

立法會
Legislative Council

LC Paper No. CB(2)212/01-02

Ref : CB2/BC/16/00

Paper for the House Committee meeting on 2 November 2001

**Report of the Bills Committee on
Massage Establishments (Amendment) Bill 2001**

Purpose

This paper reports on the deliberations of the Bills Committee on Massage Establishments (Amendment) Bill 2001.

Background

2. At present, the Massage Establishments Ordinance (Cap. 266) (MEO) provides for the control and licensing of massage establishments with a view to controlling vice activities in those establishments. Under the MEO, a massage establishment is defined as any place used or intended to be used or represented as being used for the reception or treatment of persons requiring massage or other similar service or treatment. Certain places which offer such service or treatment are exempted from the application of the MEO. These places are hospitals, maternity homes, clinics operated by registered medical practitioners, physiotherapy centres operated by registered physiotherapists and hairdressing or beauty parlours where face or scalp massage is administered to female customers only or in full view of customers.

3. In February 1999, the Business and Services Promotion Unit commissioned a consultancy study to review the MEO and the related regulatory control exercised by the Police. The consultant pointed out that the present scope of control is too wide and may unnecessarily regulate establishments that do not appear to be prone to vice activities. This may in turn inhibit the growth of bona fide massage businesses which promote health and relaxation.

The Bill

4. The Bill seeks to exempt certain types of massage establishments from the application of the MEO and to narrow down the scope of control to establishments offering full-body massage by persons to customers of the opposite sex. The Bill also proposes to streamline the existing licensing procedures.

The Bills Committee

5. At the meeting of the House Committee on 18 May 2001, Members agreed that a Bills Committee be formed to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

6. Under the chairmanship of Hon James TO Kun-sun, the Bills Committee has held three meetings with the Administration.

Deliberations of the Bills Committee

7. The main deliberations of the Bills Committee are summarised below.

Regulation of massage establishment

8. Under the MEO, all massage establishments, unless exempted, are required to apply for a licence for its operation. The Commissioner of Police, as the licensing authority, may issue a licence subject to the applicant satisfying certain prescribed conditions. The Police may also impose appropriate licensing conditions.

9. Members have queried as to how vice activities could be combated through licensing of massage establishments. Members consider that the licensing scheme could not serve its intended purpose of detecting whether licensees are, or deterring licensees from, engaging in vice activities. Rather it would cause unnecessary disturbance to those bona fide massage establishments and may inhibit the growth of bona fide massage businesses. In addition, the Administration should not make a presumption that massage establishments are prone to vice activities. Some members suggested that a notification system be adopted to replace the licensing scheme. Under the notification system, the Police could still require operators of massage establishments to meet certain operation conditions.

10. The Administration has explained that historically, vice activities had proliferated in massage establishments before licensing control was imposed. The licensing scheme is essential for the licensing authority to exercise control on massage establishments and acts as the most effective way to prevent vice activities in these establishments. If the current licensing scheme is replaced by a notification system, the

Police will no longer be able to vet whether an operator is a fit and proper person for operating a massage establishment. The licensing authority will be deprived of the power to impose licensing conditions to ensure public safety and to minimise potential nuisance to nearby residents.

11. The Administration has further explained that a notification system, if adopted, may create significant enforcement difficulties for combating vice activities in massage establishments. Licensing conditions which aim at preventing vice activities cannot be imposed on the premises. The Police will not have the power to enter and conduct inspections to prevent vice activities, and has to rely solely on undercover operation to detect vice activities in massage establishments. Such operations are time consuming which may only be conducted on a limited scale. The existing power of the licensing authority to revoke, suspend or refuse to renew a licence should there be breaches of the licensing conditions will not be available.

12. In the view of the Administration, if a notification system is adopted, there will be no effective mechanism to deter vice activities in massage establishments and to address public safety concerns or complaints about nuisance by nearby residents.

13. Members consider that the Administration is holding an outdated view against the operation of massage business. As massage service or treatment is becoming popular for health and relaxation, members have suggested that a comprehensive review of the MEO should be conducted, in particular on whether the provision of massage service or treatment should be regulated from the angle of health protection or consumer protection. Members understand that such a review is not within the Security Bureau's scope of policy responsibility. The Bills Committee has agreed that the subject matter be referred to the relevant Panel(s) of the Legislative Council for follow-up.

Scope of licensing

14. The Bill proposes 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 service or treatment provided to a person covering that part of his body below the neck and above the knees, including or excluding arms.

15. Under the new section 3(c) as proposed in the Bill, a massage establishment 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 the opposite sex will be exempted from licensing. The Bill also proposes to repeal the provision in the MEO which exempts the premises of hairdressing or beauty parlours where face or scalp massage is administered to female customers only or in full view of customers from licensing.

16. While members welcome the proposed relaxation of control over massage establishments so that foot massage establishments or spa and health clubs where full-

body massage is provided to customers by massage assistants of the same sex will be exempted from licensing, members consider that the Administration should further relax the control of establishments providing full-body massage to customers of the opposite sex.

17. Members have pointed out that under the proposed definition of full-body massage, the premises of hair salon or beauty parlours may be subject to licensing control as the provision of massage service or treatment is not necessarily administered to customers of the same sex. It is also not uncommon for massage to be applied to a person's neck and shoulders. As the provision of such service or treatment is not likely to lead to vice activities, most members have suggested that the definition of full-body massage be relaxed to mean a massage service or treatment covering that part of a customer's body below the shoulders and above the knees.

18. Hon Chan Yuen-han has suggested that the definition of full-body massage be further relaxed to use "膻中穴", which is slightly above the chest, as the dividing line. Hon Margaret NG disagrees with the suggestion. She points out that as the term "膻中穴" is not commonly understood, an expert may have to be called to give evidence on where "膻中穴" is in court proceedings.

19. In addition, for the purpose of clarity, members have suggested that the new section 3(c) should specify that the premises of hair salon or beauty parlours where only face, scalp, neck, hand, arm or foot (up to the knee) massage is administered to customers, or where no full-body massage is administered to a customer by a person of the opposite sex will be exempted from the application of the MEO.

20. The Administration has responded that in relaxing the definition of full-body massage, the predominant consideration is whether the relaxation may compromise the combat against and prevention of vice activities. The Administration agrees that massaging shoulders is not likely to lead to vice activities and will amend the definition of full-body massage to mean a massage service or treatment provided to a person covering that part of his body below the shoulders and above the knees, including or excluding arms.

21. To provide for clarity and to address members' concern of over-regulation, the Administration has agreed to add a provision to the effect that the premises of a hair salon or of a beauty parlour where massage is administered in full view of customers will be excluded from the application of the MEO.

22. The Administration has informed members that should vice activities or other illegal activities take place in these exempted massage establishments, the Police would take appropriate enforcement action if information about any such activities is received.

Exemption from application of the Massage Establishments Ordinance

23. To put it beyond doubt, the Administration will add provisions to the Bill to exempt the premises for practising Chinese medicine operated by a registered Chinese medicine practitioner or listed Chinese medicine practitioner as defined under the Chinese Medicine Ordinance, and the premises for chiropractic operated by a chiropractor registered under the Chiropractors Registration Ordinance from the application of the MEO.

Operation of, or assist in the management of, massage establishment

24. Section 4(1) of the MEO provides that any person who on any occasion operates, keeps, manages, assists in any capacity in the operation of, or assists in the management of, a massage establishment for the operation of which a licence is not in force commits an offence.

25. Members have sought clarification on whether a massage assistant providing massage service to customers at premises other than the massage establishment at which he/she is employed would be taken as assisting in the management or operation of the massage establishment.

26. The Administration has explained that massage establishment is defined in the MEO as any place used or intended to be used or represented as being used for the reception or treatment of persons requiring massage or other similar service or treatment. If a licensed massage establishment sends a massage assistant to provide massage service at a place not the establishment itself and if the place is found not to be a massage establishment, no prosecution can be instituted against the operator, the massage assistant or any person of the massage establishment under section 4(1) of the MEO. A massage assistant may not necessarily fall within the ambit of section 4(1) of the MEO. The massage assistant would be liable to prosecution only if it can be proved that he/she is also the person who operates, keeps, manages, assists in the operation of or management of the massage establishment.

27. Referring to a situation where a massage assistant is not attached to any massage establishment, but gets job assignment through telephone calls and gives massage service in any premises, members have sought clarification on whether the massage assistant would commit an offence under section 4(1) of the MEO.

28. The Administration has explained that the MEO aims at controlling massage establishments, but not massage assistants. If a massage assistant gets job assignments by telephone calls or other means and performs the massage service at premises other than a massage establishment, the massage assistant is not required to apply for a massage establishment licence. He/she is also not liable to prosecution for any offence under the MEO.

29. At the request of members, the Administration has undertaken to clarify in its speech during the resumption of the Second Reading debate on the Bill the

interpretation of section 4(1) of the MEO, in particular under what circumstances a massage assistant may or may not be liable to prosecution for assisting in the operation or management of the massage establishment, and whether premises other than a massage establishment at which massage service is administered will fall under the definition of massage establishment and be subject to the control of the MEO.

Licencing procedures

30. At present, a licence may be renewed for a period of 12 months only. The Bill proposes to streamline the existing licensing procedures by empowering the Commissioner of Police to renew a licence for a period of 24 months if the relevant licensee has not been in breach of any conditions of the licence. Members welcome the proposal.

31. According to the Administration, the Police has, as a result of the consultancy review, streamlined the application procedures for a massage establishment licence and shortened the processing time to grant a letter of "Approval-in-Principle" in respect of an application for a licence from 84 to 34 days. Members have urged that the time taken for granting the letter of "Approval-in-Principle" should be further shortened.

Committee Stage amendments

32. Apart from the amendments explained in paragraphs 20, 21 and 23 above, the Administration will move technical amendments to the Bill. A copy of the draft Committee Stage amendments (CSAs) to be moved by the Administration is in **Appendix II**.

Recommendation

33. The Bills Committee recommends that subject to the CSAs to be moved by the Administration, the Second Reading debate on the Bill be resumed at the Council meeting on 14 November 2001.

Advice Sought

34. Members are invited to support the recommendation of the Bills Committee in paragraph 33 above.

Council Business Division 2
Legislative Council Secretariat
30 October 2000

Bills Committee on
Massage Establishments (Amendment) Bill 2001

Membership list

Chairman	Hon James TO Kun-sun
Members	Hon LEE Cheuk-yan Hon Mrs Selina CHOW LIANG Shuk-ye, JP Hon Margaret NG Hon CHAN Yuen-han, JP Hon LAU Kong-wah Dr Hon TANG Siu-tong, JP

(Total : 7 Members)

Clerk	Mrs Sharon TONG LEE Yin-ping
Legal Adviser	Miss Connie FUNG
Date	10 July 2001

DMA#48352 (John Wong)

1st draft: 15.10.2001

2nd draft: 17.10.2001

MESSAGE ESTABLISHMENTS (AMENDMENT) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
2	In section 2, in the proposed definition of "full-body massage", by deleting "neck" and substituting "shoulders".
3	By deleting the clause and substituting - "3. Application of Ordinance Section 3 is amended - (a) by repealing paragraph (c) and substituting - "(c) the premises of a hair salon, or of a beauty parlour, where massage is administered in the premises in full view of customers resorting thereto;" (b) in paragraph (d), by repealing the full stop at the end and substituting a semicolon; (c) by adding -

"(f) a massage establishment where

-

(i) no massage other than face, scalp, neck, shoulder, 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;

(g) the premises for practising Chinese medicine operated by a registered Chinese medicine practitioner or listed Chinese medicine practitioner as defined under section 2 of the Chinese Medicine Ordinance (Cap. 549); or

(h) the premises for chiropractic operated by a

chiropractor registered under the Chiropractors Registration Ordinance (Cap. 428)."."

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(a) By deleting paragraph (a) and substituting -

"(a) in subsection (4), by repealing "Subject to section 8, subsections" and substituting "Subject to subsection (8) and section 8, subsections (3),";"

(b) In the proposed section 7(7), by deleting "from the date on which the renewal is granted".

(c) In the proposed section 7(8), by deleting "沒有" and substituting "不會".