

**The Legislative Council
Bills Committee on Broadcasting Bill**

Suspension and Revocation of Licence

Purpose

This paper elaborates on the provisions concerning the suspension and revocation of licence in the Broadcasting Bill (the Bill).

Background

2. At the Bills Committee meeting held on 18 April 2000, Members asked the Administration to consider introducing public hearings for suspension of licence and provide information on the arrangements in the US, Canada and other overseas countries.

Suspension and Revocation of Licence

3. Clause 30 of the Bill provides that the Broadcasting Authority (BA) may suspend a licence for not exceeding 30 days for failure by the licensee to pay any licence fee, financial penalty, etc. or if the licensee has contravened a licence condition, a requirement under the Bill, or a provision of the codes of practice, etc. This clause is modelled along section 13A of the Television Ordinance (Cap. 52).

4. Clause 31 of the Bill provides that where the BA considers that there may be cause for the Chief Executive in Council (CE in C) or it, as the case may require, to revoke a licence, it shall conduct an inquiry and, if the licence was granted by CE in C, submit recommendations to the CE in C concerning the revocation. Where the inquiry concerns the contravention by the licensee of a licence condition, a requirement under the Bill or a provision of the codes of practice, etc., the BA shall, as part of the inquiry, conduct a public hearing. This clause is modelled along section 14 of the Television Ordinance.

5. Members suggested that the Administration should consider introducing public hearings for suspension of licence similar to the procedures required for revocation of licence.

6. We should like to clarify that there is no legal impediment for the BA to conduct public hearings for suspension of licence if the particular circumstances of individual cases so require. However, it should be noted that the proposed regulatory framework would allow the BA to respond to serious or repeated contraventions in a relatively short period of time. It may therefore be more appropriate to afford the BA with the flexibility to decide whether a public hearing should be required having regard to the circumstances of individual cases. To ensure that the licensee concerned will be given a fair hearing before the BA makes a decision on suspension of licence, we have already built in the following safeguards in the Bill -

- (a) before making a decision on suspension of licence, the BA shall notify the licensee of such an intention and the grounds upon which the suspension is considered;
- (b) the licensee shall be given not less than 28 days to make representations to the BA as regards the proposed suspension; and
- (c) the BA shall consider any representations made to it in relation to the proposed suspension.

Overseas Practice

7. Our proposed procedures in relation to suspension of licence are more or less consistent with, if not more stringent than, those in overseas jurisdictions. A summary of the related procedures adopted by the broadcasting authorities of Australia, Canada, UK and US are summarized in the Annex for Members' reference.

Information Technology and Broadcasting Bureau
26 April 2000

Overseas practice in relation to suspension and revocation of licence

Australian Broadcasting Authority (ABA)

- Under the Broadcasting Services Act, if a commercial television or radio broadcasting licensee breaches a condition of the licence, the ABA may, by notice in writing given to the licensee, suspend the licence for such period, not exceeding three months, as is specified in the notice, or cancel the licence. If the ABA proposes to take such action, it must give to the licensee a written notice of its intention and a reasonable opportunity to make representations to the ABA in relation to the proposed action. The ABA may hold hearings for the purposes of the performance or exercise of any of its functions or powers. Subject to the provisions relating to hearings in the Act, the procedure for the conduct of a hearing is within the discretion of the ABA.

Canada Radio-television and Telecommunications Commission

- In accordance with the Broadcasting Act 1991, except where otherwise provided, the Canada Radio-television and Telecommunications Commission shall hold a public hearing in connection with suspension or revocation of a licence.

Independent Television Commission (ITC) of the UK

- If the ITC is satisfied that the holder of a licence is failing to comply with any condition of the licence and that failure is such that it would justify the revocation of the licence, the ITC shall serve on the holder of the licence a notice stating that the Commission will revoke the licence unless the licence holder takes such steps to remedy the failure within such period as specified. If the licence holder has failed to take the steps at the end of the period specified, and it is necessary in the public interest to revoke the licence concerned, the ITC shall serve on that person a notice revoking his licence. However, such notice shall not be served unless the ITC has given the licensee a reasonable opportunity of making representation. There is no requirement under the Broadcasting Act to hold public hearings for revocation of licence.

- The ITC may serve a notice on a licensee reducing the validity period of a licence by a specified period not exceeding two years if it is satisfied that a licensee has failed to comply with any condition of the licence or any direction given by ITC. However, such notice shall not be served unless the ITC has given the licensee a reasonable opportunity to make representations. There is no legal requirement to hold a public hearing for shortening a licence.

Federal Communications Commission (FCC) of the US

- The FCC is not required under the Communications Act to hold public hearings for suspension or revocation of licence. In the case of revocation of a licence, the Commission shall serve upon the licensee an order to show cause which shall contain a statement of the matters with respect to which the Commission is inquiring and shall call upon said licensee to appear before the Commission at a time and place stated in the order, and give evidence upon the matter specified therein. If after hearing, the Commission determines that an order of revocation should issue, it shall issue such order.