

For discussion
on 14 May 2001

**LegCo Panel on Health Services
Meeting of 14 May 2001**

**Proposed Amendments to
the Smoking (Public Health) Ordinance (Cap 371)**

Introduction

This paper sets out, for Members' comments, the Administration's proposed amendments to the Smoking (Public Health) Ordinance (Cap 371).

Background

2. Smoking is the single largest preventable cause of death. Its harmful effects to health are well documented. Medical research and studies have shown unequivocally that smoking leads to various diseases such as lung cancer, bronchitis, emphysema and ischaemic heart disease. In Hong Kong, it claims about 5,500 lives every year. In terms of monetary loss, the estimated cost of medical treatment in the public sector of diseases directly attributable to smoking amounted to \$797 million in 1999, as compared to \$635 million in 1996.

3. Passive smoking, or commonly known as secondhand smoke, also poses great risk to the health of the public. Medical evidence reveals that prolonged exposure to secondhand smoke can lead to lung cancer, ischaemic heart disease, serious respiratory illness, sudden infant death syndrome and middle ear disease. Moreover, medical studies indicated that the concentration of smoking-related carcinogen in the urine of people, who are consistently exposed to secondhand smoke, was found to be three times higher than normal persons. According to the estimation based on a survey conducted by the Harvard consultants in 1999, \$157 million was spent on medical consultation arising from exposure to passive smoking.

4. The Government's established policy on tobacco control is to seek, through a step-by-step approach, to discourage smoking, contain the proliferation of tobacco use and protect public from passive smoking to the maximum extent possible. A multi-pronged approach, comprising legislation, taxation, publicity, education and enforcement, has been adopted to achieve the above policy objectives.

5. The Smoking (Public Health) Ordinance (the Ordinance) was first enacted in 1982 to restrict the use, sale, and promotion of tobacco products. The Ordinance is subject to review on a regular basis, having regard to the latest international trends in tobacco control and changing domestic circumstances. The last amendment to the Ordinance was in 1997.

6. During a recent LegCo motion debate on tobacco control on 10 January 2001, Members expressed strong support for the Administration to introduce measures to further protect the public from passive smoking. The Health and Welfare Bureau has subsequently reviewed the Ordinance and identified areas which can be further improved through this legislative amendment exercise.

Proposed Amendments to the Ordinance

7. The amendments proposed in the ensuing paragraphs seek to achieve mainly three objectives, i.e., to protect members of the public, particularly non-smokers, against passive smoking, to close loopholes identified in the existing legislation and to bring about more effective enforcement of the Ordinance.

I. Expansion of Statutory No Smoking Areas

Restaurants and other public indoor premises

8. Under the existing legislation, a restaurant providing indoor seating accommodation for more than 200 persons, excluding areas partitioned exclusively for a private event, is required to designate at least one-third of such area as no smoking area. This requirement has been proved to be problematic since it came into effect in July 1999. Firstly, individual restaurant may need to adjust the size of its no smoking area frequently to cater for the banquet arrangements of the day. This has caused inconvenience to the management, confusion to customers and potential conflicts between smokers and non-smokers. Secondly, smoke can diffuse from smoking area to no smoking area. This in effect defeats the original intention of protecting non-smokers in a restaurant setting from passive smoking. The public is generally supportive of a total smoking ban in all restaurants. According to a survey conducted by the Hong Kong Council on Smoking and Health (COSH), 69% of the respondents supported that all seats in all restaurants should be designated as smoke-free.

Proposal

9. We propose that smoking should be prohibited in all restaurants, regardless of their size and seating capacity. Implementation will be preceded by a grace period of, say, six to twelve months. The smoking ban will also cover bars and karaokes, with consideration to be given for a longer grace period if demonstrated to be necessary.

10. To expand the scope of protection, the no smoking requirement would be gradually extended to other public indoor premises such as bathhouses, nightclubs and mahjong places. Enforcement in these licensed premises would be left to a subsequent stage when prohibition of indoor smoking has been generally practiced.

Enforcement arrangement

11. The management of the premises will be the primary enforcement agency for the statutory smoking ban. Officers of the Tobacco Control Office

(TCO) will liaise with and educate the managers on ways and means for effective implementation of the requirement. The Police will continue to provide assistance when offenders refuse to abide by the requirement.

Schools, Universities and Tertiary Institutions

12. The Ordinance at present provides that the principal of a school, university or tertiary institution may designate the premises as no smoking area at his/her discretion. Education Regulations (Cap. 279A) also prohibits smoking in classrooms during school hours. However, smoking is not a punishable offence under the Regulations, and the principal of individual school may not designate his/her premises as no smoking areas. Thus staff members of the schools may still smoke in the school premises, creating an undesirable example to students.

Proposal

13. We propose that smoking should be prohibited in both indoor and outdoor areas of all kindergartens, primary and secondary schools, and in the indoor premises of universities and tertiary institutions.

Enforcement arrangement

14. The principal of the school will assume the primary enforcement responsibility, with his/her enforcement role being similar to that of managers of other designated no smoking areas. Guidelines will be developed and provided to principals to facilitate their enforcement.

Indoor Workplaces

15. Currently, there is no legislation regulating smoking in indoor workplaces. The Omnibus Household Survey conducted by the Census and Statistics Department in 2001 revealed that about 733,000 persons working in indoor premises are currently subject to the influence of passive smoking. There have been strong public opinions calling for protection against passive smoking in indoor workplaces. According to the same survey, 73.5% of the respondents supported a smoking ban in indoor workplaces by legislation.

Proposal

16. We propose that smoking should be prohibited in all indoor workplaces, including indoor offices, shops and factories. Consideration will be given to granting a longer grace period to businesses who demonstrate genuine difficulty in complying with the smoking ban requirement.

Enforcement arrangement

17. The management of individual companies will be the primary enforcement agency. The TCO and COSH will assist the management in drawing up internal guidelines and implementation plans. The Police will assist in the event of visiting customers refusing to abide by the smoking ban.

II. Tobacco Advertisement

Display of Tobacco Advertisement

18. Under the existing Ordinance, the display of tobacco advertisement is prohibited except at licensed hawker stalls and retail outlets employing not more than two employees. Based on our observation, we noted that such exemption has become a source of abuse. Numerous tobacco advertisements are being displayed at small retail stalls selling tobacco products. Many oversized light-boxes depicting tobacco advertisements are found upon the premises of small shops throughout the territory. This has in effect defeated the purpose of banning the display of tobacco advertisements in public areas.

Proposal

19. We propose to revoke the current exemption on the display of tobacco advertisement at licensed hawker stalls and retail outlets employing not more than two employees.

Enforcement arrangement

20. TCO officers will ensure compliance with the regulation during their routine fieldwork. They will also act upon receipt of public complaints.

Price Board and Price Marker

21. Price boards (for more than one tobacco brand) and price markers (for one single tobacco brand) are allowed for display inside premises selling tobacco products. Currently, a price board cannot exceed a size of 2000 sq. centimeters, but there is no size limit for price markers. It is noted that many over-sized price markers are being displayed in numerous retail outlets in the territory to achieve the effect of advertising for specific brand of tobacco product.

Proposal

22. We propose to prescribe the size of the price board and price marker to, say, not larger than 1,500 cm² and 50 cm² respectively. We also propose also to prescribe the font size of words printed on them so that while price boards and price markers can continue to serve as indication of prices, their potential use as advertisement for tobacco products is minimized.

Enforcement arrangement

23. TCO officers will ensure compliance during their periodic check on selected retail outlets, such as the duty-free shops.

III. Promotion of Tobacco Products

Sale of tobacco products in association with other products

24. The existing legislation stipulates that a tobacco product cannot be sold in association with any gifts, or token, stamp and raffle ticket which may be exchanged for any gift. Complaints have been received that tobacco products are being sold in association with non-tobacco products, such as watches or lighters. These non-tobacco merchandises are charged at prices much lower than their actual value to induce purchase of the accompanying tobacco products.

Proposal

25. We propose to prohibit the sale of a tobacco product in association with any product, regardless it is charged or not.

Enforcement arrangement

26. TCO officers will monitor the retail outlets of tobacco products to ensure compliance.

Tobacco sponsorship

27. Currently, the display of a tobacco brand name in any sponsored event will be deemed a tobacco advertisement and hence prohibited. However, if a tobacco sponsorship is accompanied by the corporate name of a tobacco company (e.g. Philip Morris), or the brand name of a tobacco product is in association with a non-tobacco product (e.g. Salem in association with Perrier), and if no words associated with “smoking” or “cigarette” or other tobacco products are mentioned, then the related promotional materials are not regarded as tobacco advertisements.

28. We noted that in some events jointly sponsored by a tobacco and a non-tobacco product, the promotional materials were designed in a subtle way that the brand name of the tobacco was more prominent than the non-tobacco product, hence reinforcing the effect of advertisement for the former.

Proposal

29. We propose to prohibit the brand name of any tobacco product, and any words in association with “tobacco”, to be used in the promotion of any sponsored event, irrespective of whether it is used in association with a non-tobacco product. Nevertheless, the appearance of the brand name of a tobacco product is allowed if such name is clearly stipulated to be a non-tobacco product/merchandise and made no reference at all to the tobacco product.

Enforcement arrangement

30. TCO officers will liaise with organizers of major events that are known to seek sponsorships to ensure that they are aware of this restriction.

IV. Health Warning on Tobacco Products

31. Under the existing Ordinance, health warnings in prescribed size and wording, and the quantitative amount of tar and nicotine yields are required to be borne on the package of cigarette products. Canada has recently introduced health warnings, which include graphic depiction of damaged human organs caused by smoking, to be printed on tobacco packages to create greater visual impact on the purchasers. There are local voices calling for adoption of similar measure in Hong Kong.

Proposal

32. We propose to introduce enabling provision in the Ordinance allowing health warnings to contain pictorial and graphic contents. Detailed format of such health warning may be prescribed by the Secretary of Health and Welfare (SHW) by order in the Gazette in future.

Enforcement arrangement

33. The Customs and Excise Department will continue to monitor the health warning on tobacco products to ensure compliance.

V. Law Enforcement

34. At present, there are several government departments assisting in the enforcement of the Ordinance, namely, the Police, Custom and Excises Department, Food and Environmental Hygiene Department and Marine Department. Also, managers of statutory no smoking areas are empowered to enforce the legislation. However, the current enforcement mechanism is not well coordinated. Each of them is enforcing certain provisions of the Ordinance, and there lacks a designated enforcement agency to oversee the overall implementation of the Ordinance and co-ordinate efforts among departments concerned. To rectify the situation, the TCO was set up in February 2001 to undertake the coordinating role. It is also considered

necessary to delegate TCO officers with proper authority to facilitate their discharge of enforcement duties effectively.

Proposal

35. We propose to introduce provisions in the Ordinance enabling SHW to authorize public officers, particularly staff of TCO, to initiate prosecuting action against the following offences in the Ordinance: -

- (a) Failing to display sufficient number of no smoking notices in no smoking area
- (b) Failing to place a sign outside a restaurant indicating that the entire restaurant is a statutory no smoking area (provided the proposal in paragraph 9 is adopted)
- (c) Selling tobacco product without health warning
- (d) Printing or distributing tobacco advertisement on printed publication
- (e) Displaying tobacco advertisement
- (f) Broadcasting tobacco advertisement on radio and TV
- (g) Exhibiting tobacco advertisement by film
- (h) Placing tobacco advertisement on Internet
- (i) Contravening the prohibition on tobacco sponsorship
- (j) Failing to comply with the statutory requirements on price board and price marker
- (k) Giving gift or other consideration in selling of tobacco products
- (l) Selling a tobacco product in association with non-tobacco product (provided the proposal in paragraph 25 is adopted)
- (m) Failing to display a notice indicating that person under the age of 18 is prohibited to purchase tobacco products, when

offering for sale tobacco products

36. With proper authority conferred on TCO officers, they will conduct the necessary investigation, collect evidence and initiate prosecution action or refer the case to the Department of Justice for court action depending on the circumstances of the case. If deemed necessary, TCO officers could also be authorized by SHW to mount ad hoc enforcement operation in selected malls or restaurants, with the support of the Police and the management of the premises concerned.

37. Managers of statutory no smoking areas such as restaurants, shopping malls, will continue to be empowered to enforce the law as in the present legislation. Similar power will also be conferred upon principals of the schools and managers of offices and factories.

Way Forward

38. The above proposals will form the basis of our consultation with the relevant groups and organizations of the community in the coming months. A Regulatory Impact Assessment study will be conducted to assess the economic impact of the proposals on the affected sectors. Subject to the views and feedback collected, we shall refine the proposals as appropriate, and initiate legislative amendments in the 2001/02 legislative year.

Advice Sought

39. Members are invited to comment on the proposed amendments set out from paragraphs 9 to 35.