

# **立法會**

## ***Legislative Council***

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**Paper for the House Committee meeting on 13 December 2002**

### **Report of the Subcommittee on Karaoke Establishments (Licensing) Regulation and Karaoke Establishments (Fees) Regulation**

#### **Purpose**

This paper reports on the deliberations of the Subcommittee on Karaoke Establishments (Licensing) Regulation and Karaoke Establishments (Fees) Regulation.

#### **Background**

2. The Karaoke Establishments (Licensing) Regulation and Karaoke Establishments (Fees) Regulation are made under the Karaoke Establishments Ordinance (the Ordinance) which was passed by the Legislative Council on 3 July 2002. The Ordinance provides for the setting up of a licensing scheme for the regulatory control of karaoke establishments with a view to ensuring their fire safety, building safety and public safety standards.

#### **The Regulations**

##### Karaoke Establishments (Licensing) Regulation

3. The Karaoke Establishments (Licensing) Regulation provides for the detailed requirements on fire and building safety and the factors that the licensing authority may take into account when deciding whether certain premises are suitable for the operation of a karaoke establishment. It also sets out the general conditions relating to the maintenance, hygiene and alterations to the layout applicable to karaoke establishments in respect of which permits or licences have been granted or issued.

## Karaoke Establishments (Fees) Regulation

4. The Karaoke Establishments (Fees) Regulation prescribes the fees to be charged for the grant or issue, transfer and renewal of a permit, provisional permit, licence and provisional licence in respect of karaoke establishments.

### **The Subcommittee**

5. At the House Committee meeting on 1 November 2002, Members agreed to form a Subcommittee to study the two Regulations. The membership list of the Subcommittee is in **Appendix I**.

6. Under the chairmanship of Hon Audrey EU, the Subcommittee has held four meetings with the Administration.

### **Deliberations of the Subcommittee**

## Karaoke Establishment (Licensing) Regulation

### *Location of apparatus and equipment to be used for karaoke*

7. Hon Tommy CHEUNG has expressed concern about the requirement in section 2(a)(iii) that the location of all apparatus and equipment to be used for karaoke has to be shown on the layout plan accompanying an application for the grant of permit or issue of a licence.

8. The Administration has explained that its intention is to require a plan to show only apparatus and equipment of a substantial nature and the application guidelines will provide further elaboration on such requirement. In response to the Subcommittee's request, the Administration has agreed to amend section 2(a)(iii) to make the requirement clearer.

### *Sanitising facilities for microphones*

9. Section 6 provides that adequate sanitising facilities for all microphones shall be provided and maintained in the premises to which a permit or licence relates and the microphones shall be kept in a clean and hygienic condition.

10. In response to Hon Tommy CHEUNG's request for clarification of the requirement, the Administration has explained that it expects that after a microphone has been used, the management would clean it with a damp cloth and alcohol/disinfectant or replace the disposable cover. As regards Mr CHEUNG's query whether the use of the word "facilities" in the English version is appropriate, the Administration has confirmed that the word can cover the items described

above and its use is in line with the Administration's policy intent.

*Exit plan drawn to a ratio of not less than 1:200*

11. Section 2(9) of Schedule 1 provides that an exit plan drawn to a ratio of not less than 1:200 showing the floor layout of the premises and the directions of egress to escape staircases and means of escape shall be displayed in each room intended to be used by customers.

12. Hon Tommy CHEUNG has pointed out that some karaoke premises have a floor area as large as 20 000 sq. ft. and an exit plan of a ratio of 1:200 might be too large for display in the room. The Administration has explained that an exit plan of one sq. ft. in size could already cover a floor area of 40 000 sq. ft. and therefore the present requirement is reasonable and practical.

*Audio and visual alert system*

13. The karaoke trade has raised the concern that the use of the words "影音通報系統" in the Chinese version of section 2(12) of Schedule 1 would suggest the need to provide a very sophisticated audio-visual system capable of displaying overriding sound and visual images on the television screen of the karaoke system in case of a fire. The Administration has clarified that what is actually required is the interruption of the karaoke music and visual images, and simultaneous activation of a fire alarm and emergency flashlight to alert the patrons.

14. Hon LAU Kong-wah has suggested that section 2(12) of Schedule 1 should be amended to clearly reflect the need for simultaneous activation of the fire alert system. In response to Mr LAU's suggestion, the Administration proposes to amend the section to the effect that in case of a fire alarm, the emergency alert system in the premises can produce visible and audible signals immediately after the karaoke music and visual images are interrupted.

*Offences and penalties*

15. Sections 5 to 8 deal with matters relating to the maintenance, hygiene, alterations to the layout of karaoke establishments and the display of permits and licences. Section 9 provides that a contravention of section 5, 6, 7 or 8 is an offence punishable by a fine and imprisonment and an additional daily fine in the case of a continuing offence.

16. Hon Henry WU has suggested that section 9 should be amended to the effect that a grantee or licensee commits an offence only if he or she contravenes section 5, 6, 7 or 8 without reasonable excuse. He is also of the view that a person who commits an offence under section 9 should not be liable to imprisonment on first conviction. Hon Tommy CHEUNG considers that the onus should be on the prosecution to prove that a grantee or licensee has

contravened section 5, 6, 7 or 8 without reasonable excuse.

17. The Administration has pointed out that like those of restaurants and clubs, the licensing regime of karaoke establishments is set up with a view to protecting public safety. It is important for the operators of all these premises to comply with the statutory requirements at all times to ensure protection of their patrons. "Reasonable excuse" is not generally provided as a defence under the Public Health and Municipal Services Ordinance (Cap. 132) and Clubs (Safety of Premises) Ordinance (Cap. 376). Given the satisfactory operation of the licensing regimes under these two ordinances, the Administration does not consider it necessary to adopt a different approach in the karaoke establishment legislation.

18. The Administration has further explained that the licensing authorities will, as in the case of other licensing regimes, adopt a reasonable and pragmatic approach in enforcing the provisions of the Ordinance and the Licensing Regulation. As circumstances may warrant, the licensing authorities will deal with minor contraventions of requirements in a practical manner and issue proper warnings to the proprietors concerned. Failure to remedy the situation as required may lead to prosecution. This flexible approach should strike a balance between taking care of the proprietors' possible concerns and minimising the safety risk to the public.

19. On being asked to re-consider members' suggestions, the Administration has further explained that merely adding "without reasonable excuse" to the offence provision in section 9 may not altogether be satisfactory in resolving the issue. The Administration has pointed out that under section 17(2) of the Ordinance, a licensee or a grantee may put up a defence of no knowledge and reasonable diligence for the offence of contravening licence or permit conditions. The onus is on the defendant to establish the defence. Such an arrangement would strike a balance between protecting innocent proprietors and ensuring the integrity of the licensing regime. To require the prosecution to prove beyond reasonable doubt that the defendant has no reasonable excuse would put an unrealistic burden on the prosecution. In the same spirit and to maintain internal consistency within the licensing scheme, the Administration proposes to amend the Licensing Regulation to provide for the same defence for contravention of section 5, 6, 7 or 8.

20. As regards the imprisonment term on first conviction, the Administration has pointed out that the penalties set out in the Licensing Regulation are only the maximum available for the most serious offenders. The court will impose appropriate penalties according to the gravity of the circumstances of each case. According to the enforcement experience of the Food and Environmental Hygiene Department and the Home Affairs Department, imprisonment term is seldom imposed for minor licence-related offences. In many cases, the proprietors are willing to heed warnings or advice of the licensing authorities to remedy minor

contraventions, thereby obviating the need for prosecution.

21. The Administration has highlighted that the requirements in sections 5, 6, 7, and 8 are all safety related. Compliance with the requirements in section 5 relating to general maintenance and section 7 relating to alterations to layout would ensure that the premises would continue to be suitable for operation as a karaoke establishment after the grant of a permit or issue of a licence. Public health is the major concern of section 6 as contagious diseases may be transmitted through non-sanitised microphones. The requirement for display of the licence/permit in section 8 is to enable potential patrons to know whether an establishment is properly licensed or granted a permit and therefore a safe place to visit.

22. Members share the view that there are different levels of seriousness involved and have asked the Administration to lower the penalty levels for contravening sections 6 and 8. Members have also suggested that in determining the penalty level for section 6, reference should be made to the penalty level for contravening provisions on the prevention of communicable diseases.

23. Following examination of the relevant legislation, the Administration has informed members that section 19 of the Food Business Regulation requires in food business proper sterilisation and storage of utensils used for preparation and consumption of food each time after they are used. Section 34B of the Regulation requires the exhibition of a food business licence near the entrance of the premises. Contravention of such requirement is an offence subject to a level 3 fine and three months' imprisonment. Having regard to these provisions and considered members' views further, the Administration has no objection to lowering the penalty level for contravention of sections 6 and 8 and will move an amendment to that effect.

#### *Minimum width of 1.2m of corridor*

24. Section 3(1) of Schedule 2 provides that the width of exit routes including internal corridors within a karaoke establishment shall be at least 1.2m.

25. When this requirement was discussed by the Bills Committee on the Karaoke Establishments Bill (the Bills Committee), the Administration advised the Bills Committee that it was prepared to accept the reduction of the width of the corridor to not less than 1.05m subject to certain conditions. As such relaxation is not provided for in the Regulation, the Subcommittee has asked the Administration to clarify whether the reduction of the corridor width will be acceptable to the licensing authority.

26. The Administration has pointed out that under section 3(3) of the Licensing Regulation, premises shall be regarded as having adequate means of escape and adequate means of access for firefighting and rescue if the

requirements set out in sections 2, 3 and 4 of Schedule 2 are complied with. There is nothing in the provision which restricts the licensing authority's power to consider alternative measures other than those set out in Schedule 2. The acceptance of a corridor width of 1.05m is a relaxation within the discretion of the licensing authority in the implementation of the Ordinance. As this is an administrative measure subject to the condition that the width of the corridor shall be widened to 1.2m upon the carrying out of major alteration works, the Administration does not consider it appropriate to provide for the arrangement in the Regulation. Nevertheless, the undertaking given by the Administration remains valid, and the fact of the possibility of relaxation will be clearly stipulated in the Guide to Application for Karaoke Establishment Licence/Permit.

#### *Dead-end corridor*

27. Section 3(2) of Schedule 2 provides for the circumstances where a dead-end situation is permitted.

28. During discussion of the draft Karaoke Establishments (Licensing) Regulation by the Bills Committee, the Administration has proposed two additional alternative emergency escape route arrangements in order to facilitate the trade to address the problem of dead-end corridors, namely the creation of a second emergency exit route in the event of fire and utilising an access panel in another karaoke room for emergency escape. These options have not been provided for in the Regulation.

29. In response to the Subcommittee's request for clarification, the Administration has confirmed that as in the case of the width of the corridor, the options proposed in the Bills Committee to address the problem of dead-end remain valid and may be accepted by the licensing authority in exercise of its administrative discretion. As such, the Administration does not consider it appropriate to provide for the options in the Regulation.

#### Karaoke Establishments (Fees) Regulation

30. Some members have expressed concern that the fees for issue of a licence appear to be on the high side and have asked the Administration to provide the costing for items 7(a)-(e) of the Karaoke Establishments (Fees) Regulation.

31. The Administration has provided the relevant cost computation for members' reference. The Administration has taken the opportunity to confirm that the fees in the Karaoke Establishments (Fees) Regulation are set on a full-cost recovery basis in accordance with Government policy. The Administration also confirms that in calculating the costs of the licences, only costs incurred for processing such licences have been taken into account, and that there is no cross-subsidy between the karaoke establishment licence fees and karaoke establishment permit fees.

### **Proposed amendments**

32. The proposed amendments to be moved by the Administration are in **Appendix II**. The Subcommittee supports these amendments.

### **Recommendation**

33. The Subcommittee recommends support of the Regulations and the amendments proposed by the Administration.

### **Advice sought**

34. Members are invited to note the recommendation in paragraph 33 above. A verbal report was made by Hon Audrey EU, Chairman of the Subcommittee, at the House Committee meeting on 6 December 2002.

Council Business Division 2  
Legislative Council Secretariat  
12 December 2002

## **Appendix I**

### **Subcommittee on Karaoke Establishments (Licensing) Regulation and Karaoke Establishments (Fees) Regulation**

#### **Membership List**

<b>Chairman</b>	Hon Audrey EU Yuet-mee, SC, JP
<b>Members</b>	Dr Hon David CHU Yu-lin, JP
	Hon Eric LI Ka-cheung, JP
	Hon James TO Kun-sun
	Hon Andrew WONG Wang-fat, JP
	Hon LAU Kong-wah
	Hon Henry WU King-cheong, BBS, JP
	Hon Tommy CHEUNG Yu-yan, JP
	Hon MA Fung-kwok, JP
	(Total : 9 Members)
<b>Clerk</b>	Ms Doris CHAN
<b>Legal Adviser</b>	Miss Connie FUNG
<b>Date</b>	15 November 2002



INTERPRETATION AND GENERAL CLAUSES ORDINANCE

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**RESOLUTION**

(Under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1))

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KARAOKE ESTABLISHMENTS (LICENSING) REGULATION

RESOLVED that the Karaoke Establishments (Licensing) Regulation, published in the Gazette as Legal Notice No. 153 of 2002 and laid on the table of the Legislative Council on 30 October 2002, be amended -

- (a) in section 2(a)(iii), by adding "that are of a substantial and permanent nature" after "karaoke";
- (b) in section 5, by repealing everything after "shall be" and substituting "properly maintained such that the safety of persons using the premises will not be adversely affected.";

(c) in section 9 -

- (i) in subsection (1), by repealing everything before "grantee" where it first appears and substituting -

"(1) If -

- (a) section 5 or 7 is contravened; or

(b) section 6 or 8 is  
contravened,

the";

(ii) by renumbering subsection (2) as  
subsection (3);

(iii) by adding -

"(2) Where a person charged  
with an offence under subsection  
(1) is -

(a) a representative  
of a body  
corporate or a  
partnership whose  
name appears on  
the permit or the  
licence  
concerned; or

(b) a grantee or a  
licensee who is an  
individual,

it shall be a defence for the  
person to prove that -

(c) he did not know and  
had no reason to  
suspect the  
existence of the  
circumstances  
giving rise to the  
contravention;  
and

(d) he could not, by  
the exercise of  
reasonable  
supervision and  
reasonable  
diligence, have  
prevented those  
circumstances  
arising.";

(iv) in subsection (3), by repealing  
"subsection (1)" and substituting  
"subsection (1)(a)";

(v) by adding -

"(4) A person who commits an  
offence under subsection (1)(b) is  
liable -

(a) on first  
conviction, to a  
fine at level 3 and  
imprisonment for 3  
months; and

(b) on a second or  
subsequent  
conviction, to a  
fine at level 5 and  
imprisonment for 6  
months,

and in the case of a continuing  
offence, to a further daily fine of  
\$300 for each day during which the  
offence continues.";

(d) by repealing section 2(12) of Schedule 1 and substituting -

"(12) An emergency alert system which can interrupt the music or other sound and visual images produced by the karaoke equipment and at the same time produce visible and audible warning signals in case of a fire alarm shall be provided.".