.	
Penalty	<p>Relevant clauses: section 17A</p> <ul style="list-style-type: none">• Section 17A stipulates the offences and their maximum penalty for provisions relating to the regulation of public meetings and processions.	<p>Relevant clauses: section 17A</p> <ul style="list-style-type: none">• The offences and penalty levels remain unchanged except that “prohibition of a public procession” has been revised to “objection to a public procession” because of the introduction of the “notice of no objection” system.