

**Bills Committee on
Massage Establishments (Amendment) Bill 2001**

Issues raised by Members at the meeting on 10.7.2001

I. To review the drafting of the proposed section 3(c) taking into account members' concern.

Administration's response :

Having taking into account Members' concern, we may consider retaining the proposed sub-section 3(c) and adding a new sub-section under section 3 as below –

“the premises of a hair salon, or of a beauty parlour, where massage is administered in the premises in full view of customers resorting thereto”

II. To consider the suggestion of adopting a notification system in respect of offering full-body massage by persons to customers of the opposite sex, and explain the implications on enforcement and combating vice activities if such a system is adopted.

Administration's response :

2. Historically, vice activities proliferated in massage establishments before licensing control was imposed. The licensing scheme has been essential for the licensing authority (i.e. the Commissioner of Police) to exercise control on massage establishments and acts as the most effective way to prevent vice activities in these establishments.

3. Through the licensing scheme and with the relevant provisions of the Massage Establishments Ordinance, Cap. 266 (the Ordinance), the licensing authority can tackle the problem with the following measures :

- (a) only a fit and proper person may be licensed to operate a massage establishment;
- (b) the licensee is required to adequately and personally supervise the massage establishment;
- (c) the premises and the situation thereof have to be suitable for the operation of a massage establishment;
- (d) licensing conditions may be imposed to ensure public safety and prevent mal-practices.

4. The licensing scheme also makes it possible for the Police to inspect the establishments to ensure that the provisions of the Ordinance are complied with. In addition, the licensing authority may revoke, suspend, or refuse to renew a licence if the licensee has been in breach of any conditions of the licence or the licensee has ceased to satisfy any condition relating to the operation of the massage establishment as prescribed in the Ordinance.

5. Another important aspect of the licensing scheme is that a massage establishment is usually made up of many small rooms with dim lighting. The massage beds are often made of inflammable materials. Potential fire hazards in a massage establishment are of significant public concern. Furthermore, local residents may complain of nuisance caused by massage establishments, especially those in mixed commercial/residential buildings and operate until late at night. The licensing scheme has made it possible for the local residents' opinions to be gauged before a licence is granted. Local residents' concerns may often be addressed with appropriate licensing conditions imposed.

6. If the current licensing scheme is replaced by a notification system, the Police will no longer be able to vet whether the operator is a fit and proper person for operating the establishment. The licensing authority will also be stripped of the power to impose licensing conditions, to minimise any potential nuisance to nearby residents and to ensure public safety. Furthermore, the establishment will no longer be required to be operated and supervised properly by a responsible person (the licensee).

7. If a notification system is adopted, it may create significant

enforcement difficulties for combating vice activities in massage establishments. First, licensing conditions which aim at preventing vice such as lighting and window / partition requirements cannot be imposed on the premises. Second, Police will not have the power to enter and conduct inspections to prevent vice activities. Third, to replace licensing with a notification system would mean that Police have to rely solely on undercover operation to detect vice activities in massage establishments. Such operations may only be conducted on a limited scale. With a licensing system, the licensing authority may revoke, suspend or refuse to renew a licence should there be breaches of licensing conditions by the licensee. This serves as an effective mechanism to deter the licensee from engaging in vice activities. However, such sanctions will not be available if licensing is replaced with a notification system. In addition, a notification system may mean that no effective mechanism is in place to address fire, building and public safety concerns or complaints about nuisance by nearby residents.

III. To consider further relaxing the control of providing full-body massage to customers of opposite sex, e.g. relax the definition of full-body massage.

Administration's response :

8. In respect of relaxing the definition of full-body massage, the predominant consideration is whether the relaxation may compromise our fight and prevention of vice activities. Having regard to the views of Members, we consider it is acceptable to exclude "the shoulders" in the proposed definition of full-body massage. In other words, the proposed definition of full-body massage may be amended to read –

*“a massage service or treatment provided to a person covering that part of his body below the **shoulders** and above the knees, including or excluding arms”*

9. According to Longman Dictionary of Contemporary English, "shoulder" means the part of the body at each side of the neck where the arms are connected. After further consideration, we agree that massaging the shoulders is not likely to lead to vice activities. With this

proposed amendment, and with reference to paragraph 1 above in which we have proposed to exclude the premises of a hair salon or of a beauty parlour, where massage is administered in full view of customers, from application of the Ordinance, the scope of licensing is much reduced to avoid possible over-regulation.

IV. In relation to section 4(1) of the Massage Establishments Ordinance, to advise on –

(a) whether a massage assistant providing massage service to customer at a premise other than the massage establishment at which he/she is employed would be taken as assisting in the management or operation of the massage establishment;

Administration's response :

10. "Massage establishment" is defined under the Ordinance as any place used or intended to be used or represented as being used for the reception or treatment of persons requiring massage or other similar service or treatment."

11. If a licensed massage establishment sends a massage assistant to massage at a place not at the establishment itself and which place is found not to be a massage establishment, no prosecution can be laid against the operator, the massage assistant or any person of the massage establishment under section 4(1) of the Ordinance. A massage assistant may not necessarily fall within the ambit of section 4(1) of the Ordinance. The person liable to be prosecuted is the person who operates, keeps, manages, assists in the operation of or management of the massage establishment and not the massage assistant who simply massages a customer. The massage assistant would be liable to prosecution only if it can be proved that he/she was also the person who operates, keeps, manages, assists in the operation of or management of the massage establishment.

(b) where a massage establishment does not have a licence or a valid licence, whether a massage assistant employed by this massage establishment offering full-body massage to customer of opposite

sex in a premise other than the massage establishment would commit an offence under section 4(1) of the Ordinance;

Administration's response :

12. Similar to the explanation in (a) above, a massage assistant who simply provides massage service may not necessarily be treated as a person who operates, keeps, manages, assists in the operation of or management of the massage establishment.

(c) where a massage assistant is not attached to any massage establishment, but who gets job assignments through telephone calls, whether the massage assistant offering full-body massage to customer of opposite sex in any premises would commit an offence under section 4(1) of the Ordinance.

Administration's response :

13. The Ordinance aims at controlling massage establishments but not massage assistants. In other words, massage service provided by a massage assistant at a premises other than a massage establishment would not be subject to the control of the Ordinance.

14. If a massage assistant gets job assignments by telephone calls or other means and performs the massage service at a specified location such as a hospital or the customer's home other than a massage establishment, the massage assistant is not required to apply for a massage establishment licence. He/she is also not liable to prosecution for any offence under the Ordinance.

V. To provide information on the number of massage assistants and the number of customers requiring massage treatment/service.

Administration's response :

15. As at 30 June 2001, there are a total of 218 licensed massage establishments employing 3 848 massage assistants. According to information provided by these licensed establishments, it is estimated

that, on average, approximately 8 600 customers visit licensed massage establishments daily.

VI. To provide information on the number of massage establishments where vice activities were found.

Administration's response :

16. Vice activities were found in 17 licensed massage establishments in the year between 1 July 2000 and 30 June 2001. There were 69 counts of vice related offences reported on these establishments during the period resulting in 33 prosecutions, 32 warnings, 3 advice notices without further prosecution with the remaining 1 pending further investigation. Out of the 33 prosecutions, 10 were found guilty, 1 offered no evidence and 22 pending hearing.

17. In the same period, there were 132 unlicensed massage establishments located with 236 counts of prosecution action taken, of which 234 counts were vice-related. A total of 220 charges were convicted and 16 pending hearing.

Security Bureau
September 2001