

LegCo Panel on Security
Follow-up to special meeting on 10 May 2002

Questions for the Administration

- Q1. Would the Administration explain its policy on the enforcement of section 17 of Public Order Ordinance (Cap. 245) which confers the Police with powers over meetings, processions and gathering? Would the Administration also provide the following information:**
- a) in relation to a contravention of a condition which applies to a public meeting, the circumstances under which the power to stop or disperse a public meeting would still be exercised despite the fact that such contravention had ceased to occur;**
 - b) the guidelines, if any, for exercising the power under section 17(4) and (5) to cause a public place to be closed to the public.**

A1. It is police policy to endeavour to facilitate, as far as possible, all peaceful and lawful public meetings and processions (hereafter referred to as “public order events”).

There are occasions when the law is, or is likely to be, broken at a public order event whereupon it may be necessary to use the powers conferred by section 17 of the Public Order Ordinance (Cap. 245). The Field Commander at the scene will assess the threat of a breach of the peace before deciding upon an appropriate course of action.

Minor or technical breaches of the Public Order Ordinance and/or other laws will be dealt with by giving a verbal warning to the offender and/or the person in charge of the event. The event will be allowed to proceed and no further action will be taken.

Where the organizer has deliberately breached the law and/or disobeyed order(s) given by police, police will give a verbal warning to the person in charge of the event. The event will be allowed to proceed under police supervision and legal advice will be sought after the event with a view to prosecution.

Where there is an imminent or actual breach of the peace, police will give verbal warnings to the person in charge of the event and the participants and will direct immediate cessation of any unlawful activity. If the warnings are ignored, police will consider dispersing the event, removal of the participants or arrest action as appropriate. Legal advice will be sought after the event with a view to prosecution.

The information sought by parts (a) and (b) of the question is set out below :

- (a) In a public meeting when a condition imposed under section 11 of the Public Order Ordinance has been contravened, the meeting will generally be allowed to proceed if it remains a peaceful event. Where contravention of the condition is likely to cause or lead to a breach of the peace, police will consider exercising the power to stop or disperse the meeting in order to preserve the public peace and to prevent injury to life or property. Where the contravention has ceased, police will assess the circumstances so as to ascertain whether there is still a threat of breach of the peace. Thereafter a decision will be made as to allowing the event to continue.
- (b) Where a public meeting or procession is likely to take place in contravention of sections 7 or 13 of the Public Order Ordinance, consideration will be given to exercising the power conferred by section 17(4) to ban access to the public place and close it to the public. The closure will be notified by means of notices exhibited, or physical barriers erected or by verbal public announcement in the vicinity in accordance with section 17(5) of the Ordinance.

Q2. Whether the mere act of refusing to enter a press area set up by the Police would be considered as sufficient to constitute obstructing Police officers in their execution of duty.

A2. Every case has to be considered on its own facts and circumstances. It is not appropriate to comment whether the mere act of refusing to enter a press area set up by the Police would amount to obstructing Police officers in their execution of duty without examining the full picture of the case and the evidence available.

Q3. Since the duties of the Police are to take lawful measures for, among other things, preserving the public peace, preventing injury to life and property, and regulating processions and assemblies in public places or places, under section 10 of the Police Force Ordinance (Cap. 232), in what way was the closure of Chater Garden and establishment of a press area at the material time of the incident on 25 April 2002 a lawful measure?

A3. There were two purposes to the police operation at Chater Garden on 25 April 2002. Firstly, pursuant to section 17 of the Public Order Ordinance, the Commissioner of Police stopped the public meeting which was being held in contravention of two conditions imposed under section 11 of the Ordinance. Secondly, police suspected that there were persons to be repatriated to the Mainland among the group of protestors inside Chater Garden.

Police formed a cordon around Chater Garden to seal off the area, to prevent any persons liable to be arrested from leaving the scene; to facilitate the police operation; and more importantly, to prevent the general public from entering the area during the police operation in order to safeguard their personal safety.

The establishment of a press area within the cordoned area was to facilitate press coverage of the police operation.

Q4. In the light of the Administration's statement given at the Panel meeting on 10 May 2002 that "as they [the two members of the media] were worked up and struggled in the course of arrest, the Police had handcuffed these persons to avoid injuries", could the Administration clarify whether the use of handcuffs on the two persons concerned was an application of force for subduing them rather than for protecting the police officer or the two persons concerned from any injury?

A4. The use of handcuffs in the incident is still the subject of an investigation by the Complaints Against Police Office. It is not considered appropriate to comment until the investigation is completed.

Q5. How many officers of the Police Public Relations Branch were deployed at the scene of the incident at the material time? Were any of these officers involved in or did any of them witness the handcuffing of the members of the media? If the answer is in the affirmative, to what extent had their presence or involvement led to the Police taking action to arrest and handcuff the members of the media concerned?

A5. Two Information Officers from the Police Public Relations Branch were present. As details of police action and the circumstances leading to the use of handcuffs are the subjects of an investigation by the Complaints Against Police Office, it is not considered appropriate to comment until the investigation is completed.

Q6. Were the members of the media arrested subject to any investigation at the scene of the arrests? If not, why not? If yes, was it because the facts upon which the arrests were founded did not constitute a commission of an offence or was it because of other reasons?

A6. After their arrest, the two persons were escorted to the pre-designated detainee handling area. The officer in charge of the police operation, i.e.

District Commander, Central, was informed of the circumstances of the two arrests. Having been assured by the arrested persons that they would calm down and move to the designated press area, the District Commander warned them about their behaviour and released them.

Q7. Had a decision been made by the Police not to refer the case to the Secretary for Justice for deciding whether to prosecute the members of the media arrested when they were released at the scene? If it had, what were the justifications for making that decision?

A7. This follows from the answer to Q6 that having warned and released the two arrested persons, the Police regarded this particular matter as closed.

Q8. Did the provisions in the extract of Force Procedures Manual provided to the Panel apply to the incident in question? If they did, please explain why the Police did not provide an inner-cordon but a press area instead.

A8. In reference to the wording of this question, the relevant section of the English version of the Force Procedures Manual more correctly states "... The officer-in-charge ... should consider the provision of an outer-cordon which restricts the general public and of an inner-cordon *or an area* which gives advantage to members of the media ...". In other words, the provisions should be taken to mean that the officer-in-charge may consider setting up either an inner-cordon or a designated area for members of the media to cover the event.

A designated press area was established inside of the outer-cordon and a short distance (and not in the least remote) from the focus of the operation, in accordance with laid down police procedures.

Q9. In what way was the press area established a vantage point? And, what advantage the press area had given to members of the media and their photographers in the context of paragraph 2 of Chapter 39-06 of Force Procedures Manual?

A9. The press position was centrally located inside Charter Garden and was considered to be reasonably close to where police action took place. It was set up inside the Police operational area that was not accessible to the general public.

Q10. Please advise the Panel when the Complaint Against Police Office will complete investigation of the complaints in question and whether the result of the investigation would be released.

A10. The investigation by the Complaints Against Police Office is nearing completion. It is expected that a report will be submitted to the Independent Police Complaints Council (IPCC) in January 2003. The issue as to the release of the result of the investigation will also be deliberated between IPCC and the Police.

Q11. According to paragraphs 2 and 3 of the Administration's paper entitled: "Police Operation at Charter Garden on 25 April 2002" (LC Paper No. CB(2) 1852/01-02(01)), the following two particular conditions were imposed by the Commissioner of Police under section 11(2) of the Public Order Ordinance (Cap. 245) in respect of the series of public meetings held at Charter Garden at the material time :

(a) that the organizer was required to ensure that ROA claimants to be repatriated following the CFA's ruling should not take part in the public meetings; and

(b) that the organizer was required to ensure that no obstruction was caused to the pedestrian and vehicular traffic in the vicinity of Chater Garden.

Had the Commissioner considered whether the organizer would have the ability to comply with the conditions, bearing in mind that these conditions appeared to relate to activities of persons who might not be subject to the control of the organizer of the public meetings concerned?

A11. In relation to condition (a), the organisers of the meeting inside Chater Garden were known to be conducting a registration process for Right of Abode seekers. Police therefore had reasonable grounds for believing that the organisers knew the identities of those affected by the Court of Final Appeal's ruling. Furthermore, the organisers were always at liberty to ask participants in the meeting to produce identity documents for checking (although of course they could not compel their production). At no stage prior to the 25 April clearance operation did the organisers voice any concerns about being unable to comply with this condition.

In relation to condition (b), section 11 of the Public Order Ordinance, requires that, at every public meeting, the organiser, or a person nominated by him to act in his place, should be present throughout, and that good order and public safety shall be maintained throughout the meeting.

One of the conditions imposed under section 11 of the Public Order Ordinance was that the organisers should provide one marshal for each 15 participants for the purpose of maintaining public order throughout the event and that these marshals should wear a conspicuous badge or armband. This is a condition which is regularly imposed on notified meetings and processions in Hong Kong. This principle of "self-regulation" is key to ensuring that large public meetings and processions take place in safe conditions and with the minimum of

disruption to other members of the community. Again, the organisers of the event concerned did not raise any objections to this condition.

Hong Kong Police Force
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