

**Karaoke Establishments (Licensing) Regulation and
Karaoke Establishments (Fees) Regulation**

**Administration's response to issues raised at the Subcommittee
held on 25 November 2002**

- (a) *To amend section 2(a)(iii) of the Karaoke Establishments (Licensing) Regulation (the Licensing Regulation) to make it clearer that the plan should show only apparatus and equipment of a substantial and permanent nature.*

— We have no objection to the proposal. Please see paragraph (a) of a draft Legislative Council resolution to amend the Licensing Regulation at Annex I.

- (b) *To amend the Chinese version of section 2(12) of Schedule 1 to better reflect the minimum requirement in case of fire, i.e. karaoke music and visual image should be interrupted and simultaneously fire alarm and emergency flashlight to alert the patrons should be activated.*

- 2. Please see paragraph (c) of the draft Legislative Council resolution at Annex I. Members may note that we have also taken the opportunity to amend the English and the Chinese texts to make the two texts look alike, as explained in paragraph 4 of the Administration's response to issues raised by the Assistant Legal Adviser on 5.11.2002.

- (c) *To provide a comparison table showing the offences and penalties stipulated under the licensing regimes for karaoke establishments, restaurants and clubs.*

- 3. Please see Annex II.

- (d) *To re-consider amending section 9 of the Karaoke Establishments (Licensing) Regulation to the effect that a grantee or licensee committed an offence only if he or she contravened section 5, 6, 7 or 8 without reasonable excuse.*

(e) *To consider amending section 9 of the Karaoke Establishments (Licensing) Regulation to the effect that a person who committed an offence under subsection (1) should not be liable to imprisonment on first conviction, and that the onus was on the prosecution to prove that a grantee or licensee had contravened section 5, 6, 7 or 8 without reasonable excuse.*

4. We have critically examined Members' views on the enforcement of the requirements of the licensing regime. We consider that merely adding "without reasonable excuse" to the offence provision may not altogether be satisfactory in resolving the issue. We note that under s.17(2) of the principal Ordinance, a licensee or a grantee may put up a defence of no knowledge and reasonable diligence against prosecution of breach of licence or permit conditions. The onus is on the defendant to prove his case. 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 regime, we are prepared to amend the Licensing Regulation to provide for the same defence against prosecution of contravention of sections 5, 6, 7 or 8. Please see paragraph (b) of the draft resolution at Annex I.

5. Regarding the imprisonment term for the first conviction, we consider that the present penalty levels are appropriate. Members may wish to note 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 FEHD and the HAD, imprisonment term is seldom imposed for minor licence-related offences. Indeed in many cases, the proprietors are willing to heed warnings or advice of the licensing authorities to remedy minor contraventions, obviating the need for prosecution.

6. Secondly, the penalties are in line with those for contravention of licence/permit conditions under s.17(1) of the Ordinance. Given that both the licensing/permit conditions and the requirements under the subsidiary legislation are integral parts of the licensing regime, contravention of them should be subject to the same maximum penalties. The penalty provision in the Licensing Regulation is also proper within the regulation-making powers stipulated in section 21 of the principal Ordinance.
7. Thirdly, the requirements in sections 5, 6, 7 and 8 are all safety-related -
 - (a) Compliance with the requirements in sections 5 and 7 would ensure that the premises would continue to be suitable for operation as a karaoke establishment after the grant/issue of a licence or permit (cf paragraph 9 below). For example, proper maintenance of each part of the premises would ensure building safety and integrity of fire resisting construction (cf e.g. the requirements in Schedule 2). Improperly maintained electrical, ventilating or cooling systems may lead to or aggravate fire and health hazards, such as electricity leakage, failure of fire-dampers and the automatic cut-off devices, etc (cf e.g. the requirements in paragraphs 3-4 of Schedule 1). Proper maintenance of the seating and fittings could reduce fire risks (cf e.g. the requirements in paragraph 2(1)-(5) of Schedule 1).
 - (b) Public health is the major concern of section 6 as contagious diseases may be transmitted through non-sanitized microphones.
 - (c) Compliance with the requirement in section 8 is important to ensure public safety and the integrity of the licensing regime, as this would readily distinguish licensed karaoke establishments from unlicensed ones for the benefit of not only the enforcement authorities but also the public at large. Potential patrons have to rely on the proper display of the licence/permit to tell whether an establishment is properly licensed or granted a permit and therefore a safe place to visit.

8. Lastly, as shown in Annex II, the penalty levels are not particularly onerous when compared with those in other similar licensing regimes.

(f) *To explain why it was not expressly provided in the Karaoke Establishments (Licensing) Regulation that the grantees or licensees had the duty to comply with the requirements set out in Schedules 1 and 2 to the Regulation at all times.*

9. As explained previously, those “requirements” set out in Schedules 1 and 2 are merely reference standards intended to enable an applicant to know what requirements are considered acceptable by the licensing authority in determining the suitability of the premises for operation as a karaoke establishment under section 5(3)(b)(i) of the principal Ordinance and section 3 of the Licensing Regulation. Failure to comply with the “requirements” in Schedules 1 and 2 does not necessarily render the premises unsuitable for operation as a karaoke establishment. In case the licensee or grantee fails to maintain the premises up to the standard as accepted by the licensing authority upon the issue/grant of the licence/permit, a number of enforcement actions are possible, depending on the circumstances of the case -

(a) prosecution may be instituted under section 9 of the Licensing Regulation in respect of contravention of its sections 5 and 7 if the failure relates to the maintenance of the premises and seating, fittings and apparatus in the premises or alterations to the layout;

(b) prosecution may be instituted under section 17(1)(a) of the principal Ordinance in respect of contravention of a licence/permit condition which has incorporated a requirement of the Schedules;

(c) remedial works may be directed under section 15 of the principal Ordinance. Failure to comply with the requirements of a direction is an offence under section 17(4)(d);

(d) in serious cases, if the licensing authority ceases to be

satisfied that the premises are suitable for the operation of a karaoke establishment under section 10(v) of the principal Ordinance, it may revoke [s.10(a)], suspend [s.10(b)], or refuse to renew the licence/permit [s.10(c)] or amend or vary the conditions of the licence/permit [s.10(d)]. Operation of a karaoke establishment without a valid licence/permit is an offence under section 4(1); and

- (e) in the extreme case, in view of danger or risk of danger to persons on the premises, the licensing authority may apply to the District Court for a closure order under section 16 of the principal Ordinance.

Security Bureau
November 2002

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

KARAOKE ESTABLISHMENTS (LICENSING) REGULATION

Resolution made and passed by the Legislative Council under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) on 2002.

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 9 -

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

(ii) 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.";

(c) 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 produce visible and audible warning signals in case of a fire alarm shall be provided.".

Clerk to the Legislative Council

A comparison on penalty levels

Licensing regime for karaoke establishments			Other licensing regimes		
Section	Description	Penalty	Section	Description	Penalty
Karaoke Establishment (Licensing) Regulation			Hotel and Guesthouse Accommodation Ordinance		
5	General maintenance	On 1 st conviction - Fine : level 5 Imprisonment : 6 months Daily fine : \$2,000 On 2 nd or subsequent conviction - Fine : level 6 Imprisonment : 1 year Daily fine : \$2,000	21	Breach of conditions of licence : maintenance of approved Fire Service Installations and Equipment	Fine : \$100,000 (equivalent to level 6) Imprisonment : 2 years Daily fine : \$10,000
			Clubs (Safety of Premises) Ordinance		
			21	Breach of conditions of the certificate of compliance : maintenance of approved Fire Service Installations and Equipment	Fine : \$100,000 (equivalent to level 6) Imprisonment : 2 years Daily fine : \$10,000
			Food Business Regulation		
			5	Cleanliness and repair of food premises	Fine : level 3 Imprisonment : 3 months Daily fine : \$300

Karaoke Establishment (Licensing) Regulation			Hotel and Guesthouse Accommodation Ordinance		
6	Sanitizing facilities for microphones	On 1 st conviction - Fine : level 5 Imprisonment : 6 months Daily fine : \$2,000 On 2 nd or subsequent conviction - Fine : level 6 Imprisonment : 1 year Daily fine : \$2,000	--	--	--
			Clubs (Safety of Premises) Ordinance		
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			Food Business Regulation		
			19	Sterilization and storage of utensils	Fine : level 3 Imprisonment : 3 months Daily fine : \$300
Karaoke Establishment (Licensing) Regulation			Hotel and Guesthouse Accommodation Ordinance		
7	Alterations to layout	On 1 st conviction - Fine : level 5 Imprisonment : 6 months Daily fine : \$2,000 On 2 nd or subsequent conviction – Fine : level 6 Imprisonment : 1 year Daily fine : \$2,000	21	Breach of conditions of licence : Alterations to layout	Fine : \$100,000 (equivalent to level 6) Imprisonment : 2 years Daily fine : \$10,000
			Clubs (Safety of Premises) Ordinance		
			21	Breach of conditions of the certificate of compliance : Alteration works	Fine: \$100,000 (equivalent to level 6) Imprisonment : 2 years Daily fine : \$10,000
			Food Business Regulation		
			34	Restriction on alteration of premises or fittings after grant of licence	Fine : level 3 Imprisonment : 3 months Daily fine : \$300

Karaoke Establishment (Licensing) Regulation			Hotel and Guesthouse Accommodation Ordinance		
8	Display of permit or licence	On 1 st conviction - Fine : level 5 Imprisonment : 6 months Daily fine : \$2,000 On 2 nd or subsequent conviction – Fine : level 6 Imprisonment : 1 year Daily fine : \$2,000	21	Breach of conditions of licence : Display of licence	Fine : \$100,000 (equivalent to level 6) Imprisonment : 2 years Daily fine : \$10,000
			Clubs (Safety of Premises) Ordinance		
			21	Breach of conditions of the certificate of compliance : Display of Certificate	Fine : \$100,000 (equivalent to level 6) Imprisonment : 2 years Daily fine : \$10,000
			Food Business Regulation		
			34B	Licensee to exhibit licence	Fine : level 3 Imprisonment : 3 months Daily fine : \$300