

**For Information
7 November 2005**

**Subcommittee on the Closed Area (Hong Kong
Ministerial Conference of World Trade Organization) Order**

**Reasons for setting up the closed area under
section 36 of the Public Order Ordinance
and related issues**

Background

At the meeting held on 1 November 2005, Members discussed, and the Administration explained, various issues related to the closed area order. The Administration was requested to set out its response in writing on a few issues. This note sets out the reasons for setting up a closed area during the Sixth Ministerial Conference (MC6) of the World Trade Organization (WTO) under section 36 of the Public Order Ordinance (POO) (Cap. 245), as well as the two related points regarding the risk assessment and compensation.

The legal basis

2. In considering the most appropriate legal vehicle to use in a specific situation, account should be taken of the objective(s) to be achieved and the circumstances of the case. It is also necessary to ensure that statutory powers are used for their true purposes. In the case of MC6, **public order and public safety grounds** necessitated the setting up of a closed area for the following reasons.

3. According to the latest Police intelligence, a large number of local and overseas protesters advancing various causes will stage demonstrations in Hong Kong during the MC6 period. As has been seen in previous WTO Ministerial Conferences and other major international events, some protestors may use disruptive or violent methods (which may range from non-violent passive resistance to the damage of property or even clashes with law enforcement officers), with a view to causing traffic paralysis and general chaos.

4. The environs of the meeting venue (i.e. the Hong Kong Convention and Exhibition Centre (HKCEC)), including the key access routes thereto, present obvious focal points for violent protest or wanton damage by radical protesters. If the immediate proximity and access routes continue to be open to pedestrian and vehicular traffic, the safety of members of the public and MC6 participants, as well as public order in the conference venue and its vicinity, will be put at

risk.

5. We also need to guard against attempts to disrupt road traffic, a common tactic used by some demonstrators at global events. Such actions may well have a knock-on effect by paralyzing commerce and normal community life at a general level.

6. In addition, we cannot rule out the possibility of terrorist action during such a high-profile international event as MC6 with participants from all over the world, including those from countries subject to higher terrorist threat. Should there be any terrorist attempts, both members of the public and MC6 participants would unlikely be spared.

7. MC6 is different from other previous international events held in Hong Kong in the following respects -

- (a) the duration is long (six days) and the number of participants and support personnel is large (about 21 000);
- (b) its themes are the most contentious and are more likely to attract strong reaction, including violence or dangerous action, from critics; and
- (c) the overall terrorist threat globally has increased, requiring stepped-up vigilance where an event draws participants from all over the world, including those from countries subject to a high terrorist threat.

The risk to public order and to public safety arising from MC6 has been assessed to be “high” from an early stage. This requires an appropriate preventative response at the outset.

8. Section 36 of POO enables the Chief Executive to declare a closed area for the “protection of national security or *public safety*, or the protection of *public order* or public health”. Police assessment is that for MC6, the “public safety” and “public order” grounds are the most relevant. By comparison, other legislative provisions used in previous international events are less appropriate, as follows -

- (a) **Road Traffic (Traffic Control) Regulations** (Cap. 374G) would enable us to close the roads in the area, but **traffic management and road safety** (and not, for example, public order) would have to be the predominant reasons;
- (b) **Shipping and Port Control Ordinance** (Cap. 313) would enable us to close the waters off the venue, but only “in the interest of safety” and not, for example, on public order grounds;

(c) **Other sections of the POO** provide for powers to control and direct the conduct of public gatherings; to prevent the holding of, or stop or disperse public meetings where the police officer believes the public meeting is likely to cause or lead to a breach of the peace etc. The **Police Force Ordinance** (Cap. 232) also requires the Force to take lawful measures to prevent injury to life and property, to regulate processions and assemblies, to preserve order in public places and in the waters of Hong Kong, etc. However, such provisions can only be invoked *in response to* circumstances justifying the use of the powers, and not for closing off an area well in advance.

Extracts of the relevant provisions of the above-mentioned legislative provisions are attached at **Annex**.

9. The provisions in paragraph 8(a) to (c) are appropriate for events where considerations like road and sea safety and traffic management are predominant or where a response is required at short notice. By their nature, they are more piecemeal and reactive. They also require action to be taken by a number of different parties, for example, where private roads are involved, and are not appropriate for a large-scale event like MC6. Given the scale and nature of MC6 and the possible threats to public order and public safety, these are not operationally effective and should only serve as supplementary instruments when evolving circumstances so warrant but not when the true purpose is the protection of public safety and public order.

10. On the other hand, the establishment of a closed area under section 36 of the POO *meets the true purpose of protecting public order and public safety*. It also represents a comprehensive scheme that allows land closure, road closure and sea closure *in one go*. The same legal requirements would apply consistently, and the chance of confusion is thus minimized. In addition, the advance establishment of a closed area under section 36 of the POO is a transparent process to allow members of the public to know well in advance how they might be affected by the closed area so that they could make alternative plans for work and school, reducing the chance of having to react spontaneously when chaos occurs and corresponding measures are put in place.

11. Against the above considerations, legal advice is that for the purpose of safeguarding public safety and public order in the conference venue and its environs, the most appropriate statutory power to set up a closed area is section 36 of the POO.

Related issues

Risk assessment

12. As can be seen from the above, the risk assessment of an event is the result of an interplay of the various circumstances facing it. The assessment in turn influences the consideration of the appropriate legal vehicle to be adopted. The public order and public safety risk for MC6 has been assessed to be “high”, and is on the high side of the spectrum within the “high” rating. In addition, this assessment has surfaced well in advance of the conference. The terrorist threat assessment is at present “moderate”. No previous international events previously held in Hong Kong have had such characteristics calling for a preventative response so far in advance of the event.

Compensation

13. If premises directly supporting MC6 are discounted, the closed area will only affect 11 business premises, involving about 300 staff. About 22 000 bus passengers and 24 000 ferry passengers will also be affected daily. To this end, the Ministerial Conference Coordination Office (MCO) has been liaising with the affected premises and shop owners to explain the possible impact on them. As far as the 11 business premises are concerned, all their staff may apply for permission to enter and leave the area. The Administration will strive to minimize the inconvenience caused to the public, including the shop owners in the closed area.

14. The POO, under which the Order has been made, does not provide for the payment of compensation where closed area orders are necessary. Public interest in the protection of public safety and public order prevails over hardship, if any, to private interests resulting from the making of the Order. As a matter of legal principle, in the absence of an express statutory provision providing for the payment of compensation to persons affected by the making of a closed area order, there is no legal obligation to pay compensation to entities so affected.

Security Bureau
Environment, Transport and Works Bureau
Ministerial Conference Coordination Office
Hong Kong Police Force
Transport Department
Department of Justice

November 2005

Individual Section Mode

Previous section of
enactmentNext section of
enactment

Switch language

Back to the List of
Laws

 Contents of Section

▼
 Chapter: 374G Title: ROAD TRAFFIC (TRAFFIC Gazette Number:
 CONTROL) REGULATIONS
 Regulation: 27 Heading: Closure of roads Version Date: 30/06/1997

PART V

ROAD CLOSURES

(1) Where in the opinion of the Commissioner it is necessary to close a road or any part of it to all or any particular kind of traffic, he may close that road or part of it to such traffic for such period as he may think necessary.

(2) A closure under subregulation (1) shall be indicated by a sign of the type shown in Figure No. 149 in Schedule 1 and a notice of such closure shall be published by the Commissioner as soon as reasonably practicable in the Gazette or in one issue of at least one English newspaper and one Chinese newspaper circulating in Hong Kong. (L.N. 263 of 1984)

(3) The closure of a road under subregulation (1) shall not apply to-

(a) a vehicle which is being driven for any fire services, ambulance, police or customs and excise service purpose if compliance with the closure is likely to hinder the use of that vehicle for that purpose; or

(b) a vehicle in respect of which a closed road permit for the road is issued and is valid in accordance with the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap 374 sub. leg.).

(4) Subject to subregulation (3), no person shall drive a vehicle on any road closed under subregulation (1).

(5) For the purposes of this regulation, "road" does not include a private road. (L.N. 22 of 1989)

Previous section of
enactmentNext section of
enactment

Switch language

Back to the List of
Laws

Individual Section Mode

Previous section of
enactment

Next section of
enactment

Switch language

Back to the List of
Laws

Contents of Section

▼
Chapter: 313 Title: SHIPPING AND PORT Gazette Number:
CONTROL ORDINANCE
Section: 16B Heading: Closure of waters Version Date: 30/06/1997

(1) Where the Director reasonably believes that it is necessary in the interests of safety to close any area of the waters of Hong Kong to all vessels, or to any vessel belonging to any class, type or description of vessel, he may, by notice in the Gazette, close that area to such vessels or vessel, as the case may be.

(2) A notice under subsection (1) which has not been repealed, or which has not expired, on or before the effluxion of the period of 6 months immediately following the day on which it is published in the Gazette shall expire on the day immediately following that period.

(3) It is hereby declared that a notice under subsection (1)-

(a) is subsidiary legislation;

(b) may be in the same terms as another notice under that subsection where that first-mentioned notice is to come into operation upon or after the expiration of that second-mentioned notice;

(c) shall not apply to any vessel which is being used for any fire services, ambulance, police, customs and excise or Marine Department purpose if compliance with the notice is likely to hinder the use of that vessel for that purpose.

(4) If without reasonable excuse a vessel the subject of a notice under subsection (1) enters an area of the waters of Hong Kong the subject of that notice, the master of the vessel commits an offence and is liable to a fine at level 3 and to imprisonment for 6 months.

(Added 15 of 1995 s. 2)

Previous section of
enactment

Next section of
enactment

Switch language

Back to the List of
Laws

Individual Section Mode

Previous section of
enactment

Next section of
enactment

Switch language

Back to the List of
Laws

Contents of Section

▼
Chapter: 245 Title: PUBLIC ORDER Gazette Number:
ORDINANCE
Section: 17 Heading: Police powers over meetings, Version Date: 30/06/1997
processions and gatherings

(1) Any police officer may prevent the holding of, stop or disperse-

(a) any public meeting which takes place in contravention of section 7 or in regard to which any requirement, or any condition imposed, under section 11 is being or has been contravened;

(b) any public procession which takes place in contravention of section 13 or in regard to which any requirement, or any condition imposed, under section 15 is being or has been contravened. (Amended 77 of 1995 s. 8)

(2) Any police officer of or above the rank of inspector may-

(a) prevent the holding of, stop, disperse or vary the place or route of any public gathering, other than a public gathering exclusively for religious purposes, whether or not the public gathering is one to which section 7 or 13 applies; or

(b) stop or disperse any public gathering exclusively for religious purpose or any meeting convened or held in any premises or place which is not a public place or any gathering or procession whatsoever or wheresoever,

if he reasonably believes that the same is likely to cause or lead to a breach of the peace.

(3) For the purpose of exercising the powers conferred by subsections (1) and (2), respectively, a police officer and a police officer of or above the rank of inspector may give or issue such orders as he may consider necessary or expedient, and such police officer and any other police officer may-

(a) use such force as may be reasonably necessary to prevent the holding of, stop or disperse, as the case may be, the public meeting, public procession, public gathering or other meeting, gathering or procession; and

(b) enter any premises or place whatsoever in which any meeting is taking place or any persons are gathered.

(4) If a police officer of or above the rank of inspector has reason to believe that a public meeting or public procession is likely to take place or form in any public place in contravention of section 7 or 13, he may cause access to that public place and to any other public place adjacent thereto to be barred and to be closed to the public or to any person or class of persons for such time as may be necessary to prevent the

public meeting or public procession taking place.

(5) The closure of any public place under subsection (4) shall be notified by means of notices exhibited, or physical barriers erected, at the places of access thereto, or by oral public announcement in the vicinity thereof, or in such other manner as the police officer aforesaid may think fit.

(6) Any police officer may use such force as may be reasonably necessary to prevent any person from entering or remaining in any public place to which access has been closed to him under this section.

[Previous section of
enactment](#)

[Next section of
enactment](#)

[Switch language](#)

[Back to the List of
Laws](#)

Individual Section Mode

Previous section of enactment	Next section of enactment	Switch language	Back to the List of Laws
----------------------------------	------------------------------	-----------------	-----------------------------

Contents of Section

▼	Chapter: 232	Title: POLICE FORCE ORDINANCE	Gazette Number: L.N. 211 of 1998
	Section: 10	Heading: Duties of police force	Version Date: 04/05/1998

Remarks:

Adaptation amendments retroactively made - see 76 of 1999 s. 3

The duties of the police force shall be to take lawful measures for-

- (a) preserving the public peace;
 - (b) preventing and detecting crimes and offences;
 - (c) preventing injury to life and property;
 - (d) apprehending all persons whom it is lawful to apprehend and for whose apprehension sufficient grounds exists;
 - (e) regulating processions and assemblies in public places or places of public resort;
 - (f) controlling traffic upon public thoroughfares and removing obstructions therefrom;
 - (g) preserving order in public places and places of public resort, at public meetings and in assemblies for public amusements, for which purpose any police officer on duty shall have free admission to all such places and meetings and assemblies while open to any of the public;
 - (ga) assisting coroners to discharge their duties and exercise their powers under the Coroners Ordinance (Cap 504); (Added 27 of 1997 s. 75)
 - (h) assisting in carrying out any revenue, excise, sanitary, conservancy, quarantine, immigration and alien registration laws;
 - (i) assisting in preserving order in the waters of Hong Kong and in enforcing port and maritime regulation therein; (Amended 76 of 1999 s. 3)
 - (j) executing summonses, subpoenas, warrants, commitments and other process issued by the courts;
 - (k) exhibiting informations and conducting prosecutions;
 - (l) protecting unclaimed and lost property and finding the owners thereof;
 - (m) taking charge of and impounding stray animals;
 - (n) assisting in the protection of life and property at fires;
 - (o) protecting public property from loss or injury;
 - (p) attending the criminal courts and, if specially ordered, the civil courts and keeping order therein;
 - (q) escorting and guarding prisoners;
 - (r) executing such other duties as may by law be imposed on a police officer.
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