

For information
7 June 2007

Bills Committee on
Statute Law (Miscellaneous Provisions) Bill 2007

Amendments to the Public Order Ordinance (Cap. 245)
and the Societies Ordinance (Cap. 151)

Purpose

This note sets out the Administration's response to the points raised at the meeting of the Bills Committee on 11 May 2007 regarding the amendments to the Public Order Ordinance (POO) and the Societies Ordinance (SO) provided for in Part 3 of the Statute Law (Miscellaneous Provisions) Bill 2007 (the Bill).

The Administration's Response

2. As explained in para. 2(b) of the Legislative Council Brief on the Bill, the proposed amendments to the POO seek to give effect to the judgment of the Hong Kong Court of Final Appeal (CFA) in *Leung Kwok Hung v HKSAR [2005] 3 HKLRD 164* which held that "public order (in the law and order sense)" should be severed from "public order (*ordre public*)" in sections 14(1), 14(5) and 15(2) of the POO. As the term "public order (*ordre public*)" also appears in the SO, which is defined in the same way as in the POO and is used in similar contexts, given the CFA judgment, the reference to "*(ordre public)*" should also be removed from the relevant sections of the SO.

3. The Administration has explained to the Panel on Security of the Legislative Council the effect of the judgment in question. We have also provided the Panel with information on the follow-up actions taken by the Police arising from the judgment, as well as the implementation of the notification regime under the POO. For ease of reference, we enclose the following papers –

- (a) **Annex A** : paper entitled "The Court of Final Appeal's Judgment on *Leung Kwok Hung & Others v. HKSAR*", which the Panel on Security discussed at its meeting on 1 November 2005;
- (b) **Annex B** : information note entitled "Recent Measures Implemented by the Police in relation to Public Meetings and

Public Processions” and the “Guidelines on the approach to the Public Order Ordinance in relation to public meetings and public processions” submitted to the Panel on Security on 22 February 2006; and

- (c) **Annex C** : paper entitled “Processing of Notification of Public Meetings and Processions under the Public Order Ordinance” issued to the Panel on Security on 30 April 2007, originally scheduled for discussion on 8 May 2007, but now deferred to the meeting of 5 June 2007.

We trust that these documents should explain the Administration’s position on the various issues in question.

4. Since the handing down of the CFA’s judgment on 8 July 2005, in the relevant sections of the POO and SO, the term “public order (*ordre public*)” has been taken to mean “public order” in the law and order sense. This accords with what the Police had been doing in practice anyway prior to the judgment. The proposed amendments included in this Bill merely seek to bring the statute book in conformity with the law in force, and they would in no way affect the rights to assembly and demonstration currently enjoyed by the people of Hong Kong.

**Department of Justice
Security Bureau**

May 2007

For information
1 November 2005

Legislative Council Panel on Security

The Court of Final Appeal's Judgment on
Leung Kwok Hung & Others v. HKSAR

Purpose

The paper sets out the background to the case of *Leung Kwok Hung & Others v. HKSAR*, the effect of the judgment delivered by the Court of Final Appeal (CFA), and the way forward.

Background

2. In February 2002, more than 30 people gathered at Chater Garden and marched to the Police Headquarters in Wan Chai. At the peak of the procession, there were over 90 participants. There was a suspected breach of the requirement of the Public Order Ordinance (POO) (Cap. 245) regarding prior notification of a public procession comprising more than 30 persons. The Police gave warnings to the group for failing to notify the Police and invited them to so notify. They declined the invitation.

3. In May 2002, three men were charged under the POO: one for holding an unauthorized assembly and two for assisting in the holding of an unauthorized assembly. They were subsequently convicted (by the Chief Magistrate) in November 2002, and were each bound over in a sum of \$500 for three months.

4. The three men lodged an appeal in December 2002 on the grounds that the provisions in the POO requiring prior notification were unconstitutional. In November 2004, the Court of Appeal (C of A) dismissed the appeal. The three people then filed an appeal to the Court of Final Appeal (CFA).

5. The CFA handed down its judgment and dismissed the appeal on 8 July 2005. A summary of the judgment prepared by the Judiciary is at Annex.

The CFA Judgment

The Notification Scheme

6. In this case, the prosecution and appeal were chiefly centred on the notification scheme whereby it is a statutory requirement to notify the Commissioner of Police (CP) of a proposed public procession consisting of more than 30 persons on a public highway or thoroughfare or a public park, and that the CP has a statutory discretion to restrict the right of peaceful assembly by objecting to it or by imposing conditions (“the discretion to restrict”). In this regard, the CFA noted that the Government fully accepts that the right of peaceful assembly involves a positive duty on the part of the Government to take reasonable and appropriate measures to enable lawful assemblies and demonstrations to take place peacefully. The court affirmed that notification is required to enable the Police to fulfil this positive duty. The CFA therefore held that the statutory requirement for notification is constitutional and upheld the criteria fettering the CP’s discretion to restrict the right of peaceful assembly for the purpose of “public order” provided in sections 14(1), 14(5) and 15(2) of the POO. The CFA also noted that a legal requirement for notification is in fact widespread in jurisdictions around the world.

“Public Order (Ordre Public)”

7. One of the grounds of the appellants was that CP's statutory discretion to restrict the right of peaceful assembly by objecting to a notified public procession or by imposing conditions for the purpose of “public order (*ordre public*)” was too wide and uncertain to satisfy the requirements of constitutionality.

8. The CFA noted that “public order (*ordre public*)” is specified in the International Covenant on Civil and Political Rights (ICCPR) as a legitimate purpose for the restriction of the right of peaceful assembly. The CFA accepted the concept of “public order (*ordre public*)” as a constitutional norm. However, on the deployment of that concept at the statutory level, the Court was of the view that, while it is important for the CP to have a considerable degree of flexibility, his statutory discretion to restrict the right of peaceful assembly for the purpose of “public order (*ordre public*)” provided for in sections 14(1), 14(5) and 15(2) of the Ordinance does not give an adequate indication of the scope of that discretion. Hence, the CFA ruled that CP’s discretion to restrict the right of peaceful assembly for the purpose of “public order (*ordre public*)” does not satisfy the constitutional requirement of “prescribed by law” which mandates the principle of legal certainty. The

appropriate remedy was the severance of “public order” in the law and order sense from “public order (*ordre public*)” in the relevant statutory provisions. After severance, CP’s discretion to restrict the right in relation to “public order” in the law and order sense under the relevant provisions was held to be constitutional.

9. The CFA found that the offences for which the appellants were convicted did not relate to the statutory provisions conferring on CP the discretion to object or to impose conditions on a public procession where he considered it reasonably necessary in the interests of “public order (*ordre public*)”. Hence, the CFA by a majority of four to one (with Mr Justice Bokhary PJ dissenting) dismissed the appeal and upheld the convictions.

The Dissenting Judgment of Mr Justice Bokhary PJ

10. Mr Justice Bokhary PJ found that CP’s entitlement to prior notification of public meetings and processions to be constitutional. But, in his view, this entitlement should not be enforceable by the criminal sanctions in section 17A. He also found CP’s powers of prior restraint and the related criminal sanctions to be unconstitutional. Accordingly, in his view, the appeal should have been allowed.

11. Mr Justice Bokhary PJ’s view is a minority view and is *obiter dictum* and not *ratio decidendi*. In other words, a considerable part of his judgment covers matters not directly forming the rationale behind the court’s judgment. The dissenting judgment is not the opinion of the court and, in that light, not a decision in the case.

Effects of the Judgment and Way Forward

12. As can be seen from the above, the CFA has ruled that, after severance of “public order” from “public order (*ordre public*)”, the provisions of the POO that the CFA considered are constitutional. Therefore, the POO can and will continue to operate, subject to the CFA’s judgment, in order to achieve its objectives of assisting to provide for the freedom of procession and assembly, yet protecting public order and other public interests.

13. As regards the severance of “public order” from “public order (*ordre public*)”, it should be noted that the term “(*ordre public*)” has ceased to apply for all practical purposes in the context of the relevant sections following the handing down of the CFA’s judgment on 8 July 2005. In these sections, the term “public order (*ordre public*)” is now taken to mean “public order” in the

law and order sense. The Administration will take the necessary steps in due course to formally amend the relevant provisions in the POO.

Conclusion

14. The Administration respects the CFA's judgment, which has provided useful guidance to the Police on the handling of notifications of public meetings and processions. The relevant provisions of the POO reflect a proper balance between protecting and facilitating individuals' right to freedom of expression and right of peaceful assembly, and the broader interests of the community at large. We will continue to work to protect the fundamental rights of the people in Hong Kong as guaranteed by the Basic Law and the Hong Kong Bill of Rights Ordinance. The Police will also continue to deal with notifications of public meetings and processions in accordance with the law.

**Security Bureau
Hong Kong Police Force
Department of Justice
October 2005**

Leung Kwok Hung & Others v. HKSAR**Summary of Judgment**

This summary is prepared by the Judiciary.
It is not part of the judgment and has no legal effect.

The Court

1. The Court (with Mr Justice Bokhary PJ dissenting) dismissed the appeal and upheld the convictions.

The judgment of Chief Justice Li, Mr Justice Chan PJ, Mr Justice Ribeiro PJ and Sir Anthony Mason NPJ

2. The freedom of peaceful assembly and the freedom of speech are fundamental rights. They lie at the foundation of a democratic society and are of cardinal importance for a number of reasons. The resolution of tensions and problems through open dialogue is of the essence of a democratic society. Such a society is one where the market place of ideas must thrive. These freedoms enable citizens to air grievances and seek redress. Tolerance is the hallmark of a pluralistic society. Through these freedoms, minority views which may be disagreeable can be ventilated. A procession is a potent method of expression and is a common phenomenon.

3. The Public Order Ordinance ("the Ordinance") is of limited scope in regulating public processions. It only regulates public processions consisting of more than 30 persons on a public highway or thoroughfare or in a public park.

4. The right of peaceful assembly involves a positive duty on the part of Government to take reasonable and appropriate measures to enable lawful assemblies to take place peacefully. The statutory requirement to notify the Commissioner of Police ("the Commissioner") of a proposed public procession consisting of more than 30 persons on a public highway or thoroughfare or in a public park is constitutional. A legal requirement for notification is in fact widespread in jurisdictions around the world.

5. In the present case, the offences arose out of the holding of a public procession without complying with the legal requirement for notification, notwithstanding a warning by the police.

6. The focus of the challenge in this appeal is on the contention that the Commissioner's statutory discretion to restrict the right of peaceful assembly by objecting to a notified public procession or by imposing conditions ("the discretion to restrict") for the purpose of "public order (ordre public)" is too wide and uncertain to satisfy the requirements of constitutionality.

7. The International Covenant on Civil and Political Rights (ICCPR) as applied to Hong Kong has been implemented by the Bill of Rights. It provides for the concept of "public order (ordre public)" as a constitutional norm. The concept is an imprecise and elusive one. Its boundaries beyond public order in the law and order sense, that is, the maintenance of public order and prevention of public disorder, cannot be clearly defined. A constitutional norm is usually and advisedly expressed in relatively abstract terms. There is no question of challenging a constitutional norm which must be

accepted. The Court applied "public order (ordre public)" as a constitutional norm in holding that the concept includes legitimate interests in the protection of the national and regional flags.

8. In contrast to the use of the concept at the constitutional level, different considerations apply to its deployment at the statutory level. Adopting an unusual technique, the concept of "public order (ordre public)" used in the ICCPR has been incorporated into the Ordinance in relation to the Commissioner's discretion to restrict the right of peaceful assembly. Although it is important for the Commissioner to have a considerable degree of flexibility, his statutory discretion to restrict the right of peaceful assembly for the purpose of "public order (ordre public)" provided for in ss. 14(1), 14(5) and 15(2) of the Ordinance does not give an adequate indication of the scope of that discretion. This is because of the inappropriateness of this concept taken from the ICCPR as the basis of the exercise of such a discretion vested in the executive authorities. The Commissioner's discretion to restrict the right of peaceful assembly for the purpose of "public order (ordre public)" does not therefore satisfy the constitutional requirement of "prescribed by law" which mandates the principle of legal certainty.

9. Public order in the law and order sense, that is, the maintenance of public order and prevention of public disorder is sufficiently certain. The appropriate remedy is the severance of public order in the law and order sense from "public order (ordre public)" in the relevant statutory provisions.

10. After severance, the Commissioner's discretion in relation to public order in the law and order sense is constitutional. It satisfies (i) the constitutional requirement of "prescribed by law" and (ii) the constitutional requirement of "necessary in a democratic society" for the relevant constitutional legitimate purpose.

11. It must be emphasised that the Commissioner must, as a matter of law, apply the proportionality test in exercising his statutory discretion to restrict the right of peaceful assembly. He must consider whether a potential restriction is rationally connected with one or more of the statutory legitimate purposes and whether it is no more than is necessary to accomplish such purpose. His discretion is thus not an arbitrary one but is a constrained one. This test is well recognized internationally as appropriate in relation to the protection of fundamental rights. The legal requirement to apply it in this context ensures the full protection of the fundamental right of peaceful assembly against any undue restriction.

The dissenting judgment of Mr Justice Bokhary PJ

12. Mr Justice Bokhary PJ held that the Commissioner's entitlement to prior notification of public meetings and processions is constitutional. This entitlement is enforceable in the various ways indicated in his judgment, but not by the criminal sanctions in s.17A. The Commissioner's powers of prior restraint are unconstitutional. And the criminal sanctions follow the fate of those powers so as to be unconstitutional too. Accordingly, he would allow this appeal so as to quash the convictions and set aside the binding-over orders on the ground that the penal provisions under which the appellants were convicted are unconstitutional.

政府總部
香港下亞厘畢道



GOVERNMENT SECRETARIAT
LOWER ALBERT ROAD
HONG KONG

本函檔號 OUR REF: SBCR 1/3285/03

來函檔號 YOUR REF:

Tel: 2810 2686
Fax: 2810 7702

22 February 2006

By Fax (23 pages)

Clerk to Panel on Security
(Attn : Mrs Sharon Tong)
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Fax No. : 2509 0775)

Dear Mrs Tong,

The Panel discussed the Court of Final Appeal's judgment on *Leung Kwok Hung & Others v. HKSAR* on 1 November 2005. The Panel noted that the Police would, in consultation with the Department of Justice, review their internal guidelines for dealing with notifications of public meetings and processions.

I am pleased to advise that the Police have now adopted the attached guidelines on the approach to the Public Order Ordinance in relation to public meetings and public processions, and have uploaded them on the Police website for the information of the public. I am also pleased to attach a related note prepared by the Police for Members' reference.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Rosalind", written in a cursive style.

(Miss Rosalind Cheung)
for Secretary for Security

Recent Measures Implemented by the Police in relation to Public Meetings and Public Processions

The Police are fully committed to facilitating the exercise of the right of peaceful assembly. To enhance the current system relating to public meetings and public processions, the Police have implemented a number of measures recently. They include –

- (a) Guidelines: To assist frontline officers in exercising their discretion to regulate public meetings and processions, the Police have widely promulgated the “*Guidelines on the approach to the Public Order Ordinance in relation to public meetings and public processions*” (the Guidelines) among frontline Police officers. The Guidelines state nothing new but aim to further explain the meaning of important terms, supply additional guidance on the terms used on the limits to Police discretion, and enhance the consistency of the criteria with the Basic Law’s requirements of legal certainty. To provide guidance to the public, the Guidelines have also been made available on the Police’s website and Divisional Police Report Rooms for public inspection.
- (b) Seminars: To enhance frontline supervisory Police officers’ understanding of the Public Order Ordinance (POO) and the principles governing the policing of public meetings and processions, three seminars were held in September and November 2005. The seminars were conducted by senior and experienced counsel from Department of Justice (DoJ). The essence of the judgment delivered by the Court of Final Appeal on *Leung Kwok Hung & Others v. HKSAR* FACC Nos. 1 & 2 of 2005 was also covered.
- (c) Conditions: In exercising the discretionary power to impose conditions on proposed public meetings and processions, the Police have given full consideration to the importance of rationality, proportionality and necessity. The Police have also taken positive steps to enhance communications with organizers of such events. For instance, organizers are encouraged to inform the Police if they anticipate a significant change in the number of participants so that deployment could be adjusted accordingly and appropriate safety measures could be put in place. Some sample letters of no objection illustrating the above are at Annex. The above has been adopted in the Guidelines.

- (d) Liaison with DoJ: DoJ has been providing advice to the Police on the handling of notifications of public meetings and processions, whenever necessary. The Police will continue to maintain close liaison with DoJ in this regard.

Hong Kong Police Force
February 2006

香港警務處
油尖警區總部
九龍尖沙咀
彌敦道 213 號



Hong Kong Police Force
Yan Tin Police Headquarters,
No. 213 Nathan Road,
Tsim Sha Tsui,
Kowloon.

Our Ref. : LM (15) in KW YT 136/32 Pt.13
Telephone : 2731 7383
Fax No. : 2314 8872

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Hong Kong

Dear Ms. [REDACTED],

Notification of Public Procession

I refer to the notification of public meeting you made as the organizer on [REDACTED] at [REDACTED] Police Station.

Pursuant to Section 14(4) of the Public Order Ordinance, Cap. 245, I am writing to inform you that I have no objection to your intention to hold a public procession in connection with a [REDACTED] involving about 80 participants between 2100 and 0100 hours on [REDACTED] and [REDACTED] from outside [REDACTED] and then back to the same location.

Police deployment and assessment on public safety is based on the number of participants as notified, i.e. 80 people. If you anticipate a significant increase in the number of participants, you should inform Police promptly so that deployment can be adjusted accordingly and appropriate safety measures can be put in place. You are also advised to provide one marshal for approximately every four participants and ensure that they can be clearly identified.

You are reminded of the requirements in Section 15(1) of the Public Order Ordinance, Cap. 245, which states, inter alia,

- (1) At every public procession -

- (a) there shall be present throughout the procession either the person who organized the procession or, if he is not present, a person nominated by him to act in his place;
- (b) good order and public safety shall be maintained throughout the procession; and
- (c) the control of any amplification device that is used in such a manner that it causes a noise that would not be tolerated by a reasonable person shall, if so required by a police officer, be surrendered to the police officer for the duration of the procession.

Conditions

Section 15(2) of the Public Order Ordinance, Cap. 245 provides for the Commissioner of Police to exercise his discretion to impose conditions upon any public procession notified in the interests of public safety and public order - the term as used in this letter refers to the maintenance of public order and prevention of public disorder. Having given consideration to the particular details of the public procession you intend to hold, the Commissioner has decided that it is rational, proportionate and necessary to impose the following condition:-

- (1) The procession shall be conducted between [redacted] hours on [redacted] and [redacted] hours on [redacted] taking the following route:-

(Starting Point) (Route) (Finishing Point)

- (2) Due to a police crowd management operation that will be taking place in the area you may be required to change your route to avoid congested areas. In this regard you are required to comply with any instructions given to you by a police officer in respect of the route.

Furthermore you are reminded that any changes of details of the notified public procession may affect police deployment in ensuring public safety and public order. For this reason, you are urged to inform the police of any changes as soon as practicable so that conditions may be amended under section 15(3) of the Public Order Ordinance.

Appeal

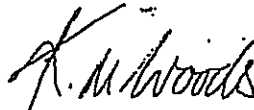
If you are aggrieved by the imposing of these conditions, you are entitled to lodge an appeal to the Appeal Board on Public Meetings and Public Processions in accordance with Section 16 of the Public Order Ordinance. An appeal should be made as soon as possible in writing and addressed to the Secretary of the Appeal Board by Fax No. 2810 7702 or by personal delivery to Room 606, 6/F, Main Wing, Central Government Offices, Lower Albert Road, Central, Hong Kong.

Remarks

Please be advised that this letter does not exempt you from obtaining permission from other concerned authorities should the event take place in areas within their jurisdiction. Notwithstanding the Public Order Ordinance, there are other statutory provisions that may be applicable. Your attention is drawn to the list of commonly applicable legislation, together with brief details of procedural matters at Annex 'A'.

Should there be any change regarding the proposed event, please immediately inform Mr. LIM Che-chung, Acting Chief Inspector of the Police Community Relations Officer of Yau Tsim District at 2731 7223 during office hours at weekdays or the Duty Officer of Tsim Sha Tsui Police Station at telephone number 27317278 after office hours.

Yours sincerely,



(K.M. Woods)

District Commander, Yau Tsim District
for Commissioner of Police

c.c. CP (Attn: SP LIC)
RC KW
SSP OPS KW
SP RCCC K
PCRO YTDIST
DOO YTDIST
DVC TSTDIV
ADV OPS TSTDIV
OSSUC TSTDIV

Public Procession

List of Commonly Applicable Legislation
and Brief Details of Procedural Matters:

Notwithstanding the Public Order Ordinance, the following provisions under various ordinances are considered relevant to organizers of public procession :-

- (i) The Road Traffic Ordinance, Cap 374, s.61 requires that the drivers of vehicles and pedestrians obey the directives of uniformed Police Officers and Traffic Wardens who are engaged in the regulation of traffic, at all times;
- (ii) The Summary Offence Ordinance, Cap. 228, s.4 (17) prohibits fund raising, flag selling or exchange activities unless with a permit from either the Director of Social Welfare or the Secretary for Home Affairs;
- (iii) The Public Health and Municipal Services Ordinance, Cap. 132, s.4A, 104A(2) and 104B(1) prohibits the posting of such things as posters and notices on the walls of any building, or abandoning the same in any public place causing obstruction unless with the written approval from the landlord or occupants; and
- (iv) The Crimes Ordinance, Cap. 200, s.24, states that it is a criminal offence to threaten any person with injury to their person, reputation or property, with intention to alarm the person so threatened.

PERSONAL DATA-個人資料

香港警務處牌照課
香港灣仔軍器廠街1號
警察總部警政大樓12樓



Licensing Office
Hong Kong Police Force
12/F, Arsenal House, Police Headquarters
1 Arsenal Street, Wanchai,
Hong Kong

本處持號 OUR REF: (R) in CPLIC 136/129/2005 LM 37
電話 TELEPHONE: 2860 6525
傳真 FAX: 2200 4325

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
(傳真: [REDACTED])

小姐:

公眾遊行通知書

有關你於 年 月 日向 警署以主辦者身分遞交公眾遊行通知書一事，本處已經備悉。

現特依據《公安條例》(第 245 章)第 14(4)條通知你，本處不反對你在 年 月 日(星期日)，就「」一事舉行約四十人參與的公眾遊行。遊行隊伍由 出發，前往。

警方是根據你所填報的人數(四十人)及車輛數目(十二輛私家車)，作為人手調派及公眾安全評估的基礎。假如你知道或相信參與活動人數或車輛數目將可能大幅增加，你必須盡快通知警方，以便我們可以重新調配人手及提供適當的安全措施。

規定

請你留意《公安條例》(第 245 章)第 15(1)條的規定，其中包括：

- (1) 在每次公眾遊行中：
 - (a) 遊行的組織人(如他不出席)由他指定代替他行事的人，必須在整個遊行進行期間出席；
 - (b) 整個遊行進行期間均須維持良好秩序和公共安全；以及
 - (c) 如所使用的任何擴音器，其所發出的噪音為一個合理的人不會忍受者，則在警務人員提出要求下，須於遊行的持續期間將該擴音器的控制交予該警務人員。



條件

根據《公安條例》(第 245 章)第 15(2) 條，為維護公共安全，維護公共秩序（維護公共秩序在本信中指維持公眾秩序和防止擾亂公眾秩序），警務處處長可行使酌情權，就已作出通知的公眾遊行施加條件。處長考慮過擬舉行的公眾遊行細節後，根據相稱性原則，認為施加以下條件是合理和有需要的：

- ◆ 是次公眾遊行必須根據你在通知書內填報的資料，在 2022 年 11 月 20 日（星期日）由上午 10 時至上午 12 時 30 分的一段時間內依照下列路線進行：

(起點) 沿途路線 (終點)

請注意：已通知的公眾遊行細節如有任何變動，均可能影響警方為確保公共安全和維持公眾秩序而進行的調配工作。因此，你的公眾遊行細節如有變動，務須盡早通知警方，以便警方根據《公安條例》第 15(3) 條修訂有關條件。

上訴

你如因警務處處長施加上述條件而感到受屈，可根據《公安條例》第 16 條，向公眾集會及遊行上訴委員會提出上訴。如擬上訴，須盡快把上訴書送交上訴委員會秘書。上訴書可以傳真方式傳送（傳真號碼：2810 7702）或親自送遞（地址：香港下亞厘畢道中區政府合署中座 6 樓 606 室）。

附註

如這項活動在其他機構管轄的地方進行，你須向該等機構申請批准；本信並不涵蓋你在這方面的申請。除《公安條例》外，其他法例條文也可能適用於這項活動。

上述活動如有更改，請立即於辦公時間內致電 2860 6522 知會本處牌照課高級督察陳倩小姐；辦公時間後、星期天或假日，則可致電通知有關總區的指揮及控制中心的假日監督(九龍區：2666 4500，新界區：3472 7200)。

警務處處長

(趙安琪)



代行)

██████████年███月███日

**Guidelines on the approach
to the Public Order Ordinance
in relation to public meetings and public processions**

These Guidelines are not intended to be exhaustive. They are intended to assist enforcement officers and other persons in their understanding of the statutory scheme, including some of the terms, of the Public Order Ordinance (POO), Cap. 245, in the light of the constitutional right of peaceful assembly in relation to public meetings and public processions.

The Relevant Freedoms

2. The freedom or right to peaceful assembly and to peaceful public procession are fundamental rights guaranteed in the Basic Law (BL) of the HKSAR and the Hong Kong Bill of Rights Ordinance (BORO), Cap. 383. Article 27 of the Basic Law declares:

“Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions; and to strike.”

3. The BORO is the domestic enactment of the United Nations, International Covenant on Civil and Political Rights (ICCPR) as applied to Hong Kong. BL 39 has entrenched the ICCPR as applied to Hong Kong. The most relevant right recognized in BORO Article 17:

“The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of the rights and freedoms of others.”

The right to freedom of expression, Article 16 of the BORO, is a right that has close association with the right to peaceful assembly.

‘Peaceful Assembly’

4. The POO is inter alia concerned with the regulation of public assemblies. The relevant freedoms envisage that only peaceful, intentional, temporary gatherings of groups of persons for a specific purpose are afforded the protection. Assemblies that are not peaceful or that lose their peacefulness

through force do not fall within the protective scope of the freedoms. As a result, the regulation of assemblies is, within limits, permissible.

'Democratic Society'

5. BORO Article 17 permits restrictions to be placed on the exercise of the right of peaceful assembly if they are (amongst other things) necessary in a 'democratic society'. This expression has a special meaning in regard to human rights that has been recognised at the United Nations (UN) in relation to the ICCPR. It refers to a society that recognises the Universal Declaration of Human Rights (UDHR) and the two Covenants of the UN, that is the ICCPR and International Covenant on Economic, Social and Cultural Rights (ICESCR), a society, in short, that believes in pluralism and tolerance and the need for differing views to be reasonably and appropriately heard in a peaceful environment. The necessity for objections, prohibitions or conditions must be seen in that context. In particular, "a procession is a potent method of expression and is a common phenomenon in democratic societies including Hong Kong."¹

Government's Positive Duty

6. The right of peaceful assembly involves a positive duty on the part of Government to take reasonable and appropriate measures to enable lawful assemblies. This obligation is not absolute for the Government cannot guarantee that lawful assemblies will proceed peacefully and it has a wide discretion in the choice of the measures to be used. What are reasonable and appropriate measures must depend on all the circumstances in the particular case.

7. Organisers and participants should be aware of the need for the peaceful nature of public meetings and public processions, and the need for the police to ascertain that such assemblies are intended to be peaceful, and to have powers, to be exercised if necessary, to ensure that they remain so.

Conditions and Prohibitions

8. The Commissioner of Police has a discretionary power under the POO to prohibit, object to or impose conditions on public meetings and public processions if he reasonably considers it to be necessary.² However, he is restricted by law as to the conditions he may impose and the circumstances in

¹ Court of Final Appeal judgment in *Leung Kwok Hung & Others v. HKSAR* FACC Nos. 1 & 2 of 2005, at para. 3.

² Public Order Ordinance, Cap. 245, (POO) sections 9, 11, 14 & 15, section 6 is a discretionary power that applies to public gatherings as defined, when they are imminent or already underway.

which he may prohibit public meetings or processions. It is important to appreciate that these statutory powers are in place not to restrict the exercise of the relevant rights; but to enable Government to fulfil its positive duties. Without the power to impose conditions or to prohibit or object in certain circumstances, the peaceful nature of the assembly could not be reasonably assured or other important societal interests could be unnecessarily degraded.

The Criteria for Prohibition or Conditions

9. Terms used in the ICCPR and BORO relating to permissible restrictions have largely, although not wholly, been adopted in the POO. The terms used as criteria for prohibiting or restricting assemblies are broad and flexible so as to accommodate the wide variety of circumstances in which the relevant freedoms are exercised. They are as follows:

- (i) national security;
- (ii) public safety;
- (iii) public order; and
- (iv) protection of rights and freedoms of others

In everyday practice, the two most important criteria are public order and public safety.

National Security

10. In the context of the Commissioner's statutory discretion to restrict the right of peaceful assembly, the expression 'national security' is defined as the safeguarding of the territorial integrity and the independence of the People's Republic of China.³

Public Safety

11. In the context of the Commissioner's statutory discretion to restrict the right of peaceful assembly, the term 'public safety' refers to—

“[s]afety of persons (i.e., their lives, their physical integrity or health) or things.”⁴

³ POO, section 2(2).

⁴ U.N. Covenant on Civil and Political Rights CCPR Commentary, Dr. Manfred Nowak, at p.380.

Public Order

12. The expression 'public order' in the law and order sense, means the maintenance of public order and prevention of public disorder.⁵

Protection of Rights and Freedoms of Others

13. In the context of the Commissioner's statutory discretion to restrict the right of peaceful assembly, the term 'the protection of the rights and freedoms of others' refers to –

- the protection of the rights of passers-by, as well as those of the participants, to personal safety and physical integrity, which were dealt with in the context of public safety; and
- the protection of private property of others including private commercial interests.⁶

14. Scenarios upon which the Commissioner of Police may, in his discretion, limit the right to freedom of assembly on the ground of 'rights and freedoms of others' would, for example, be :

- (i) the procession will result in unreasonable disruption of normal business and mercantile operations along, or in the vicinity of, the proposed procession route; and
- (ii) the concentration of persons, vehicles or things at the formation and dismissal areas, along the procession route and in nearby areas, will prevent necessary fire and police protection or other emergency services.

Application of the Criteria

15. The above criteria must be approached and used in a manner recognised by the courts as being consistent with preserving the essentials of the relevant freedoms. At the same time, they should inform important practical decisions on how, for example, to preserve public order during the exercise of the relevant freedoms. The Commissioner has to approach the matter in a flexible manner and his discretion to object or to impose conditions is

⁵ Court of Final Appeal judgment in *Leung Kwok Hung & Others v. HKSAR FACC* Nos. 1 & 2 of 2005, at para 82.

⁶ *U.N. Covenant on Civil and Political Rights CCPR Commentary*, Dr. Manfred Nowak, at p. 382-383.

constrained. In considering its exercise, the Commissioner must apply the proportionality test.

The Proportionality Test

16. In applying the proportionality test, one must ask is the potential restriction -

- (a) rationally connected with the purpose of public order; and
- (b) no more than is necessary to accomplish that purpose?

Both questions must be answered in the affirmative before the test is satisfied.

17. Factors to be taken into account in regard to (b) depend on the criteria relied on and all the factual circumstances. Using the example of public order, the Commissioner has to consider various facets of public order such as traffic conditions and crowd control. Depending on the case in question, factors that may be relevant include the date and time of the proposed procession, the topography of the route, the possible presence of rival groups and the reaction of members of the public.

Conditions before Prohibition or Objection

18. Wherever possible, conditions that can be justified as being reasonably necessary should be imposed on a proposed public meeting or procession, rather than the event being prohibited or objected to.⁷

Duty to Give Reasons

19. The Commissioner is under a statutory duty⁸ to give reasons when he decides not to accept shorter notice and when he reasonably prohibits or objects to or imposes conditions on a notified public meeting or procession. The duty is to give adequate reasons not merely a bald conclusion.⁹

Appeal Board

20. There is an Appeal Board on Public Meetings and Processions. This can be convened at short notice. The Appeal Board does not need to follow formal rules of evidence, and is intended to be 'user friendly' to the

⁷ POO section 9(4) & section 14(5).

⁸ POO e.g. section 15(2).

⁹ *Leung Kwok-hung & Others v. HKSAR*, supra, at para. 59.

public. The Appeal Board may, after hearing an appeal, confirm, reverse or vary the prohibition, objection or condition appealed against.¹⁰

Useful Background Materials

Cases

- (i) *HKSAR v. Ng Kung Siu & Another* (1992) 2 HKCFAR 442
- (ii) *Leung Kwok Hung & Others v. HKSAR* FACC Nos. 1 & 2/2005
- (iii) *Leung Kwok Hung & Others v. HKSAR* (CA) HCMA 16/2003
- (iv) *Auli Kivenmaa v. Finland* UN Human Rights Committee, Communication No. 412/1990

Texts

- (i) U.N. Covenant on Civil & Political Rights CCPR Commentary (Articles 18 & 21) by Dr. Manfred Nowak
- (ii) The International Bill of Rights, Editor: Professor Henkin, Chapter 12, Permissible Limitations on Rights by A.C. Kiss

¹⁰ POO, section 44(4).

For information
on 8 May 2007

Legislative Council Panel on Security

Processing of Notification of Public Meetings and Processions under the Public Order Ordinance

INTRODUCTION

Members would like to know how the Police process notifications for public meetings and processions, and handle unauthorized public meetings and processions. Members also asked for statistics on the number of notifications, prohibitions / objections and appeals in respect of public meetings and processions in the past five years.

PROCESSING OF NOTIFICATION RELATING TO PUBLIC MEETINGS AND PROCESSIONS

Notification

2. People in Hong Kong have the right to assemble, to demonstrate, etc. as guaranteed by Article 27 of the Basic Law (BL) and Article 17 of the Hong Kong Bill of Rights. It has been our policy that it is the Police's duty to facilitate the conduct of lawful and peaceful public meetings and processions. In doing so, it is important to strike a proper balance between protecting the individual's right to assemble, to demonstrate, etc., and the interests of the community at large.

3. The main statutory provisions regulating public meetings and processions are in the Public Order Ordinance (POO). These provide that a public meeting or procession at which the attendance exceeds the prescribed limit can only take place if notice has been given in accordance with the requirements of the Ordinance, and the Commissioner of Police (CP) has not prohibited or objected to it. CP (or delegated officers) will carefully examine each case and will exercise his discretion properly. He must also state the grounds of prohibiting or objecting to a public meeting or procession by way of a written notice. Also, CP may impose conditions on a notified public meeting or procession. In deciding whether and if so what restriction(s) to impose, he must consider whether

such restriction(s) is proportionate. Wherever possible, conditions that can be justified as being reasonably necessary should be imposed for a proposed public meeting or procession, rather than the event being prohibited or objected to.

4. In *Yeung May-wan & Others v HKSAR*, the Court of Final Appeal (CFA) held that the freedoms protected by BL 27 were at the heart of Hong Kong's system. However, the law required reasonable give and take between users of public places. In *Leung Kwok Hung & Others v HKSAR*, the CFA observed that the right of peaceful assembly involved a positive duty on the part of the Government to take reasonable and appropriate measures to enable lawful assemblies and demonstrations to take place peacefully. It also affirmed that notification is required to enable the Police to fulfill this positive duty.

5. Whenever the Police become aware of any impending public meetings or processions, they will initiate and maintain a dialogue with the organizers and render assistance to them. The Police will offer advice on procedures, the statutory requirements and logistical arrangements, with a view to protecting the interests of all persons involved with the event in question and the interests of the community, particularly in respect of public safety and the proper maintenance of law and order.

Appeal Mechanism

6. If CP prohibits, objects to or imposes conditions on a notified public meeting and procession, the organizer(s) has a right of appeal. The POO provides for an independent Appeal Board on Public Meetings and Processions (the Appeal Board), consisting of three members selected in rotation from a panel of 15 members and is chaired by a retired judge, which can be convened at short notice. The Appeal Board is intended to be "user friendly" to the public, and allows the appellant (and the CP) to be heard and make submissions. The Appeal Board may confirm, reverse or vary the prohibition, objection or condition imposed by CP.

HANDLING OF UNAUTHORIZED PUBLIC ORDER EVENTS

7. Under the POO, a public meeting or procession may become "unauthorized" if, for example, –

- (a) the number of participants requires that the CP is notified, but he has not been;

- (b) it proceeds despite having been prohibited or objected to; or
- (c) its participants do not comply with any direction given by a Police officer for ensuring compliance with or due performance of the conditions specified by CP under the POO.

In handling such an event, the Field Commander must bear in mind the Police's fundamental duty to facilitate the conduct of lawful and peaceful public meetings and processions, and to protect, as far as possible, the interests of the participants, other individual citizens and the community.

8. In general, Field Commanders will –
- (a) whenever possible warn participants of their breach of the law and dissuade them from starting or continuing an unauthorized event;
 - (b) try to come to an agreement with the participants concerning arrangements that could help remove any safety or public order concerns, having regard to the interests of the community at large, and thereby enable the event to proceed; and
 - (c) if circumstances require, take reasonable steps to end the event by dispersal, physical removal or arrest.

9. In the event that an unauthorized event proceeds, in appropriate cases, the relevant evidence collected will be presented to the Department of Justice, which will, in accordance with the prosecution guidelines, decide whether prosecution action is warranted.

STATISTICS

10. From 2002 to 2006, 6 418 public meetings and 4 692 public processions were held in Hong Kong (or an average of 6 events daily), among which 3 095 public meetings and 3 903 processions were notified events. During the same period, 5 public meetings and 6 processions were prohibited / objected to. A detailed breakdown is at Annex. 2 public meetings and 3 processions of these 11 events subsequently took place after the organizers had revised their routing or scale. As for the other 6 events, the organizers cancelled their activities eventually.

11. Over the same period, 11 applications for appeal were lodged with the Appeal Board (see para. 6 above). 3 cases were withdrawn before hearings were conducted while 8 cases were heard by the Appeal Board. Of these 8 cases, the Police's decision was upheld in 7 cases and overruled in 1 case.

Security Bureau
Hong Kong Police Force
April 2007

Breakdown of Figures on Police's Prohibitions / Objections to Public Meetings and Processions between 2002 and 2006

Reason / Basis for Prohibition / Objection	2002		2003		2004		2005		2006	
	Public Meetings	Public Processions	Public Meetings	Public Processions	Public Meetings	Public Processions	Public Meetings	Public Processions	Public Meetings	Public Processions
(1) Causing serious inconvenience and obstruction to traffic and / or road users	1	2	0	0	0	0	0	0	0	0
(2) Posing danger to the safety of participants of the events, members of the public and Police officers on duty	0	0	0	1	0	0	0	0	0	0
(3) (1) and (2) above occurring together	1	2	0	0	0	0	0	0	0	0
(4) Breach of Police's conditions by event participants	1	0	0	0	0	0	0	0	0	0
(5) The Police have reasons to believe that serious breach of the peace may occur during the event	2	1	0	0	0	0	0	0	0	0
Total	5*	5#	0	1#	0	0	0	0	0	0

Note: * Among the above 5 public meetings which were prohibited by the Police, 2 of them were allowed to continue as the organizers changed the number of participants.
 # Among the above 6 public processions which were objected to by the Police, the organizers of 2 of them changed the routing and 1 changed the number of participants, and the processions were allowed to continue.