

立法會

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Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2007

Background brief prepared by the Legislative Council Secretariat

Review of the Public Order Ordinance (Cap. 245) relating to public meetings and processions

Purpose

This paper summarises past discussion by the Legislative Council (LegCo) and the Panel on Security on the review of the Public Order Ordinance (Cap. 245) (POO) relating to public meetings and processions.

Background

The Bill

2. Part 3 (clauses 4 to 14) of the Statute Law (Miscellaneous Provisions) Bill 2007 (the Bill) proposes to repeal the references to "*ordre public*" in the Societies Ordinance (Cap. 151) (SO) (clauses 4 to 8 of the Bill) and POO (clauses 9 to 14 of the Bill).

3. According to the Administration, the proposed amendments seek to give effect to the Court of Final Appeal (CFA)'s judgment on the case of *Leung Kwok Hung & Others v HKSAR* (the case) 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 POO. Similar provisions in SO need to be amended as a result of that decision.

Provisions in POO relating to the regulation of public meetings and processions

4. The main statutory provisions regulating public meetings and processions are in POO. Under POO, a "meeting" is defined as any gathering or assembly of persons convened or organised for the purpose of the discussion of issues or matters of interest or concern to the general public, or for the purpose of the

expression of views on such issues or matters, and at which a person assumes control or leadership. However, gathering of persons for social, recreational, cultural, academic, educational, religious, charitable, professional, business or commercial purposes; for the purpose of a funeral; for the purpose of any public body; for the purpose of carrying out any duty or exercising any power imposed or conferred by any ordinance are excluded. A "public meeting" means any meeting held or to be held in a public place. A "public procession" means any procession in, to or from a public place.

5. Section 2(2) of POO states that the expressions "public safety", "public order (*ordre public*)", "the protection of public health" and "the protection of rights and freedoms of others" are interpreted in the same way as under ICCPR as applied to Hong Kong. According to the Administration, the provisions of POO in respect of the right to assembly are framed in conformity with Article 21 of ICCPR on right of peaceful assembly.

6. Part III (sections 6 to 17G) of POO deals with control of meetings, processions and gatherings.

Processing of notification relating to public meetings and processions

Notification system

7. Under POO, 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 may impose conditions on a notified public meeting or procession.

Appeal mechanism

8. If CP prohibits, objects to or imposes conditions on a notified public meeting and procession, the organiser(s) has a right of appeal to an independent Appeal Board on Public Meetings and Processions (the Appeal Board) as provided under POO. The Appeal Board may confirm, reverse or vary the prohibition, objection or condition imposed by CP.

Issues raised by the Bills Committee

Views and concern of the majority members

9. The majority members expressed concern that the Administration had simplified the CFA judgment into a matter of merely replacing the term "public order (*ordre public*)" in POO with the term "public order". They expressed grave concern about the impact of deleting the term "*ordre public*" from POO on the

rights of Hong Kong people, in particular the rights to assembly and demonstrations, and the application of ICCPR in Hong Kong. Members were also concerned with whether the amendment to delete the term "public order (*ordre public*)" in section 2(2) of POO would result in an absence of clear interpretation of the term under the Ordinance.

10. Some members pointed out that the meaning of the French term "*ordre public*" was wider than public order, but its exact meaning had never been made clear in the legislation. They were of the view that the proposed amendments to POO and SO were not merely textual amendments, but involved changes in policy. The Administration should take into account the CFA judgment and examine how the provisions in POO relating to public meetings and processions could be improved, e.g. by setting out clearly in the legislation the conditions which could or could not be imposed on public meetings and processions, so that the Police and members of the public would be aware of the precise scope of the Police's power.

11. At the meeting on 16 June 2007, the Bills Committee received views from six organisations and one individual on the Bill, including the proposed amendments to POO. The two legal professional bodies were of the view that the proposed amendments in Part 3 of the Bill were in line with the CFA's judgment on the case, and they had no objection to the amendments. Other deputations attending the meeting, however, considered that the Administration should take the opportunity to review the relevant provisions in POO. A suggestion was made for the Bills Committee to consider deleting the proposed amendments in Part 3 of the Bill, if the Administration did not agree to conduct a comprehensive review of POO.

The Administration's explanation

12. According to the Administration, the proposed amendments in the Bill merely sought to bring the statute book in conformity with the law in force having regard to the CFA judgment, and they would in no way affect the rights to assembly and demonstration currently enjoyed by the people of Hong Kong.

13. The Administration explained that under POO, "public order (*ordre public*)" was one of the grounds upon which CP might exercise his discretion to object to public meetings and processions. The Police had all along been applying the term "public order (*ordre public*)" in the law and order sense in their daily operations. Since the handing down of CFA's judgment on the case in 2005, the term "public order (*ordre public*)" had been taken to mean "public order" in the law and order sense. There had been no substantive changes to the procedures in the processing of notifications. By deleting the reference to "*ordre public*" from the English text, the citizens' right to peaceful assembly was enhanced since CP's discretionary power was by law limited to public order in the law and order sense. Thus, deletion of the reference to "*ordre public*" from the English text did not have any substantive effect on Police operations in practice.

14. The Administration advised that it had explained to the Panel on Security the effect of the CFA judgment on 1 November 2005. The Panel was informed that in the light of the CFA judgment, the Police would, in consultation with the Department of Justice, review the internal guidelines for dealing with notifications of public meetings and processions. The guidelines explained the meaning of many important terms used in POO, and were available on the Police's website and in Divisional Police Report Rooms for inspection. The Panel was subsequently provided with a copy of new guidelines adopted by the Police on the approach to POO in relation to public meetings and processions, as well as a related note prepared by the Police. The note was reproduced by the Administration to the Bills Committee (Annex B to LC Paper No. CB(2)2034/06-07(01)) for the meeting on 7 June 2007.

15. On the need to review POO, the Administration advised that the current regime under POO was both necessary and proportionate in that it struck a correct balance between the need to protect the individual's rights of peaceful assembly, of demonstration, etc. on the one hand, and the interests of the community at large on the other. The Administration further advised that in-depth discussion on the subject had been carried out by LegCo in the past years, and its position was set out in the debate on POO at the Council meeting in December 2000. It had kept POO under review and did not consider that it required any major amendments. A comprehensive review of POO would be outside the scope of the Bill.

16. The Bills Committee has requested the legal adviser to the Bills Committee to provide a paper on the effect of not passing the proposed amendments in Part 3 of the Bill (LC Paper No. LS101/06-07 refers).

Past discussion on the review of POO relating to public meetings and processions

17. The Secretary for Security (S for S) gave notice to move the following motion on POO at the Council meeting on 22 November 2000 –

"That this Council considers that the POO's existing provisions relating to the regulation of public meetings and public processions reflect a proper balance between protecting the individual's right to freedom of expression and right of peaceful assembly, and the broader interests of the community at large, and that there is a need to preserve these provisions."

According to the Administration, the reasons for moving the motion was to explain explicitly the Government's stance on the provisions of POO regulating public meetings through a debate in LegCo and to gauge the views of LegCo Members and the people or sectors they represented, having regard to a huge controversy in

the community over whether POO was a piece of "evil" legislation and whether it should be preserved.

18. Some Members considered that the Administration should not push for a debate in the Council before listening to the views of the community and the Panel on Security. At the House Committee meeting on 10 November 2000, members agreed that the Chairman of the House Committee should relay to the Chief Secretary for Administration Members' request that S for S should defer the motion on POO to the last Council meeting in December 2000. Subsequently, S for S deferred the motion debate on POO to the Council meeting on 20 December 2000.

Discussion by the Panel on Security

19. Before the Government motion was debated at the Council, the Panel on Security held five special meetings on 18 and 25 November, and 9, 12 and 16 December 2000 to discuss the regulation of public meetings and public processions and review of POO.

20. The Panel received public views from 100 organisations/individuals at four meetings. Some of the deputations had put forward proposals for amendments to POO. These included shortening the seven-day notice period, lowering the threshold on the number of people participating in public meetings and processions, resting with the court the decision on whether a procession or meeting could proceed. Some deputations were of the view that participation in an unauthorised meeting or procession should not be considered as a criminal offence and the maximum penalty should not be five-year imprisonment. Some other deputations considered that no amendment to POO was necessary.

21. In response to the views and submissions on POO, the Administration provided a written response for the discussion of the Panel on Security at the special meeting on 16 December 2000 (LC Paper No. CB(2)520/00-01(01)). In gist, the Administration considered that the notification requirement was necessary to protect national security, safety, public order and the rights and freedoms of others, and was consistent with human rights guarantees. The Administration stressed that the notice of no objection system was not a licensing system. The Police's power to object to the holding of a public meeting or procession was not absolute. If an applicant was dissatisfied with the decision of the Police, he could lodge an appeal with the Appeal Board.

22. The Administration also provided a paper to the Panel on the legislation governing public meetings and processions in 11 places overseas. According to the Administration, the legislation and practices of Hong Kong were similar to those of other modern cities. In most places, organisers were required to give notification to the authorities concerned in advance or even to apply for a licence.

Government motion on POO

23. S for S moved the motion on POO at the Council meeting on 20 December 2000 (please refer to paragraph 17 for the wording of the motion). While agreeing that there was a need to preserve the provisions in POO in relation to public meetings and processions, Mr James TO and Ms Emily LAU considered that a review of these provisions should be conducted. They proposed amendments to the motion to the effect that the Government should review POO.

24. The major views of those Members who expressed support for the amendments to the motion are as follows –

- (a) under the current notification system, an organiser should notify the Police seven days before the procession or meeting. If the "notice of no objection" was not received within 48 hours before the commencement of the procession or meeting, the organiser might conduct the procession or meeting. In other words, the organiser had 48 hours only to promote the procession or meeting and notify participants. The system was in fact a licensing system;
- (b) the seven-day notice period required under POO was too long and should be shortened to three days, or 48 hours, or 24 hours;
- (c) if no advance notice was given for a procession and meeting, the procession and assembly would become an "unauthorised assembly" and all the participants would become criminally liable under POO with the maximum sentence being five-year imprisonment. The maximum penalty under POO was too heavy as compared with the maximum penalty for committing other criminal offences. For instance, the maximum penalty for common assault causing bodily harm was three years' imprisonment;
- (d) the maximum number of participants that could be exempted from notification should be relaxed; and
- (e) the Police should have the onus of proof to explain why a procession or meeting was to be prohibited, and not for the organiser to prove otherwise. The Police should apply for injunction from an independent third party, such as a duty Judge, to prohibit the holding of the procession or meeting.

25. The Administration stressed that the provisions in POO relating to the regulation of public meetings and processions had struck a proper balance between protecting individual's freedom and interests of the community at large. The Administration explained that the purpose of a notice of no objection was to require CP to give a clear indication as soon as possible so that organisers of

processions might organise their activities. Notification requirement was aimed at giving participants a responsibility to take measures to ensure the smooth operation of their processions and meetings. CP was empowered to prohibit the holding of any public meeting or procession when he considered it necessary on four grounds (i.e. safeguarding national security, public safety, public order or protecting the rights and freedoms of others). These grounds for prohibition reflected the restrictions on the right of peaceful assembly as allowed under Article 21 of ICCPR. CP would not exercise his power to prohibit the holding of public meetings where he considered that the four grounds could be met by the imposition of condition, and he must state the reasons for imposing the conditions. The notice of no objection was not a licence, and the procession could take place as scheduled if the Police did not issue a notice of no objection or notice of objection within the specified time limit.

26. As regards the notice period, the Administration advised that CP has the discretionary power to accept a notice of less than seven days. It did not see any need for amendments. As for the statutory threshold on the number of people participating in public meetings and procession, the Administration pointed out that in view of the extremely overcrowded conditions in Hong Kong, a public meeting consisting of more than 50 people or a public procession consisting of more than 30 people would inevitably affect traffic, public order or activities of other people. The restrictions could not be further relaxed.

27. On the offence of making announcement or promotion of an unnotified meeting or procession, the Administration advised that it saw no difficulty in complying with the notification requirement. The organiser would not commit an offence if he/she notified the police before advertising or promoting the event. Such requirement would allow the relevant authorities to assess whether the event complied with the law. Hence, the prohibition of prior promotion or announcement was part of the notification system.

28. The Administration pointed out that POO provided that anyone who was aggrieved by the decision of CP to prohibit a public meeting or to object to a public procession or to impose conditions on the activity could lodge an appeal to the Appeal Board, which was chaired by a retired judge and served by three unofficial members. After hearing the appeal, the Appeal Board might uphold, overturn or change CP's decision.

29. The Administration took the view that the mechanism had been working well since its inception, and the existing provisions in POO should be retained. Nevertheless, it would not preclude the possibility of proposing amendments to POO in response to future social developments.

30. The original motion moved by S for S was carried. 36 Members voted in favour of the motion and 21 voted against it.

Relevant papers

31. Members are invited to access the LegCo website at <http://www.legco.gov.hk> to view the Administration's papers and submissions for the meetings of the Panel on Security on 18 and 25 November, 9, 12 and 16 December 2000, and 1 November 2005 and the relevant minutes of meetings, and the Hansard for the Council meeting on 20 December 2000.

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