

LEGISLATIVE COUNCIL BRIEF

Film Censorship Ordinance
(Chapter 392)

FILM CENSORSHIP (AMENDMENT) BILL 1998

INTRODUCTION

At the meeting of the Executive Council on 17 November 1998, the Council ADVISED and the Acting Chief Executive ORDERED that the Film Censorship (Amendment) Bill 1998 at Annex A should be introduced into the Legislative Council.

2. In exercise of the power conferred on him by section 29(1) of the Film Censorship Ordinance (the Ordinance), the Secretary for Information Technology and Broadcasting will make the Film Censorship (Amendment) Regulation 1998 at Annex B on the same day as that of enactment of the Film Censorship (Amendment) Ordinance 1998.

BACKGROUND AND ARGUMENT

3. Government has undertaken in the Final Report of the Government Task Force of Services Promotion and the 1997 Policy Address to improve the operation of the Ordinance and make the regulatory regime more user and business-friendly. We have completed a review of the Ordinance and identified a number of areas which need improvements. The improvements which require the amendment of the Ordinance and its subsidiary legislation are set out in paragraphs 4 to 8 below.

Exemption of slides of non-commercial nature from censorship requirement

4. Under the Ordinance, a film has to be submitted to the Film

Censorship Authority (the Authority) for classification before exhibition. By definition, “film” also includes slides. Although the Ordinance provides for certain prescribed classes of films such as cultural, educational, instructional and promotional films to be exempted from classification, they are still required to be submitted to the Authority for examination before exemption from classification can be granted. This censorship requirement which also applies to slides has drawn particular criticisms from arts, educational and professional bodies which frequently use slides as visual aids in public talks and lectures. In their view, the submission requirement is bureaucratic and has posed unnecessary administrative burdens on the organizers. As our primary policy intent is to regulate the commercial application of slides as advertisements and not slides used in bona fide cultural, educational, instructional, promotional or religious events, we therefore propose to lift the submission requirement for the latter. The submission requirement will continue to apply to all other slides and still films. To guard against possible abuse, the Authority will have the reserve power to require exhibitors to submit still films for examination.

Simplification of the appeal mechanism

5. The Ordinance provides for an appeal channel and sets out the detailed procedures for lodging appeals against the decision of the Authority or a censor. Any member of the public who is aggrieved by the exhibition, publication or display of a film may file a request for review. However, the request has first to be submitted to the Chief Secretary for Administration for consideration before it is referred to the Board of Review for review. To streamline and simplify the appeal procedure, we propose that an appeal request can be lodged with the Board of Review through the Secretary for Information Technology and Broadcasting (SITB).

Empowering SITB to make regulation on the time frame for delivery of services to the public

6. At present, the Authority is bound by the Ordinance to deliver decisions within stipulated time frames. These include the decision on the classification of a film, and the issue of a Certificate of Exemption, a Certificate for Packaging and a Certificate for Advertising Material. The current stipulated time frames were set some time ago and they no longer reflect the more efficient service the Authority is now able to deliver. As the statutory time frames may need to be updated

from time to time, we propose to remove this provision from the Ordinance and to empower SITB to determine the statutory time frames for delivery of the various services to the public by way of regulation so as to obviate the need for frequent legislative amendment to the Ordinance.

Shortening statutory time frame

7. Consequent to the proposal in paragraph 6 above, we propose that the opportunity be taken to update the various stipulated time frames. The time limit set for a censor to give a decision is shortened from 21 days to 14 days. The maximum time which can be allowed for a censor to give a decision on any particular case is reduced from the existing 35 days to 28 days. The statutory time for issue of a Certificate of Exemption is shortened from seven working days to five working days.

Empowering the Film Censorship Authority to determine and set forms

8. At present, section 29(1) of the Ordinance empowers SITB to prescribe by regulation the form of certificates to be issued as well as the relevant submission forms. A total of eight forms are involved. Since the enactment of the Ordinance in 1988, the forms in the Film Censorship Regulations have been amended four times to cater for necessary changes. Our review concludes that there is no need to prescribe forms by regulation. This can be done administratively by an authorised body. For more effective administration of the Ordinance, we propose to delegate the power to determine and set the forms that are required for the purposes of the Ordinance to the Authority, i.e. the Commissioner for Television and Entertainment Licensing. Under this proposed arrangement, the Authority can introduce new forms and amend existing forms in response to changing circumstances at the earliest instance.

THE FILM CENSORSHIP (AMENDMENT) BILL 1998

9. The main provisions of the Bill are -
- (a) **Clauses 2 and 4** exempt the exhibition of a still film of a cultural, educational, instructional, promotional and

religious nature and for non-commercial purpose from censorship requirement.

- (b) **Clause 10** simplifies the appeal procedures by enabling requests from members of the public for a review of the decision of the Authority or a censor to be made to the Board of Review through SITB.
- (c) **Clause 12** empowers SITB to make regulation to prescribe the statutory time frame for the delivery of services to the community.
- (d) **Clause 13** empowers the Authority to determine and set the forms that are required for the purposes of the Ordinance.

THE FILM CENSORSHIP (AMENDMENT) REGULATION 1998

 B 10. The main provisions of the Regulation at Annex B, to be made by SITB under section 29(1) of the Ordinance, are -

- (a) **Clauses 2 to 5 and 8** reflect amendments to the principal Ordinance relating to the determination and setting of forms by the Authority.
- (b) **Clauses 7 and 9** prescribe the statutory time for notifying a censor's decision on film classification and the issue of a Certificate of Exemption, a Certificate for Packaging and a Certificate for Advertising Material.

PUBLIC CONSULTATION

11. Representatives of major film industry associations (including the Hong Kong, Kowloon and New Territories Motion Picture Industry Association Limited, Movie Producers and Distributors Association of Hong Kong Limited and Hong Kong Film Directors' Guild) have been consulted. They supported the proposed amendments. Cultural and professional organisations which regularly submit non-commercial slides to the Authority have also been consulted. They welcomed the proposal to remove censorship requirement for slides of non-commercial nature.

HUMAN RIGHTS IMPLICATIONS

12. The proposed legislative amendments serve to make the regulatory regime more user and business-friendly. The Department of Justice advises that the proposed legislative amendments are consistent with the human rights provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

13. Savings arising from the removal of censorship requirement for slides of non-commercial nature are not significant. This will be re-deployed by the Television and Entertainment Licensing Authority to cope with the increase in workload of its Film Section and to improve its service to the trade. Non-commercial slides submitted for censorship are exempt from censorship fees. Abolishing the censorship requirement for this category of slides and other proposed amendments will not have any revenue implications.

LEGISLATIVE TIMETABLE

14. The following legislative timetable will apply -

Publication in the Gazette	27 November 1998
First reading and commencement of Second Reading debate	9 December 1998
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

15. A press release will be issued on 25 November 1998. The Bill will be published in the Gazette on 27 November 1998. A spokesman will be available for answering media enquiries.

ENQUIRY

16. For enquiries on this brief, please contact Miss Joanna CHOI, Principal Assistant Secretary for Information Technology and Broadcasting, at telephone number 2189 2229.

Information Technology and Broadcasting Bureau
25 November 1998

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A BILL

To

Amend the Film Censorship Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Film Censorship (Amendment) Ordinance 1998.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Information Technology and Broadcasting by notice in the Gazette.

2. Restriction on exhibiting films unless exempted or approved

Section 7 of the Film Censorship Ordinance (Cap. 392) is amended -

(a) in subsection (1), by repealing “neither” and substituting “none”;

(b) in subsection (2), by adding before paragraph (a) -

“(aa) that the film is a still film that is not subject to section 8;”.

3. Films to be submitted to Authority before exhibition

Section 8(2) is amended -

(a) in paragraph (a), by repealing “prescribed under section 29(1)” and substituting “the Authority may determine”;

(b) by repealing paragraph (b) and substituting -

“(b) be submitted in such manner and at such place as is prescribed together with such form, information and particulars as the Authority may determine.”.

4. Section added

The following is added -

“8A. Application of section 8 to still films

(1) Notwithstanding section 8 and subject to this section, a still film in respect of which the conditions specified in subsection (2) are satisfied is exempt from section 8.

(2) The conditions referred to in subsection (1) are that the still film is exhibited or intended to be exhibited for any purpose not being a commercial purpose and is a still film of a cultural, educational, instructional, promotional or religious nature, exhibited or intended to be exhibited by a cultural, educational, religious or professional organization, or a member of any such organization.

(3) Notwithstanding subsection (1), the Authority may, by notice in writing served personally or by registered post on any person who by virtue of subsection (2), exhibits or intends to exhibit a still film of any of the descriptions mentioned in that subsection, require the person on whom the notice is served to submit to him the still film exhibited or intended to be exhibited not later than 5 working days beginning on the date of service or such longer period as he may allow in a particular case.

(4) Where a notice is served under subsection (3), the still film in respect of which it is served shall, whether or not it has been exhibited, be deemed to be subject to section 8.”.

5. Exemptions of films by Authority

Section 9 is amended -

(a) in subsection (1), by repealing”, not later than 7 working days after it is so accepted,”;

(b) by repealing subsection (3) and substituting -

“(3) Where a film is exempted under this section, the Authority shall within the prescribed period issue to the person who submitted it under section 8 a certificate of exemption -

(a) in such form as the Authority may determine; and

(b) endorsed with the conditions to which the exemption is subject.”;

(c) in subsection (5), by repealing “A fee prescribed by regulations made under section 29(1A)” and substituting “A prescribed fee”.

6. Action to be taken by Authority and censor in relation to film which is not exempted

Section 10(5) is amended by repealing everything after “subsection (4)” and substituting “within the prescribed period.”.

7. Certificate of approval, notice of refusal to approve and notice concerning excision

Section 13(1) (a) and (4) (b) (iii) (A) is amended by repealing “the prescribed form” and substituting “such form as the Authority may determine”.

8. Submission of and conditions on packaging

Section 15B is amended -

(a) by repealing subsection (3) and substituting -

“(3) Any packaging submitted under subsection (1) shall be submitted in such manner and at such place together with the appropriate fee as is prescribed and together with such form, information and particulars as the Authority may determine.”;

(b) in subsection (4) (a), by repealing”, within 4 working days of such submission,”;

(c) by repealing subsection (4) (b) and substituting -

“(b) shall, within the prescribed period, issue a certificate as regards such packaging, which shall -

- (i) be in such form as the Authority may determine;
- (ii) certify that the packaging has been submitted; and
- (iii) where a requirement is made under paragraph (a), have that requirement endorsed on it.”.

9. Submission for approval of advertising material

Section 15K(4) and (5) is repealed and the following substituted -

“(4) For the purposes of this section, advertising material shall be submitted in such manner and at such place together with the appropriate fee as is prescribed and together with such form, information and particulars as the Authority may determine.

(5) Where any advertising material is submitted under this section the Authority may within the prescribed period -

- (a) approve the advertising material; or
- (b) refuse to approve the advertising material, and where he approves the advertising material, he shall issue a certificate which shall -
 - (i) be in such form as the Authority may determine; and
 - (ii) certify that the advertising material has been approved.”.

10. Request of person aggrieved by exhibition of film to review decision of Authority or censor

Section 19 is amended -

- (a) in subsections (1) (ii) and (2), by repealing “Chief Secretary for Administration” and substituting “Secretary”;
- (b) in subsection (2), by repealing “by delivering that request to the Secretary,”;
- (c) by adding -

“(2A) The Secretary shall only decline to refer a decision to the Board under subsection (2) if he is satisfied that the request to which the decision relates is made in a frivolous or vexatious manner.

(2B) Where the Secretary declines, under subsection (2A), to refer a decision to the Board under subsection (2), he shall give to the person who made the request notice, in writing, of the fact that the decision has not been referred to the Board and the notice shall contain an adequate statement of the reasons why he is satisfied that the request to which the decision relates is made in a frivolous or vexatious manner.”;

- (d) in subsection (3), by repealing “under subsection (1) is delivered to the Secretary under subsection (2)” and substituting “is made under subsection (1)”;
- (e) in subsection (4), by repealing “under subsection (1) which is delivered to the Secretary under subsection (2)” and substituting “made under subsection (1)”;
- (f) in subsections (5), (6), (7), (9) and (10), by repealing “which is delivered to the Secretary under subsection (2)”.

11. Authority may issue replacement certificates

Section 25(1) is amended by repealing “the prescribed form” and substituting “such form as the Authority may determine”.

12. Regulations

Section 29(1) is amended -

- (a) by repealing paragraphs (c), (e), (h), (hb), (hc), (j) and (k);
- (b) in paragraph (i), by repealing “or 18” and substituting “, 18 or 19”;
- (c) by adding -
 - “(p) any period to be prescribed under this Ordinance.”.

13. Section added

The following is added -

“29B. Power of Authority to set forms

(1) The Authority may set the forms to be determined by him or that are required for the purposes of this Ordinance.

(2) The Authority’s power under subsection (1) is subject to any express requirement under this Ordinance for a form to comply with the requirement.

(3) The Authority may include in a form a statutory declaration to be made by the person completing the form confirming that the particulars contained in the form are correct to the best of the person’s knowledge.”.

Explanatory Memorandum

This Bill amends the Film Censorship Ordinance (Cap. 392) so as to simplify existing censorship requirements for still films, streamline the operation of the Ordinance, improve the quality of existing services to the trade, simplify the determination and setting of forms and simplify appeal procedures currently available against a decision of the Film Censorship Authority or a censor on film censorship matters under the Ordinance.

2. More particularly -

- (a) still films, that is, slides, including single frames of a film, of non-moving visual images that are exhibited or intended to be exhibited for any purpose not being a commercial purpose and that are still films of a cultural, educational, instructional, promotional or religious nature, exhibited or intended to be exhibited by a cultural, educational, religious or professional organization, or a member of any such organization are exempt from the censorship requirements of the Ordinance. Provision is however made for the Authority, if necessary, to require the exhibitors to submit any such still film to him for examination so as to guard against abuse (clauses 2 and 4);
- (b) the Authority is given power to determine and set the forms that are required for the purposes of the Ordinance (clauses 3, 5, 7, 8, 9, 11, 12 and 13);
- (c) appeal procedures are simplified by enabling requests for a review of a decision of the

Authority or a censor to be made to the Board of Review through the Secretary for Information Technology and Broadcasting (clause 10).

FILM CENSORSHIP (AMENDMENT) REGULATION 1998

(Made under section 29 of the Film Censorship Ordinance (Cap. 392))

1. Commencement

This Regulation shall come into operation on the day appointed for the coming into operation of the Film Censorship (Amendment) Ordinance 1998 (of 1998).

2. Submission of film under section 8

Regulation 2(b) of the Film Censorship Regulations (Cap. 392 sub. leg.) is amended by repealing “Form 1 in Schedule 1” and substituting “the form determined by the Authority under that section”.

3. Submission of packaging under section 15B(1) of the Ordinance

Regulation 2A(b) is amended by repealing “Form 5 of Schedule 1” and substituting “the form determined by the Authority under that section”.

4. Submission of advertising material under section 15K of the Ordinance

Regulation 2B(b) is amended by repealing “Form 7 in Schedule 1” and substituting “the form determined by the Authority under that section”.

5. Regulations repealed

Regulations 4, 7, 7A, 7B and 10 are repealed.

6. Requests under section 17 or 19

Regulation 8 is amended by repealing “or the Chief Secretary for Administration, as the case may require” where it twice occurs.

7. Regulation added

The following is added -

“14. Period prescribed under section 9(3), 10(5), 15B(4)(b) or 15K(5)

(1) The period prescribed under section 9(3) of the Ordinance for the Authority to issue a certificate of exemption is specified in Part I of Schedule 5.

(2) The period prescribed under section 10(5) of the Ordinance for the censor to make his decision under section 10(4) of the Ordinance is specified in Part II of Schedule 5.

(3) The period prescribed under section 15B(4)(b) of the Ordinance for the Authority to issue a certificate as regards any packaging constituting the cover of a videotape or laserdisc and submitted under section 15B(1) of the Ordinance is specified in Part III of Schedule 5.

(4) The period prescribed under section 15K(5) of the Ordinance for the Authority to approve or refuse to approve any advertising material relating to a film is specified in Par IV of Schedule 5.”.

8. Forms

Schedule 1 is repealed.

9. Schedule added

The following is added -

“SCHEDULE 5

[reg. 14]

PERIODS PRESCRIBED FOR THE PURPOSES OF THE ORDINANCE

Section of the Ordinance	Period prescribed
PART I	
1. 9(3) - The issue, by the Authority, of a certificate of exemption.	Not later than 5 working days after a film is submitted to and accepted by the Authority under section 8 of the Ordinance.
PART II	
2. 10(5) - The making, by the censor, of a decision under section 10(4) of the Ordinance.	Not later than 14 days after a film is submitted to and accepted by the Authority under section 8 of the Ordinance or such longer period, but in any case not more than 28 days after the film is so submitted and accepted as the Secretary may allow in any particular case.
PART III	
3. 15B(4)(b) - The issue, by the Authority, of a certificate as	Not later than 4 working days after the submission to the Authority of such packaging under section 15B(1) of the Ordinance.

regards any packaging
constituting the cover of a
videotape or laserdisc and
submitted under section
15B(1) of the Ordinance.

PART IV

- | | | |
|----|--|---|
| 4. | 15K(5) - The approval or
refusal of approval, by the
Authority, of any advertising
material relating to a film. | Not later than 4 working days after the submission
to the Authority of such advertising material
under section 15K(1) of the Ordinance.”. |
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Secretary for Information Technology
and Broadcasting

1998

Explanatory Note

The purpose of this Regulation is to amend the Film Censorship Regulations (Cap. 392 sub. leg.) to reflect amendments to the Ordinance relating to the determination and setting of

forms, the simplification of appeal procedures for members of the public and the prescribing of periods for the purposes of the Ordinance.