

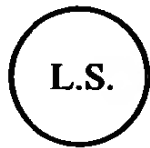
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HONG KONG

ORDINANCE NO. 77 OF 1995



I assent.

Christopher PATTEN,
Governor.
27 July 1995

An Ordinance to amend the Public Order Ordinance.

[]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. Short title and commencement

(1) This Ordinance may be cited as the Public Order (Amendment) Ordinance 1995.

(2) This Ordinance shall come into operation on a day to be appointed by the Governor by notice in the Gazette.

2. Long title amended

The long title to the Public Order Ordinance (Cap. 245) is amended by adding “processions,” after “meetings,”.

3. Interpretation

Section 2 is amended—

- (a) by repealing the definition of “political organization”;
- (b) in the definition of “procession” by adding “, and includes any meeting held in conjunction with such procession” after “purpose”.

4. Prohibition of uniforms in connection with political objects

Section 4 is repealed.

5. General powers of Commissioner of Police

Section 6 is amended—

- (a) by repealing “if it appears to him to be necessary or expedient in the interests of public order so to do” and substituting—
“if he reasonably considers it to be necessary in the interests of public safety or public order”;
- (b) in paragraph (a), by repealing “notwithstanding the issue of any permit under section 4(29) of the Summary Offences Ordinance (Cap. 228),”;
- (c) in paragraph (c), by deleting “as he may consider necessary or expedient” and substituting “as he may reasonably consider necessary”.

6. Regulation of public meetings

Section 7(2) is amended—

- (a) in paragraph (a) by repealing “30 persons” and substituting “50 persons”;
- (b) in paragraph (b) by repealing everything after “attend)” and substituting “where the attendance at the meeting does not exceed 500 persons;”.

7. Sections substituted

Sections 8 to 16 are repealed and the following substituted—

“8. Notification of public meetings

(1) For the purposes of section 7, notice of the intention to hold a public meeting shall be given in writing to the Commissioner of Police—

- (a) not later than 11 a.m. on the same day of the week in the preceding week as the day on which the meeting is intended to be held; or
- (b) where the last day for giving notice under paragraph (a) would fall on a general holiday, not later than 11 a.m. on the first day immediately preceding that day which is not a general holiday.

(2) Notwithstanding subsection (1), the Commissioner of Police may, and shall in any case where he is reasonably satisfied that earlier notice could not have been given, accept shorter notice than is specified in that subsection.

(3) In cases where the Commissioner of Police has decided not to accept shorter notice than is specified in subsection (1), he shall as soon as is reasonably practicable inform in writing the person purporting to give the notice of his decision and the reasons why the shorter notice is not acceptable.

(4) Notice under this section shall be given by being delivered in person by the person giving it, or by any person on his behalf, to the officer in charge of a police station, and shall contain particulars of the following matters—

- (a) the name, address and telephone number of—
 - (i) the person organizing the meeting and any society or organization promoting or connected with the holding of the meeting; and
 - (ii) a person able to act, if necessary, in place of the organizer for the purpose of section 11(1)(a);
- (b) the purpose and subject-matter of the meeting;
- (c) the date, location, time of commencement and duration of the meeting; and
- (d) an estimate by the person organizing the meeting of the number of people expected to attend the meeting.

(5) The Commissioner of Police shall issue written acknowledgment of receipt of notice under this section to the person giving or delivering the notice.

9. Power of Commissioner of Police to prohibit notified public meeting

(1) Subject to this section, the Commissioner of Police may prohibit the holding of any public meeting notified under section 8 where he reasonably considers such prohibition to be necessary in the interests of public safety or public order.

(2) Notice of a prohibition under subsection (1) shall be given—

- (a) in writing to the person who gave notice under section 8 or to any person named in that notice for the purposes of section 8(4)(a)(i); or
- (b) by publication in writing in such manner, or by posting a notice of the prohibition in such place, as the Commissioner of Police may think fit,

and such notice shall state the ground or grounds on which the prohibition is considered to be necessary and the reasons for the Commissioner's opinion as to those grounds.

(3) The power conferred by subsection (1) shall not be exercised in respect of any public meeting notified under section 8—

- (a) where notice is given in accordance with section 8(1), at any time later than 48 hours; or
- (b) where shorter notice of 72 hours or more is accepted by the Commissioner of Police pursuant to section 8(2), at any time later than 24 hours,

prior to the time of commencement of the meeting as so notified.

(4) The Commissioner of Police shall not exercise the power conferred by subsection (1) to prohibit the holding of a public meeting in any case where he considers that the interests of public safety or public order could be met by the imposition of conditions under section 11(2).

10. Designated public areas

The Governor may, by order published in the Gazette, designate any area as a designated public area for the purposes of this Part.

11. Requirements and conditions applying to public meetings

(1) At every public meeting—

- (a) there shall be present throughout the meeting either the person who organized the meeting 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 meeting;
- (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 meeting.

(2) The Commissioner of Police may, where he reasonably considers it necessary in the interests of public safety or public order, impose conditions in respect of any public meeting notified under section 8; except that if the meeting is to take place in a designated public area the Commissioner may, insofar as the interests of public order are concerned, only impose conditions relating to the time at which such a meeting may be held.

(3) Notice of any condition imposed pursuant to subsection (2) shall be given in writing to the person by whom the public meeting has been notified or to some other person concerned in the holding, convening, organizing or forming of the meeting and shall state the reasons why such condition is considered necessary.

(4) The power conferred by subsection (2) to impose conditions includes a like power to amend any such condition previously imposed and reference in this Ordinance to a condition imposed under or pursuant to

subsection (2) shall, except where the context otherwise requires, include reference to an amendment to such a condition pursuant to this subsection.

(5) Every person who organizes a public meeting, or any person acting in place of such person for the purpose of subsection (1)(a), shall comply forthwith with any direction given to him by a police officer for ensuring compliance with or the due performance of any of the requirements of subsection (1) or any conditions imposed under subsection (2).

(6) In this section—

- (a) “meeting” includes the period from first assembly to final dispersal of a meeting; and
- (b) references to a public meeting do not include references to a meeting referred to in section 7(2).

12. Compliance with safety requirements for public meetings in private premises

In respect of any public meeting held in private premises, it shall be the duty of the owner or occupier of the premises, and any person who organizes or assists in the organization of the meeting, to comply with any restriction or requirement imposed by or under any Ordinance relating to the safety of persons or the prevention of fire.

13. Regulation of public processions

(1) Subject to this Ordinance, a public procession may take place if, but only if,—

- (a) the Commissioner of Police is notified under section 13A of the intention to hold the procession;
- (b) the holding of the procession is not prohibited by the Commissioner of Police under section 14; and
- (c) the requirements of section 15(1) are complied with.

(2) This section shall not apply to—

- (a) any public procession which is not a procession on a public highway or thoroughfare or in a public park;
- (b) any public procession consisting of not more than 30 persons;
- (c) any public procession of a nature or description specified by the Commissioner of Police by notice in the Gazette.

13A. Notification of public processions

(1) For the purposes of section 13, notice of the intention to hold a public procession shall be given in writing to the Commissioner of Police—

- (a) in the case of a public procession held solely for the purposes of a funeral at which the body is present, not later than 24 hours prior to the forming of the procession;
- (b) in any other case—
 - (i) not later than 11 a.m. on the same day of the week in the preceding week as the day on which the procession is intended to be held; or
 - (ii) where the last day for giving notice under subparagraph (i) would fall on a general holiday, not later than 11 a.m. on the first day immediately preceding that day which is not a general holiday.

(2) Notwithstanding subsection (1), the Commissioner of Police may, and shall in any case where he is reasonably satisfied that earlier notice could not have been given, accept shorter notice than is specified in that subsection.

(3) In cases where the Commissioner of Police has decided not to accept shorter notice than is specified in subsection (1), he shall as soon as is reasonably practicable inform in writing the person purporting to give the notice of his decision and the reasons why the shorter notice is not acceptable.

(4) Notice under this section shall be given by being delivered in person by the person giving it, or by any person on his behalf, to the officer in charge of a police station, and shall contain particulars of the following matters—

- (a) the name, address and telephone number of—
 - (i) the person organizing the procession and any society or organization promoting or connected with the holding of the procession; and
 - (ii) a person able to act, if necessary, in place of the organizer for the purpose of section 15(1)(a);
- (b) the purpose and subject-matter of the procession;
- (c) the date, precise route, time of commencement and duration of the procession;
- (d) in respect of any meeting to be held in conjunction with the procession, the location, time of commencement and duration of the meeting; and
- (e) an estimate by the person organizing the procession of the number of people expected to attend the procession.

(5) The Commissioner of Police shall issue written acknowledgment of receipt of notice under this section to the person giving or delivering the notice.

14. Power of Commissioner of Police to prohibit notified public procession

(1) Subject to this section, the Commissioner of Police may prohibit the holding of any public procession notified under section 13A where he reasonably considers such prohibition to be necessary in the interests of public safety or public order.

(2) Notice of a prohibition under subsection (1) shall be given—

- (a) in writing to the person who gave notice under section 13A or to any person named in that notice for the purposes of section 13A(4)(a)(i); or
- (b) by publication in writing in such manner, or by posting a notice of the prohibition in such place, as the Commissioner of Police may think fit,

and such notice shall state the ground or grounds on which the prohibition is considered to be necessary and the reasons for the Commissioner's opinion as to those grounds.

(3) The power conferred by subsection (1) shall not be exercised in respect of any public procession notified under section 13A—

- (a) where notice is given in accordance with section 13A(1)(b), at any time later than 48 hours; or
- (b) where shorter notice of 72 hours or more is accepted by the Commissioner of Police pursuant to section 13A(2), at any time later than 24 hours,

prior to the time of commencement of the procession as so notified.

(4) The Commissioner of Police shall not exercise the power conferred by subsection (1) to prohibit the holding of a public procession in any case where he considers that the interests of public safety or public order could be met by the imposition of conditions under section 15(2).

15. Requirements and conditions applying to public processions

(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;
- (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.

(2) The Commissioner of Police may, where he reasonably considers it necessary in the interests of public safety or public order, impose conditions in respect of any public procession notified under section 13A, and notice of any condition so imposed shall be given in writing to the person by whom such public procession is so notified or to some other person concerned in the holding, convening, organizing or forming of the procession and shall state the reasons why such condition is considered necessary.

(3) The power conferred by subsection (2) to impose conditions includes a like power to amend any such condition previously imposed and reference in this Ordinance to a condition imposed under or pursuant to subsection (2) shall, except where the context otherwise requires, include reference to an amendment to such a condition pursuant to this subsection.

(4) Every person who organizes a public procession, or any person acting in place of such person for the purpose of subsection (1)(a), shall comply forthwith with any direction given to him by a police officer for ensuring compliance with or the due performance of any of the requirements of subsection (1) or any conditions imposed under subsection (2).

(5) In this section—

- (a) “procession” includes the period from first assembly to final dispersal of a procession; and
- (b) references to a public procession do not include references to a procession referred to in section 13(2).

16. Appeals

Any person, society or organization—

- (a) named in a notice given under section 8 or 13A; or
- (b) to whom a notice of prohibition may be given under section 9 or 14,

and who is aggrieved by a prohibition issued under section 9 or 14 or by a condition imposed by the Commissioner of Police under section 11 or 15 may appeal in writing to an appeal board constituted under section 44 against such prohibition or condition.”.

8. Police powers over meetings, processions and gatherings

Section 17(1) is amended—

- (a) in paragraph (a) by repealing “condition prescribed or imposed” and substituting “requirement, or any condition imposed,”;

- (b) in paragraph (b) by repealing “condition imposed by or under section 13, 14 or 15” and substituting “requirement, or any condition imposed, under section 15”.

9. Offences in relation to sections 6, 7, 8, 9, 11, 13, 13A, 14, 15 and 17

Section 17A is amended—

- (a) by repealing subsection (1) and substituting—

“(1) Any person who—

- (a) refuses or wilfully neglects to obey any order given or issued under section 6 or 17(3); or
- (b) knowingly contravenes or suffers or permits any person so to contravene any requirement imposed by section 11(1) or 15(1) in respect of any public meeting or public procession; or
- (c) without the permission of any police officer on duty there, knowingly enters or remains in a public place to which access has been closed to him under section 17(4); or
- (d) makes any announcement or publishes any advertisement or notice, whether in printed or other form, or in any other manner advertises or publicizes a public meeting (other than a meeting referred to in section 7(2)) or a public procession (other than a public procession referred to in section 13(2))—

(i) which has not been notified under section 8 or 13A;

(ii) notice of which under section 8 or 13A was given to the Commissioner of Police less than 24 hours previously (excluding general holidays); or

(iii) which is prohibited under section 9 or 14, commits an offence and is liable to a fine of \$10,000 and to imprisonment for 12 months.

(1A) Any person who without reasonable excuse contravenes section 11(5) or 15(4) commits an offence and is liable to a fine of \$5,000 and to imprisonment for 12 months.”;

- (b) by repealing subsection (4).

10. Power of Commissioner of Police to prohibit public gatherings

Section 17D is repealed.

11. Proof

Section 17F is amended—

- (a) in paragraph (a) by adding “or 14” after “section 9”;
- (b) in paragraph (b) by adding “or 15(2)” after “section 11(2)”;
- (c) by repealing paragraphs (c), (d) and (e).

12. Possession of offensive weapon in public place

Section 33(6) is repealed and the following substituted—

“(6) Where a police officer reasonably believes that—

- (a) an offence against section 18 or 19 has been committed, is being committed or may be committed in any place; and
- (b) offensive weapons have been or may be used in the course of the commission of such offence,

he may, within the vicinity of such place, stop and search any person in a public place in order to ascertain whether that person has been guilty of an offence against this section.”.

13. Closed areas

Section 36(1) is repealed and the following substituted—

“(1) The Governor may, where he reasonably believes that it is necessary for the protection of security, public order or public health, by order declare any area or place to be a closed area.”.

14. Sections substituted

Sections 43 and 44 are repealed and the following substituted—

“43. Appeal Board

(1) Every appeal made under section 16 shall be determined by an appeal board to be known as the Appeal Board on Public Meetings and Processions (in this section and sections 44 and 44A referred to as “the Appeal Board”).

(2) The Governor shall appoint to be the Chairman of the Appeal Board a person who—

- (a) is a retired Justice of Appeal or judge of the High Court;
- (b) is a retired District Judge; or
- (c) has served for more than 10 years as a magistrate but who is no longer serving as a magistrate.

(3) The Governor shall appoint a panel of 15 persons, not being public officers, whom he considers suitable for appointment under section 44 as members of the Appeal Board, 2 of whom he shall appoint to be the Deputy Chairmen of the Appeal Board.

(4) Subject to subsection (6), the Chairman and any person appointed under subsection (3) shall be appointed for a term of not more than 2 years but may be reappointed.

(5) An appointment under subsection (2) or (3) shall be notified in the Gazette.

(6) The Chairman and any person appointed under subsection (3) may at any time resign by notice in writing to the Governor.

44. Constitution and powers of Appeal Board

(1) The Appeal Board shall consist of the Chairman or a Deputy Chairman who shall preside at the hearing and 3 persons selected in rotation in accordance with the alphabetical order of their surnames from the panel referred to in section 43(3), whom the Chairman shall appoint to be members of the Appeal Board to hear any appeal.

(2) In relation to the hearing of appeals every question before the Appeal Board shall be determined by the opinion of the majority of the members hearing the appeal and in the case of an equality of votes the Chairman or Deputy Chairman shall have a casting vote.

(3) In hearing an appeal the Appeal Board may receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, and whether or not it would be admissible in a court of law.

(4) The Appeal Board may, after hearing an appeal, confirm, reverse or vary the prohibition or condition appealed against.

44A. Supplementary provisions relating to appeals

(1) The procedure and practice of the Appeal Board shall, subject to this Ordinance, be determined by the Chairman.

(2) If the Chairman is precluded by illness, absence from Hong Kong or any other cause from exercising his functions the Deputy Chairmen shall take it in turn to act as Chairman, and as such to exercise all the functions of the Chairman during the period the Chairman is precluded

from exercising his functions, with the identity of the Deputy Chairman to act on the first such occasion being determined in accordance with the alphabetical order of the surnames of the Deputy Chairmen.

(3) In the hearing of an appeal, the appellant and the Commissioner of Police shall be entitled to be heard either in person or through a representative.

(4) If a party mentioned in subsection (3) fails to attend or be represented at a hearing of which he has been notified the Appeal Board may hear and determine the appeal in the party's absence.

(5) Before deciding to dispose of any appeal in the absence of a party the Appeal Board shall consider any representations in writing submitted by that party and, for the purposes of this subsection, an appeal and any reply to an appeal shall be treated as representations in writing.

(6) Where any notice of an appeal is given the Appeal Board shall consider and determine the appeal with the greatest expedition possible so as to ensure that the appeal is not frustrated by reason of the decision of the Appeal Board being delayed until after the date on which the public meeting or public procession is proposed to be held.

(7) The determination of an appeal by the Appeal Board shall be final.

(8) The Chairman of the Appeal Board, in consultation with the Secretary for Security, may make rules providing for matters in connection with appeals to the Appeal Board and the hearing and determination of such appeals.”.

15. Offences by societies, etc.

Section 47 is repealed.

16. Section substituted

Section 49 is repealed and the following substituted—

“49. Power to require identification

(1) Where a member of Her Majesty's forces acting in the course of his duty or a police officer reasonably believes that it is necessary for the purpose of preventing, detecting or investigating any offence for which the sentence is fixed by law or for which a person may (on a first conviction for that offence) be sentenced to imprisonment, the member or officer may require any person to produce proof of his identity for inspection, and any person who fails to comply with any such requirement commits an offence

and is liable on summary conviction to a fine of \$10,000 and to imprisonment for 6 months.

(2) In this section “proof of identity” has the same meaning as in section 17B of the Immigration Ordinance (Cap. 115).”.

17. Delegation of powers

Section 52 is amended—

(a) in paragraph (a) by repealing “section 4, 6, 9, 11, 13 or 14; and” and substituting “section 6(b) or (c), 9, 11, 14 or 15;”;

(b) by adding—

“(aa) delegate to any police officer of the rank of chief superintendent or above any of the powers conferred on him by section 6(a); and”.

18. Transitional

This Ordinance shall not apply to—

(a) any public meeting notice of which for the purposes of section 7 of the principal Ordinance had, at the time this Ordinance came into operation, been given to the Commissioner of Police; or

(b) any public procession an application for which for the purposes of section 13 of the principal Ordinance had, at the time this Ordinance came into operation, been made to the Commissioner of Police.

Consequential Amendments

Summary Offences Ordinance

19. Nuisances committed in public places, etc.

The Summary Offences Ordinance (Cap. 228) is amended—

(a) by repealing section 4(29);

(b) in the Chinese text, by repealing section 4(29).

Public Order (Public Meetings) (General Conditions) Order

20. Repeal

The Public Order (Public Meetings)(General Conditions) Order (Cap. 245 sub. leg.) is repealed.