

Legislative Council Panel on Security

**Provisions of the Public Order Ordinance before and after
the enactment of the Public Order (Amendment) Bill 1994 and
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 1994 (commonly known as the 1995 Amendments) and the Public Order (Amendment) Bill 1997 (commonly known as the 1997 Amendments).

Background

2. It is noted that in the recent public debate on the Public Order Ordinance, some people criticize the current legislation as a resurrection of the “evil law” (i.e. the pre-1995 law) without fully understanding the provisions relating to the regulation of public meetings and processions before the 1995 Amendments. Hence, as a supplement to the paper on “Provisions of the Public Order Ordinance before and after the enactment of the Public Order (Amendment) Bill 1997” that we have issued earlier, a comparison of the relevant provisions before and after the 1995 Amendments and the 1997 Amendments is provided in the ensuing paragraphs.

Comparison of the major provisions before and after the 1995 and 1997 Amendments

Public processions

3. The major difference in the provisions concerned before the 1995 Amendments and after the 1997 Amendments is the system adopted for regulating public processions. Prior to the 1995 Amendments,

organizers of a public procession consisting of more than 20 persons were required to apply to the Commissioner of the Police (CP) for a licence. CP could issue a licence if he was satisfied that the public procession was not likely to prejudice the maintenance of public order or to be used for any unlawful purpose. He could cancel any licence issued if it appeared to him to be necessary or expedient in the interests of public order or for preventing the carrying out of any unlawful purpose. In addition, if the applicant or any other person concerned in the procession had previously contravened the Public Order Ordinance or any other law in respect of any past public gathering, CP could refuse to issue a licence. He could choose to do so even if he could achieve the same purpose by imposing conditions.

4. The licensing system was replaced by a notification system under the 1995 Amendments. Under the new system, organizers of a public procession consisting of more than 30 persons were only required to give a written notice to CP seven days before the commencement date of the procession. CP could prohibit the holding of a notified public procession only if he reasonably considered that it was necessary in the interests of public safety or public order. Notice of a prohibition had to be issued within a specified time limit (e.g. 48 hours before the commencement of the event if seven days' notice was given). CP could not exercise this power if such interests could be met by imposition of conditions.

5. This notification system was retained after the 1997 Amendments with only two changes. The first change was the introduction of a "notice of no objection" system. Under this system, after CP receives a notice of intention to hold a public procession, he is required to notify the person concerned of his decision within a tight 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 a specified time limit (e.g. 48 hours before the commencement of the event if seven days' notice is given). 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 CP does not issue 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. The notification

system for public processions did not change following the introduction of this “notice of no objection” system. Instead, the new system places a positive duty on CP to notify an organizer of his decision, i.e. whether he objects to a notified procession or not, within a specified time limit.

6. The second change made by the 1997 Amendments was the addition of two new grounds on which CP 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. CP’s objection power in question is not new. As mentioned in paragraph 4 above, under the 1995 Amendments, CP already had the power to prohibit a notified procession on the grounds of public safety or public order.

Public meetings

7. As regards public meetings, a notification system has been adopted even before the 1995 Amendments. However, the notification requirements are slightly different. Prior to the 1995 Amendments, organizers of a public meeting consisting of over 30 persons were required to give a seven-day written notice to CP. CP could prohibit a public meeting if in his opinion, the holding of the meeting was likely to prejudice the maintenance of public order or to be used for any unlawful purpose. That any person or society associated with the meeting had been convicted of any offence under the Public Order Ordinance was also one of the reasons for which CP could prohibit a public meeting.

8. The notification requirement for public meetings was relaxed under the 1995 Amendments. Organizers of a public meeting consisting of over 50 persons, as opposed to 30 persons before the 1995 Amendments, were required to give a seven-day written notice to CP. CP could prohibit any public meetings only if he reasonably considered such prohibition to be necessary in the interests of public safety or public order. Notice of a prohibition had to be issued within a specified time limit (e.g. 48 hours before the commencement of the event if seven days’ notice was given). In addition, CP could not exercise this power if such interests could be met by imposition of conditions.

9. This notification system for public meetings remained unchanged under the 1997 Amendments. The only difference between the systems before and after the 1997 Amendments 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. It should be noted that CP’s power to prohibit the holding of a public meeting has existed even before the 1995 Amendments.

10. To facilitate Members to understand the systems before the 1995 Amendments and the subsequent changes, a comparison of the major provisions of the Public Order Ordinance relating to the regulation of public processions and meetings before and after the 1995 and 1997 Amendments is set out at the table at Annex A. Relevant extracts of the Ordinance before the 1995 Amendments are at Annex B for reference.

Security Bureau
1 December 2000

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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 1995 and 1997 Amendments**

	<u>Before the 1995 Amendments</u>	<u>After the 1995 Amendments and 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 provision: 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 it appears to him to be necessary or expedient in the interests of public order to do so.	<p>Relevant provision: section 6</p> <ul style="list-style-type: none">• CP may exercise the same powers only if he reasonably considers it to be necessary in the interests of public safety or public order.	<p>Relevant provision: 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 may exercise the powers.

	<u>Before the 1995 Amendments</u>	<u>After the 1995 Amendments and before the 1997 Amendments</u>	<u>After the 1997 Amendments</u>
Regulation of public meetings	<p>Relevant provisions: sections 7, 8</p> <ul style="list-style-type: none">• The Ordinance imposes a notification requirement in respect of most public meetings of over 30 persons (over 200 persons if the public meeting is held in private premises). Notice of the intention to hold a public meeting has to be given in writing to CP 7 days in advance. CP may accept shorter notice if he thinks fit to do so.	<p>Relevant provisions: sections 7, 8</p> <ul style="list-style-type: none">• The notification system remains unchanged except that the notification requirement only applies to public meetings of over 50 persons (as opposed to 30 persons) in public places or over 500 persons (as opposed to 200 persons) in private premises. In addition, 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>Relevant provisions: sections 7, 8</p> <ul style="list-style-type: none">• The notification system remains unchanged.

	<u>Before the 1995 Amendments</u>	<u>After the 1995 Amendments and before the 1997 Amendments</u>	<u>After the 1997 Amendments</u>
Regulation of public processions	<p>Relevant provision: 13</p> <ul style="list-style-type: none"> The Ordinance imposes a licensing requirement on most public processions of over 20 persons. Application for a licence has to be submitted to CP 7 days prior to the date on which the procession is intended to take place. CP may accept an application which is made less than 7 days in advance if he thinks fit to do so. CP may issue a licence if he is satisfied that the public procession is not likely to prejudice the maintenance of public order or to be used for 	<p>Relevant provisions: 13, 13A</p> <ul style="list-style-type: none"> The licensing system was replaced by a notification system. The Ordinance imposes a notification requirement in respect of most public processions of over 30 persons. Normally, 7 days' written notice of the intention to hold such a public procession has to be submitted to 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>Relevant provisions: 13, 13A</p> <ul style="list-style-type: none"> The notification system for the holding of public processions remain unchanged except that a system of "notice of no objection" is introduced. Under the 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

	<u>Before the 1995 Amendments</u>	<u>After the 1995 Amendments and before the 1997 Amendments</u>	<u>After the 1997 Amendments</u>
	<p>any unlawful purpose.</p> <ul style="list-style-type: none"> • CP may refuse to issue a licence if the applicant or any person/society associated with the application has in relation to any public gathering at any time contravened the Ordinance or any other law or any condition of a licence issued under the Ordinance; or the public procession has been advertised or publicized prior to the determination of the application. 		<p>event if 7 days' notice is given). 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>
CP's powers to prohibit/object to public meetings and public processions	<p>Relevant provisions: 9, 14</p> <ul style="list-style-type: none"> • CP may prohibit the holding of any public 	<p>Relevant provisions: sections 9, 14</p> <ul style="list-style-type: none"> • CP may prohibit the holding 	<p>Relevant provisions: sections 9, 14</p> <ul style="list-style-type: none"> • CP may prohibit any

	<u>Before the 1995 Amendments</u>	<u>After the 1995 Amendments and before the 1997 Amendments</u>	<u>After the 1997 Amendments</u>
	<p>meetings on the following grounds –</p> <p>(a) the notice given does not comply with the statutory requirements;</p> <p>(b) advertisements have been placed in contravention of the Ordinance;</p> <p>(c) the holding of the public meeting is, in CP’s opinion, likely to prejudice the maintenance of public order or to be used for any unlawful purpose;</p> <p>(d) any person/society associated with the public meeting has been convicted</p>	<p>of any public meetings or processions notified under the 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>public meetings and object to any public processions notified 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</p>

	<u>Before the 1995 Amendments</u>	<u>After the 1995 Amendments and before the 1997 Amendments</u>	<u>After the 1997 Amendments</u>
	<p>of any offence under the Ordinance.</p> <p>The prohibition power should be exercised within a time limit (4 days from the date on which the public meeting is so notified if 7 days' notice is given and 24 hours before the date on which the public is intended to be held if shorter notice is given).</p> <ul style="list-style-type: none">• For public processions, CP may cancel any licence issued if it appears to him to be necessary or expedient in the interests of public order or for preventing the carrying out of any unlawful purpose to do so. A public procession cannot take place		<p>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 public 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 1995 Amendments</u>	<u>After the 1995 Amendments and before the 1997 Amendments</u>	<u>After the 1997 Amendments</u>
	without a valid licence.		
Imposition of conditions	<p>Relevant provisions: sections 11, 13, 14, 15</p> <ul style="list-style-type: none"> • The then Governor in Council may by order prescribe general conditions in respect of the holding of public meetings. CP may impose additional conditions relating to the time at which the meeting may be held and the conduct of such meeting. • For public processions, CP may impose conditions relating to the forming, conduct, route, times of passing and dispersal of the 	<p>Relevant provisions: 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 to be necessary in the interests of public safety or public order. 	<p>Relevant provisions: 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.

	<u>Before the 1995 Amendments</u>	<u>After the 1995 Amendments and before the 1997 Amendments</u>	<u>After the 1997 Amendments</u>
	<p>procession when issuing the licence. CP may also amend the conditions if it appears to him to be necessary or expedient in the interests of public order or for preventing the carrying out of any unlawful purpose to do so.</p>		
Appeal system	<p>Relevant provisions: 16, 43, 44, 44A</p> <ul style="list-style-type: none"> • Any person aggrieved by the decision of CP to prohibit the holding of a public meeting, to refuse an application for a licence for the holding of a public procession, or to cancel or amend a licence for the 	<p>Relevant provisions: 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 	<p>Relevant provisions: 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

	<u>Before the 1995 Amendments</u>	<u>After the 1995 Amendments and before the 1997 Amendments</u>	<u>After the 1997 Amendments</u>
	holding of a public meeting may appeal in writing to the then Governor.	<p>procession; or to impose conditions on a public meeting or procession.</p> <ul style="list-style-type: none"> • Under the Ordinance, the Chairman of the 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. 	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.
Penalty	<p>Relevant provision: 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 provision: section 17A</p> <ul style="list-style-type: none"> • The offences and maximum penalty basically remain unchanged except that – <p>(a) making an announcement or publishing any advertisement or notice of a public meeting</p>	<p>Relevant provision: 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”

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		<p>or procession of which the notice was given to CP less than 24 hours in advance is made an offence under the Ordinance; and</p> <p>(b) the penalty level of offences under section 17A(1) is increased to a fine of \$10,000 (as opposed to \$5,000) and imprisonment for 12 months (remained unchanged).</p>	<p>following the introduction of the “notice of no objection” system.</p>