Paper No. CB(2)2118/01-02(02)

Information requested by the Bills Committee at its meeting on 29 May 2002 regarding the Karaoke Establishments Bill

The information requested by the Bills Committee is set out in the following paragraphs-

(1) To consider replacing the reference to "public interest" in clause 5(3)(c) by "fire safety, building safety and public safety";

Our views on clause 5(3)(c) in relation to "public interest" are set out in the Administration's responses to information requested in the meetings of 1 March 2001, 18 May 2001, 7 and 20 March 2002 (LC Papers No. CB(2)1153/00-01(02), CB(2)502/01-02(02), CB(2)1585/01-02(02) and CB(2)1738/01-02(01)). The Administration stands by those views and remains of the opinion that it is desirable to keep clause 5(3)(c) in its present form so that, should circumstances so warrant, the licensing authority, in considering whether or not to issue or grant a licence or permit, would not be precluded from considering factors other than fire safety, building safety and public safety in the wider interest of the community at large.

Nevertheless, in view of Members' strong wish, to replace the reference to "public interest" by a reference to "fire safety, building safety and public safety", we propose to delete clause 5(3)(c). This is because if the "public interest' consideration in clause 5(3)(c) is to be restricted to considerations of fire safety, building safety and public safety only, it will be just a repetition of the requirements prescribed by the draft regulation made for the purpose of clause 5(3)(b)(i), which contains, among other things, fire and building standards and hygiene requirements. In view of this and in order to avoid overlap, deletion of clause 5(3)(c) rather than replacing the reference to "public interest" with the reference to the three safety considerations is appropriate.

(2) To consider the Assistant Legal Advisers's suggestion of revising clause 13(1)(ii) to stipulate that the exercise of power under the clause was only for the purpose of ensuring compliance with the provisions of the Bill and with the licensing conditions;

We have no strong views on the proposal and will introduce a Committee Stage Amendment to revise clause 13(1)(ii) to stipulate that the power under the clause is to be exercised for the purpose of ensuring compliance with the provisions of the Bill and with the licensing conditions.

(3) To justify the need to confer on the Police the power of seizure for evidence in support of revocation or suspension of a permit or licence under clause 13(1)(iii);

The power of seizure for evidence in support of revocation or suspension of a permit or licence under clause 13(1)(iii) (to be replaced by the new clause 13(3) in the draft Committee Stage amendment) is conferred on both the Police and public officer authorized by the licensing authority.

As stated in item 1(iv) of the Administration's response to information requested in the meeting held on 22 May 2002 (LC Paper No. CB(2) 2103/01-02(01)), evidence of possible grounds for revocation or suspension of a permit or licence may not be the same as evidence of commission of an offence against the Bill. That said, evidence of grounds for revocation or suspension would in most cases, be covered by evidence of commission of offences. For the minority of other cases, if any, the licensing authority may resort to other means to collect evidence of grounds for revocation or suspension such as taking photographs or statements from the relevant people on the KE.

In view of the foregoing, we have no objection to revising the Committee Stage amendment by deleting the new clause 13(3)(b).

(4) To provide internal instructions issued by the Police on the return of seized property and to provide examples of Ordinances which included provisions also on the return of seized property. (A member suggested the Administration to make reference to the Public Health and Municipal Services Ordinance and the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance);

There are general guidelines in Chapter 30-05 of Police General Orders (PGO) on the return of seized property. Clause 12 of the PGO states that where an officer-in-charge of the case makes a recommendation not to proceed with any investigation, for whatever reason, he shall ensure that the Property Office is instructed to return any property connected with the case to the rightful owner".

We are not aware of any general practice of making legislative provisions for the return of seized properties. Apart from s. 86 of the Public Health and Municipal Services Ordinance (Cap. 132) and s. 18 of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566), s. 28 of the Money Lenders Ordinance (Cap. 163)and s.24E of the Organized and Serious Crimes Ordinance (Cap. 455) contain similar provisions.

The above examples indicate that the period of time for returning seized property varies from a short period of merely 72 hours (Cap. 132, s.86), to 3 months (Cap. 163, s.28) or 6 months (Cap. 566, s.18, Cap. 455, s.24E). This shows that the considerations in different regulatory systems can vary greatly. Likewise, different considerations may apply in the case of KEs.

A decision as to whether or not prosecution is to be instituted will not be taken lightly and must be supported by evidence of commission of an offence. The seized evidence may be subject to technical examination and assessment, and the enforcement authorities must also be given sufficient and reasonable time to consider and decide whether prosecution should proceed. Thus, setting too short a period of time is impracticable and defeats the purpose of the whole operation. On the

other hand, setting a long period of time may be meaningless and may work to the disadvantage of the KE operator.

Be that as it may, the seizure of documents, articles or materials by the licensing authority (under warrant) will not extinguish the ownership or property right of those from whom the items are seized. Where the purposes for which the property is seized have been fulfilled, e.g. a decision is made not to initiate prosecution, the licensing authority is required to return the seized property as soon as practicable to the owner or those from whom it is seized. The licensing authority may be liable in civil action for damages and/or return of the property if it fails to do so without reasonable grounds. Therefore a specific provision for return of seized property is not necessary.

(5) To consider revising clause 15(6)(b) proposed in the draft Committee Stage amendments (CSAs) to the effect that the licensing authority should as soon as practicable within 28 days after receiving a request for a discharge of the closure order inform a KE operator of the reasons why the closure order could not be discharged.

Under clause 15(6) in the draft Committee Stage amendment, the licensing authority can only advise the applicant of the reasons as to why a discharge was not made in the case of a rejection under clause 15(6)(a). There is a possibility that a decision could not be made by the licensing authority within the 28-day period because of the need to conduct further inspection or assessment.

To address members' concern, we propose to revise clause 15 to the effect that the licensing authority will, as soon as practicable after receiving a request for discharge of closure order, notify the applicant of any outstanding matters that need to be remedied.

Security Bureau
June 2002