

The Administration's responses to the points raised at the 2nd meeting of the Subcommittee on Places of Public Entertainment Ordinance (Amendment of Schedule 1) Regulation 2002 and Places of Public Entertainment (Exemption) Order held on 18 October 2002

(a) The Administration is glad that Subcommittee Members are supportive of our proposal on introducing the captioned legislative amendments to regulate dance parties. At the same time, however, we are aware of Members' concern that the legislative amendments might impose extra administrative and financial burdens on dance parties organized by students and local organizations. In this respect, Members suggested that premises under the management of public bodies, voluntary organizations, tertiary institutions and public sector schools should be exempted from the requirements to obtain a licence under the Places of Public Entertainment Ordinance (PPEO) for holding dance parties with over 200 participants. In other words, these premises would be exempted from the ambit of proposed Regulation and be added under the PPE (Exemption) Order.

The Administration noted Members' concern and agrees that the proposed legislative amendment does not intend to catch those dance parties organized by bona fide student or local community organizations. However, we are of the view that the suggestion to expand the scope of the PPE (Exemption Order) may not be the best way to tackle the issue due to the following considerations:

- (i) The proposed exemption under the PPEO for all premises under the management of public bodies, voluntary organizations, tertiary institutions and public sector schools is bound to be general and broad in nature and coverage. It is virtually impossible to compile a specific and exhaustive list of such organisations for the purpose of the Exemption Order. We are also concerned that without a precise legal definition for these organisations grey areas and loopholes may be created which may be exploited by unscrupulous organisers to circumvent the intended control on dance parties.
- (ii) A blanket exemption of such premises will deprive the relevant authorities, in particular the Police, of the necessary powers under the PPEO to conduct

inspections of dance parties being held there for safety and crime prevention purposes, particularly on the illegal sale and usage of drugs. Without such powers, the relevant authorities could not enter and inspect the premises unless they have strong justifications. This might again present opportunities to unscrupulous rave party organisers to circumvent control.

- (iii) It should be noted that premises of local community organisations vary greatly in terms of design, construction and location and the maximum capacity of persons for which they can safely accommodate, and hence not all such premises are suitable for the purpose of holding dance parties. If a blanket exemption is given to the relevant premises under the PPEO, there is no way for the relevant authorities to ensure that the premises are suitable and to regulate on matters such as capacity of and the potential risks of fire and overcrowding at the premises. The inherent risks involved in such an approach should not be underestimated.

In the light of the above considerations, the Administration wishes to propose an alternative arrangement which would be able to achieve the same objective of addressing Members' concern. Under the alternative arrangement, the Administration undertakes to entertain, as long as they are eligible, all applications for Permanent PPE Licences for holding dance parties in respect of premises managed by public bodies, voluntary organizations, tertiary institutions and public sector schools. The Permanent PPE Licences are valid for 12 months and can be renewed upon application. Under Regulation 178 of the Places of Public Entertainment Regulation (Cap.172 sub.leg.), the licensing authority may reduce or waive the fees for PPE licences if it appears to the licensing authority that the place of public entertainment is to be kept or used by certain bodies, organisations or institutions (including religious, charitable or welfare body and educational institutions etc.) recommended by Director of Home Affairs or Director of Education or their designated officers, as the case may be, for the purpose of the PPE Regulation. As such, in accordance with existing practice, the licensing authority under the PPEO would exercise his power to charge only a nominal licence fee for the premises managed by the relevant bodies,

organisations or institutions in accordance with Regulation 178. Under this alternative arrangement, student and local organizations wishing to hold dance parties could borrow or hire the above mentioned premises for such purpose. The organisers would not have to apply for a PPE Licence themselves, as the premises would have already been covered by a Permanent PPE Licence .

The alternative arrangement has the following advantages:

- (i) Through issuing Permanent PPE Licences to the premises concerned, the relevant authorities may, having regard to the specific structure and conditions of the premises involved, put in the necessary licensing conditions on holding dance parties at these venues, e.g. maximum number of participants, special fire safety prevention measures, etc. to ensure the safety of the party-goers.
- (ii) Relevant authorities, in particular, the Police, would be empowered under the PPEO to enter the premises concerned for the purposes of ensuring compliance with the licensing conditions and crime prevention, including the sale and use of drugs.
- (iii) The authorities concerned can ensure that only premises managed by bona fide organizations will be issued with Permanent PPE Licences.
- (iv) The alternative arrangement would give the authorities concerned the flexibility of not renewing the Permanent PPE Licences of certain premises should the circumstances so warranted, e.g., a poor record on noise pollution, drug abuse or other criminal activities. This flexibility cannot be made available if a blanket exemption of the premises concerned is given under the PPEO.
- (v) The alternative arrangement would allow the management of the premises concerned the choice of whether to apply for a Permanent PPE Licence for dance parties and making their premises available to outside bodies for such purpose.

- (vi) The alternative arrangement does not require further changes to the existing legislative amendments and hence avoid any potential delay to the enactment of the proposed legislative amendments.

The Administration wishes to stress that the need to introduce effective control on dance parties, particularly rave parties is an urgent and pressing one. It hopes that Members would support its proposal on the alternative arrangement to avoid potential delay to the enactment of the PPEO Amendment Regulation and Exemption Order.

(b) The Administration undertakes to make special administrative arrangement for processing the temporary PPE licence applications for dance parties from non-profit making organizations within 7 working days and charging a nominal licence fee for these applications in accordance with regulation 178 of the PPE Regulation provided that the venue has been certified in compliance with standard safety requirements for public assembly and there are no temporary structures. However, we would like to point out that if the PPE (Exemption Order) is passed and the alternative arrangement proposed in the above is adopted, a large proportion of the venues involved will either be exempted or covered by Permanent PPE Licences. These venues will be available for borrowing or hiring by non-profit making organizations for holding dance parties. Non-profit making organizations such as voluntary agencies would no longer have to apply for a PPE Licence for dance parties themselves.

(c) It is clear from the jurisprudence that the answer to the question depends on the factual finding of each case (please refer to the legal advice submitted by the Administration dated 17 October 2002). The Court would consider all the available evidence to determine whether the club is a bona fide genuine club or a sham club. The way membership to the club is granted is one of the considerations but it is not a conclusive factor. All the facts and the circumstances of each case, for example, whether the club keeps a register of membership, whether the club takes any follow-up action whatsoever in respect of granting membership and the activities organised by the club, etc. would be taken into account. Granting membership instantly on-the-spot would be very likely to point to the fact that the club is a sham and the membership is a mere fiction but again this is not conclusive. On the other hand, the fact that membership is granted the day before the event may not necessarily

prove that the club is a genuine club. If all the facts and circumstances point to the fact that the club is a sham, then even if membership to the club is granted the day before or some days before the dance party, the dance party would nevertheless be public entertainment for the purpose of Cap.172. In any event, the burden is on the police and prosecution to prove that the club is a sham and the general public is admitted to the dance party.

Home Affairs Bureau
October 2002