

《2005年吸煙(公眾衛生)(修訂)條例草案》委員會

政府當局就二零零六年二月十四日、
三月三十一日、四月四日及四月十日
法案委員會會議席上所提事項作出的回應

目的

本文件載述政府當局就法案委員會二零零六年二月十四日、三月三十一日、四月四日及四月十日會議上所提事項作出的回應。

背景

2. 在上述會議上，議員提出下列各項問題，要求政府當局以書面答覆－

(a) 鑑於第 3(3)(c)條提及禁止吸煙區的管理人只可召喚一名警務人員協助執行禁煙規定，根據擬議新的第 15F 條委任的督察可否根據現行第 3(3)(c)條協助執行禁煙規定；

政府當局的回應

3. 條例第 3(3)(1)條並沒有限制禁止吸煙區的管理人向控煙辦公室作出投訴。根據新的第 15G 條，辦公室的督察會被授權搜集有關吸煙罪行的證據，並要求有關人仕提供其姓名及地址和出示身分證明文件。

(b) 是否有任何方法確定小學及中學、專上院校及大學的確切界線；如有的話，請說明之；

4. 就法定禁止吸煙區而言，相關的法例規定適用於學校的校舍或任何部分。根據《教育條例》第3條，“校舍”包括學校康樂室、居住設施、運動場、操場及為學校用途而使用的其他地方。每間學校可在內營辦的處所範圍會顯示在其樓面平面圖。有關圖則會在學校註冊時由教育統籌局審閱並存放。

5. 關於《吸煙(公眾衛生)條例》(第371章)(條例)所界定的“指明教育機構”，其界線並沒有在相關的條例(如適用的話)內清楚闡明。因此我們已致函該等機構，以獲取有關其界線的詳情。

(c) 現行第 14(2)條的推定條文是可推翻的推定還是不可推翻的推定；

6. 第 14(2)條的目的，是就"煙草廣告"這個界定詞語的進一步涵義作出規定，而並非一項可推翻的推定。法定定義使用"當作"來擴充界定詞語的本義，是爲了減少法例條文的冗贅而採用的一種便利手法。第 371 章第 IV 部採用了這項草擬技巧，該部規管用以推廣煙草產品的若干材料和物體的印行、刊登、展示和分發。這些材料和物體均稱爲"煙草廣告"，其涵義在第 14 條有所訂明。

7. 第 14(1)條首先界定"煙草廣告"的基本涵義。第 14(2)擴充有關涵義，訂明除非若干廣告或物體是在第(3)至(5)款的條文範圍內，否則須當作煙草廣告。第 14(2)條的效力，並非推定某項行爲已經作出而事實上並無作出。第 14(2)條只是一項不容爭辯的陳述，就"煙草廣告"規定多一項的涵義。

(d) 現時香港有多少非煙草產品展示煙草產品的名稱／標識；

8. 我們知悉如 Salem, Dunhill, Marlboro 等牌子的煙草公司亦會生產非煙草產品。不過，我們未能逐一盡錄，也沒有這些產品的確切數目。

(e) 海外司法管轄區如何處理包含煙草牌子及／或標識的非煙草產品，無論是供出售或作其他用途；

9. 有關海外做法的一些研究結果，摘錄於附件，以供參考。

(f) 所有位於學校界線範圍內的小學及中學的員工宿舍及學生宿舍均須禁煙，這項政策原意是否清楚反映在條例草案內；

10. 在條例草案第 20 條、經修訂的附表 2 已將學校劃爲禁止吸煙區。根據教育條例(第 279 章)第 3 條，居住設施無異是校舍的一部份。室內的員工宿舍及學生宿舍，如處在學校的範圍內，均須禁煙。根據經修訂的第 3(5)條(條例草案第 5(c)條)，對宿舍或居所的豁免只適用於根據經條例草案第 5(a)條修訂的第 3(1AA)條下指定的室內工作間或室內公眾地方。有關豁免不會適用於被條例第 3(1)條規範，並列於經修訂的附表 2 之學校。

(g) 安老院如位於住宅樓宇內，會否被視爲“住宅”而獲豁免禁煙；

11. 在條例草案第 20 條、經修訂的附表 2 已將安老院劃爲禁止吸煙區。根據經修訂的第 3(5)條(條例草案第 5(c)條)，對住宅的豁免只適用於根據經條例草案第 5(a)條修訂的第 3(1AA)條下指定的室內工作間或室內公眾地方。有關豁免不會適用於被條例第 3(1)條規範，並列於經修訂的附表 2 之安老院。

12. 在上述會議上，議員亦要求政府當局以書面回應議員所作的下列建議－

(a) 公共交通工具即使並非正運載公眾人士，仍須遵行禁煙規定；

13. 我們已就公共交通工具即使並非正運載乘客亦須禁煙的規定是否可以接受，諮詢環境運輸及工務局。他們不反對這項建議。因此，我們會就第 2 條下的“公共交通工具”的定義條文提出委員會審議階段修正案，以實施上述規定。

(b) 考慮到雪茄產品的數目和種類遠遠超逾香煙產品，在條例草案建議的處所內要約出售的煙草產品的價格板和價格標記的尺寸，不應施加於雪茄產品；

14. 考慮到雪茄店的獨特經營模式，我們建議准許他們除在店內使用價格板和價格標記外，可設置 3 套目錄，載列出售雪茄產品的名稱和價格。有關目錄可在顧客提出要求時向他們展示。因此，我們會就《2005 年吸煙(公眾衛生)(修訂)條例草案(“條例草案”)第 15 條提出委員會審議階段修正案。

(c) 除煙草產品外，出售及／或展示的任何物體如包含煙草牌子及／或標識，應受到禁制，以防止煙草公司利用這類物體推廣其煙草產品；另一做法是禁止擬出售及／或展示的這類產品而現行產品則獲豁免；

15. 現行第 14(3)條訂明，如任何廣告或物體純粹是(a) 為非煙草產品或服務；或(b) 為職位招聘目的，而包含該等姓名、名稱、商業名稱、商標、牌子名稱或圖樣或圖樣的一部分，則法定規限條文不適用於該廣告或物體。條例草案藉加入“顯眼程度”的測試，進一步規限這方面的規定。該項建議已可取得合理平衡，既容許名稱與圖樣與煙草產品相同的合法非煙草產品有廣告機會，亦盡量減少任何鼓勵吸煙的宣傳效果。我們不建議全面禁止擁有與煙草產品相同牌子的非煙草產品的廣告。現時並沒有確實的證據顯示品牌延伸與吸煙的行為有關係。

(d) 《吸煙(公眾衛生)條例》(第 371 章)附表 2 所指的“公共升降機”的涵義應予詳細闡釋，以便與私人升降機區分；

16. 現行《條例》第 2 條界定“公共升降機”的涵義為“公眾可乘用的升降機，並包括任何可通往個別佔用的樓宇單位、辦公室或其他住宿單位的升降機及包括酒店升降機”。公共升降機有別於在多層家居單位內裝設的私人升降機。這類私人升降機無須禁煙，因為升降機是位於私人居所內。

(e) 刪除草案第 5(g)條；

17. 在考慮議員的意見後，我們擬刪除草案第 5(g)條。換言之，特定的豁免禁煙安排，不適用於正在建造或拆卸的建築物。與其他工作地方的情況一樣，室內區域會實行禁煙。在建造階段，某一區域在某日可能在“室內”的定義範圍內，另一日則不然，視乎有關結構在關鍵時間的情況而定。

(f) 提供法律意見，說明《公眾衛生及市政條例》(第 132 章)所界定的“扔棄物”一詞是否涵括燃著的煙草產品所產生的煙。

18. 《公眾衛生及市政條例》(第 132 章)第 2 條界定“扔棄物”為：

- (a) 土壤、污物、泥土、塵埃、灰燼、紙張或垃圾；
- (b) 玻璃器皿、瓷器、陶器或金屬罐；
- (c) 泥漿、黏土、磚、石、灰泥、沙、水泥、混凝土、灰漿、木、木材、木屑、塑膠、建築材料或挖掘出來的物料；
- (d) 碎石、廢棄物或碎片；
- (e) 穢物、肥料、牲畜糞便、排泄物及其他具厭惡性、有害或令人討厭的物體或液體；及
- (f) 相當可能構成妨擾的物質。

19. 在第 132 章下“扔棄物”的定義之表面意思，並不包括“煙的排放”。自條例生效後，有關定義一直一貫地獲實行。要嘗試令到“扔棄物”的定義足以檢控一個在街上吸煙的人犯了扔棄垃圾的罪行，爭議性會很大。

20. 吸煙的行為，由吸煙(公眾衛生)條例作規範。條例第 2 條將“吸煙”、“吸用”定義為“吸入與呼出煙草或其他物質的煙”。制訂吸煙(公眾衛生)條例的目的無疑是為禁止在指定非吸煙區吸煙。

Country / region	Overseas experience in regulating non-tobacco products
<p>Canada (Federal)</p>	<p><i>Tobacco Act 1997</i></p> <p>27. Non-tobacco product displaying tobacco brand element</p> <p>No person shall furnish or promote a tobacco product if any of its brand elements is displayed on a non-tobacco product, other than an accessory, or is used with a service, if the non-tobacco product or service</p> <p>(a) is associated with young persons or could be construed on reasonable grounds to be appealing to young persons; or</p> <p>(b) is associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.</p>
<p>New Zealand</p>	<p><i>Smoke-Free Environments Act 1990</i></p> <p>24. Use of trade marks, etc, on goods other than tobacco products, or in relation to sponsored events—</p> <p>(1) No person shall use, otherwise than in a private capacity, a tobacco product trademark—</p> <p>(a) On any article other than a tobacco product or a package or container in which a tobacco product is sold or shipped; or</p> <p>(b) For the purpose of advertising or identifying to the public—</p> <p>(i) Any article other than a tobacco product; or</p> <p>(ii) Any service, activity, or event; or</p> <p>(iii) Any scholarship, fellowship, or other educational benefit,—</p> <p>even though that person would be, but for this Act, entitled to use the trade mark on that article or for that purpose.</p> <p>(2) Where a trade mark includes the company name, or part of the company name, of a manufacturer, importer, or distributor in New Zealand of any tobacco product, no person shall, otherwise than in a private capacity, use that company name for the purpose of advertising or identifying to the public—</p> <p>(a) Any article other than a tobacco product; or</p> <p>(b) Any service, activity, or event; or</p> <p>(c) Any scholarship, fellowship, or other educational benefit —</p>

	<p>even though that person would be, but for this Act, entitled to use that trade mark or company name for that purpose.</p> <p>(3) No person shall distribute, sell, or offer or expose for sale any article, other than a tobacco product or a package or container in which a tobacco product is sold or shipped, that bears a trade mark of a tobacco product that is sold in New Zealand.</p> <p>(4) Nothing in subsections (1) to (3) of this section shall apply to a trade mark or company name that, during the year ending with the 31st day of March 1990, was applied to tobacco products and other articles sold at retail in New Zealand if the estimated retail value of those other articles sold during that year exceeded one-quarter of the estimated retail value of those tobacco products sold during that year.</p> <p>(5) Nothing in subsections (1) to (3) of this section shall apply to the use, by any person (other than a manufacturer, an importer, a distributor, or a retailer of any tobacco products, or a person acting on behalf of any such manufacturer, importer, distributor, or retailer), of a trade mark or company name for any purpose (other than for application to, or for use in connection with, tobacco products or smoking accessories) if the trade mark or company name—</p> <p style="padding-left: 40px;">(a) Was in use in New Zealand for that purpose before the 17th day of May 1990; or</p> <p style="padding-left: 40px;">(b) Was in use for that purpose at any time before that trade mark or company name was first used, in New Zealand, for application to, or in connection with, any tobacco product or smoking accessory.</p>
<p>USA</p>	<p><i>Master Settlement Agreement</i></p> <p>III. (f) Ban on Tobacco Brand Name Merchandise</p> <p>Beginning July 1, 1999, no Participating Manufacturer may, within any Settling State, market, distribute, offer, sell, license or cause to be marketed, distributed, offered, sold or licensed (including, without limitation, by catalogue or direct mail), any apparel or other merchandise (other than Tobacco Products, items the sole function of which is to advertise Tobacco Products, or written or electronic publications) which bears a Brand Name. Provided, however, that nothing in this subsection shall (1) require any Participating Manufacturer to breach or terminate</p>

	<p>any licensing agreement or other contract in existence as of June 20, 1997 (this exception shall not apply beyond the current term of any existing contract, without regard to any renewal or option term that may be exercised by such Participating Manufacturer); (2) prohibit the distribution to any Participating Manufacturer's employee who is not Underage of any item described above that is intended for the personal use of such an employee; (3) require any Participating Manufacturer to retrieve, collect or otherwise recover any item that prior to the MSA Execution Date was marketed, distributed, offered, sold, licensed, or caused to be marketed, distributed, offered, sold or licensed by such Participating Manufacturer; (4) apply to coupons or other items used by Adults solely in connection with the purchase of Tobacco Products; or (5) apply to apparel or other merchandise used within an Adult-Only Facility that is not distributed (by sale or otherwise) to any member of the general public.</p>
<p>UK</p>	<p><i>Tobacco Advertising and Promotion Act 2002</i></p> <p>11. Brandsharing</p> <p>(1) The Secretary of State may by regulations make provision prohibiting or restricting, in such circumstances and subject to such exceptions as may be specified in the regulations, the use-</p> <ul style="list-style-type: none"> (a) in connection with any service or product (other than a tobacco product), of any name, emblem or other feature of a description specified in the regulations which is the same as, or similar to, a name, emblem or other feature so specified which is connected with a tobacco product, or (b) in connection with any tobacco product, of any name, emblem or other feature of a description specified in the regulations which is the same as, or similar to, a name, emblem or other feature so specified which is connected with any service or product other than a tobacco product. <p>(2) Provision made by virtue of subsection (1) may prohibit or restrict only that use whose purpose is to promote a tobacco product, or whose effect is to do so.</p> <p>(3) If regulations under this section provide for a prohibition or restriction to be subject to an exception, the regulations may also make such provision as the Secretary of State considers appropriate for a corresponding exception to</p>

have effect for the purposes of offences under section 2, 3, 8, 9 or 10.

(4) A person who contravenes a prohibition or restriction contained in regulations made under this section is guilty of an offence.