

For information
24 September 2007

**Bills Committee on the
Statute Law (Miscellaneous Provisions) Bill 2007**

**Amendments to the Public Order Ordinance (Cap. 245)
and the Societies Ordinance (Cap. 151)**

Purpose

At the Bills Committee meeting on 3 July 2007, the Administration was requested to provide the following information –

- (a) the reasons why the Administration considered it unnecessary to define the term “public order” in the statute;
- (b) the meaning of the term “public order” in overseas jurisdictions;
- (c) the number of prohibitions of / objections to the holding of public meetings and processions raised by the Police on the ground of “public order (*ordre public*)” from 1997 to date, and the difference in the number of objections that would have been raised by the Police during the above period if the references to “(*ordre public*)” in the Public Order Ordinance (POO) were deleted;
- (d) how the Police had applied the term “public order (*ordre public*)” in the processing of notification of public meetings and processions under the POO before and after the handing down of the judgment of the Hong Kong Court of Final Appeal (CFA) in *Leung Kwok Hung v HKSAR [2005] 3 HKLRD 164* (the case);
- (e) whether the concept of “public order (*ordre public*)” had been an issue of consideration in any of the appeals considered by the Appeal Board on Public Meetings and Processions since 1997; and
- (f) the explanation of the scope of the interpretation of the term “protection of the rights and freedoms of others” in the Guidelines on the approach to POO in relation to public

meetings and public processions (the Guidelines) issued in February 2006.

Issues 1(a) to 1(e)

2. From 1997 to August 2007, the Police objected to / prohibited 19 public processions and meetings on the ground of “public order (*ordre public*)”. As pointed out in the papers submitted by the Administration for the Bills Committee meetings held on 7 and 16 June 2007 (LC Papers Nos. CB(2)2034/06-07(01) and (03)), the Police have all along been applying the term “public order (*ordre public*)” in the law and order sense in their daily operation, both before and after the handing down of the judgment of the case. Hence, there would not have had any implication on the number of objections / prohibitions raised by the Police during the above-mentioned period even if the references to “(*ordre public*)” had been removed from the POO. According to our understanding, the concept of “public order (*ordre public*)” has never been a matter at issue among all the cases considered by the Appeal Board on Public Meetings and Processions since 1997.

3. As we have pointed out in the paper submitted for the Bills Committee meeting of 16 June 2007 (LC Paper No. CB(2)2106/06-07(03)), the CFA explains the concept of “public order” (as opposed to “public order (*ordre public*)”) in its judgment on the case. In gist, the term covers “the maintenance of public order and prevention of public disorder”, a concept which the CFA held to be sufficiently certain to satisfy the constitutional requirement of “prescribed by law”. This reflects that the meaning of the term is abundantly clear. The explanation as set out in the CFA judgment is now part of our case law and is applicable to relevant legislation, i.e. the POO and Societies Ordinance. At an operational level, we have also incorporated the explanation in the CFA judgment into the Guidelines for reference by frontline police officers and members of the public. In view of the foregoing, we do not see a need to add a separate definition of the term in the statute. Indeed, the term “public order” (as opposed to “public order (*ordre public*)”) is widely used in our legislation and none of the legislation concerned contains a definition of the term.

4. According to our information, the relevant provisions in the legislation (including, for example, statutes, state law, municipal / city code and by-laws) in common law jurisdictions such as the United Kingdom, Australia (in the states of New South Wales and Queensland), the United States of America (in San Francisco and New York) and Canada (in Toronto and Vancouver) do not contain a definition of the term.

Issue 1(f)

5. The Bills Committee asked about the scope of the interpretation of the term “the protection of the rights and freedoms of others” in the Guidelines. We wish to point out that the Guidelines were formulated with reference to various relevant materials, including the UN Covenant on Civil and Political Rights CCPR Commentary by Dr. Manfred Nowak¹. The Commentary points out that :

“..... [t]o be taken into consideration with [the right of] assemblies are the rights of passers-by, as well as those of participants, to personal safety and physical integrity, which were dealt with in the context of public safety. In addition, the prohibition of advocacy of hatred set down in Art. 20(2) should be mentioned in this regard As with freedom of movement, freedom of assembly is subject to the limitations for the protection of *private property* of others.” (at page 382, paras. 28 and 29)

This sheds some light on how the term should be interpreted in the context of the Guidelines.

6. Given the different scenarios that the consideration of “the protection of the rights and freedoms of others” may arise, the Guidelines do not seek to provide exhaustive instructions to law enforcement officers on the scope of this term (and other terms under the POO). Rather, the Guidelines are intended to assist law enforcement officers and other persons in their understanding of the statutory scheme, including some of the terms of the POO, in the light of the constitutional right of peaceful assembly in relation to public meetings and public processions. Application of the proportionality test, where appropriate, is required. Where in doubt, the Police will seek legal advice on the applicability of the limitation to specific cases before it is to be invoked.

**Security Bureau
Hong Kong Police Force**

September 2007

¹ A full list of the reference documents is set out on the last page of the Guidelines.