

PROPOSED COMMITTEE STAGE AMENDMENTS
TO
SMOKING (PUBLIC HEALTH)(AMENDMENT) BILL 2005

[Shown in revision mode on the Gazette version of the Bill]

Version as at 2 May 2006

A BILL

To

Amend the Smoking (Public Health) Ordinance and its subsidiary legislation to expand the scope of prohibition on smoking; to amend the form of health warnings to be borne on packets or retail containers of tobacco products; to amend the law relating to tobacco advertisements and the sale of tobacco products; to provide for the appointment, powers and duties of inspectors for the enforcement of certain provisions of the Ordinance; and to provide for consequential, transitional and related matters.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Smoking (Public Health) (Amendment) Ordinance 2005.

2. Commencement

(1) Subject to subsection (2), this Ordinance shall come into operation on the ninetieth day after the day on which this Ordinance is published in the Gazette.

(2) Sections 14, 35 and 36(e) shall come into operation on the first anniversary of the day on which this Ordinance is published in the Gazette.

PART 2

AMENDMENTS TO SMOKING (PUBLIC HEALTH) ORDINANCE

3. Long title amended

The long title to the Smoking (Public Health) Ordinance (Cap. 371) is amended by repealing everything after “areas” and substituting “; to provide for the display of a health warning and other information on packets or retail containers of tobacco products; to restrict tobacco advertising; to restrict the sale or giving of tobacco products; to provide for the appointment, powers and duties of inspectors for the enforcement of certain provisions of this Ordinance; and to provide for incidental and related matters.”.

4. Interpretation

Section 2 is amended –

- (a) by repealing the definition of “agency”;
- (b) by repealing the definition of “amusement game centre” and substituting –

““amusement game centre” (遊戲機中心) means –

- (a) an amusement game centre within the meaning of section 2(1) of the Amusement Game Centres Ordinance (Cap. 435);
- (b) any place that is the subject of an order under section 3(1)(a) of that Ordinance; or
- (c) any area that is specified in an order under section 3(1)(b) of that Ordinance;”;

(e) ~~in the definition of “manager”~~

(i) ~~by repealing paragraph (a) and substituting~~

- ~~“(a) — a no smoking area (other than a lift) or a public transport carrier, includes an assistant manager, any person holding an appointment analogous to that of manager or assistant manager and any person who is responsible for the management, or is in charge or control of the no smoking area or public transport carrier;”;~~
- (ii) — by repealing paragraph (c);
- (c) by repealing the definition of “manager” and substituting –
““manager” (管理人), in relation to a no smoking area or a
public transport carrier, means –
- (a) any person who is responsible for
the management or is in charge or
control of the no smoking area or
public transport carrier, and
includes an assistant manager and
any person holding an
appointment analogous to that of
a manager or assistant manager;
or
- (b) in the case where there is no such
person in relation to any premises,
the owner of the premises;”;
- (d) in the definition of “no smoking area”, by repealing “section 3(1), (1A) or (1C) or the premises or part thereof designated under section 3(1B)” and substituting “section 3”;
- (e) by repealing the definition of “principal officer”;

- (*ea*) in the definition of “public transport carrier”, by repealing “while the public bus, public light bus, taxi, train, light rail vehicle, car, tramcar or ferry vessel is, subject to Schedule 1, carrying members of the public”;

- (f) by repealing the definition of “restaurant” and substituting –

““restaurant premises” (食肆處所) means any premises on
or from which there is carried on –

- (a) a factory canteen or restaurant within the meaning of section 31(2) of the Food Business Regulation (Cap. 132 sub. leg. X); or

- (b) any other trade or business for the purpose of which is for the sale or supply of meals or unbottled non-alcoholic drinks (including Chinese herb tea) ~~are sold or intended to be sold for~~ human consumption on the premises (whether or not it is carried on by a person who is the holder of a licence under the Hawker Regulation (Cap. 132 sub. leg. AI));”;

- (g) by repealing the definition of “retail container” and substituting –

““retail container” (零售盛器) —

- (a) in relation to any cigarette, means a container suitable for the retail marketing of cigarette packets; or
 - (b) in relation to any cigar, pipe tobacco or cigarette tobacco, means a container suitable for the retail marketing of cigar, pipe tobacco or cigarette tobacco;”;
- (h) by adding –
 - ““approved institution” (核准院舍) means an approved institution within the meaning of section 2(1) of the Probation of Offenders Ordinance (Cap. 298);
 - “bar” (酒吧) means any place that is exclusively or mainly used for the sale and consumption of intoxicating liquors as defined in section 53(1) of the Dutiable Commodities Ordinance (Cap. 109);
 - “bathhouse” (浴室) means a bathhouse within the meaning of section 3(1) of the Commercial Bathhouses Regulation (Cap. 132 sub. leg. I);
 - “child care centre” (幼兒中心) means a child care centre within the meaning of section 2(1) of the Child Care Services Ordinance (Cap. 243);
 - “correctional facility” (懲教機構) means –
 - (a) any of the sites and buildings specified in the Schedule to the Prisons Order (Cap. 234 sub. leg. B);
 - (b) any of the buildings specified in the Schedule to the Prisons

(Hostel) Order (Cap. 234 sub. leg. C); or

- (c) an addiction treatment centre within the meaning of section 2 of the Drug Addiction Treatment Centres Ordinance (Cap. 244);

~~“domestic premises” (住宅) means any premises which are constructed or intended to be used for habitation;~~

“domestic premises” (住宅) means any premises that have been constructed to be used, and are used, as a private dwelling;

“escalator” (自動梯) means an escalator within the meaning of section 2(1) of the Lifts and Escalators (Safety) Ordinance (Cap. 327);

“hospital” (醫院) means any establishment for the care of the sick, injured or infirm or those who require medical treatment, including a nursing home –

- (a) whether or not it is a hospital to which the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) applies; or

- (b) whether or not it is a public hospital within the meaning of section 2(1) of the Hospital Authority Ordinance (Cap. 113);

“indoor” (室內) means –

- (a) having a ceiling or roof, or a cover that functions (whether temporarily or permanently) as a ceiling or roof; and
- (b) ~~completely or substantially~~ enclosed (whether temporarily or permanently) at least up to 50% of the total area on all sides, except for any window or door, or any closeable opening that functions as a window or door;

“inspector” (督察) means an inspector appointed under section 15F;

“karaoke establishment” (卡拉 OK 場所) means –

- (a) a karaoke establishment within the meaning of section 2(1) of the Karaoke Establishments Ordinance (Cap. 573); or
- (b) a karaoke establishment referred to in section 3(1) of that Ordinance;

“mahjong-tin kau premises” (麻將天九耍樂處所) means any premises that are licensed under section 22 of the Gambling Ordinance (Cap. 148) for –

- (a) the playing therein of games in which mahjong tiles are used; or
- (b) the playing therein of games in which tin kau tiles are used;

“maternity home” (留產院) means any premises used or intended to be used for the reception of pregnant women or of women immediately after childbirth –

- (a) whether or not it is a maternity home to which the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) applies; or
- (b) whether or not it is a maternity home that is run as part of a public hospital within the meaning of section 2(1) of the Hospital Authority Ordinance (Cap. 113), or managed or controlled by the Hospital Authority established under that Ordinance;

“place of detention” (拘留地方) means –

- (a) a place of detention specified in Schedule 2 to the Immigration (Places of Detention) Order (Cap. 115 sub. leg. B); or
- (b) a place of detention within the meaning of section 2(1) of the Juvenile Offenders Ordinance (Cap. 226);

“place of refuge” (收容所) means a place of refuge within the meaning of section 2 of the Protection of Children and Juveniles Ordinance (Cap. 213);

“post secondary school” (專上學校) means a school within the meaning of section 3 of the Education Ordinance (Cap. 279) at which post secondary education is provided without contravention of section 18A of that Ordinance (not being a College within the meaning of section 2 of the Post Secondary Colleges Ordinance (Cap. 320));

~~“public market” (公眾街市) means a market specified in the Tenth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132);~~

“public place” (公眾地方) means –

- (a) any place to which for the time being the public are entitled or permitted to have access, whether on payment or otherwise; or
- (b) a common part of any premises notwithstanding that the public are not entitled or permitted to have access to that common part or those premises;

“reformatory school” (感化院) means a reformatory school within the meaning of section 2 of the Reformatory Schools Ordinance (Cap. 225);

“residential care home” (安老院) means a residential care home within the meaning of section 2 of the

Residential Care Homes (Elderly Persons)
Ordinance (Cap. 459);

“school” (學校) means a school within the meaning of
section 3 of the Education Ordinance (Cap. 279),
but excludes a post secondary school;

“specified educational establishment” (指明教育機構)
means any establishment specified in section 2 of
the Education Ordinance (Cap. 279);

“treatment centre” (治療中心) means a treatment centre
within the meaning of section 2 of the Drug
Dependent Persons Treatment and Rehabilitation
Centres (Licensing) Ordinance (Cap. 566);

“workplace” (工作地方) means a place –

(a) that is occupied for conducting a
business ~~(whether for profit or~~
~~not)~~ or non-profit making
undertaking; and

(b) in which natural persons work in
the course of any self-
employment, employment or
engagement (whether for income
or not),

including any part of the place that is set aside for
use by those persons during any interval for
taking a meal or rest.”.

5. Prohibition on smoking in certain designated areas

Section 3 is amended –

(a) by adding immediately after subsection (1) –

“(1AA) An indoor area in a workplace or public place is, to the extent that it is not an area to which subsection (1) applies, designated as a no smoking area.”;

- (b) by repealing subsections (1A), (1B) and (1C);
- (c) by adding –

“(4A) Subsection (1) does not apply to a room designated for cigar tasting in a shop if all the following requirements are complied with -

- (a) the shop is engaged in the retail sale of cigars;
- (b) nothing except cigars and cigar accessories are offered for sale in the shop;
- (c) the room is not used for smoking except for the purpose of tasting the cigars, or samples of the cigars, that are sold or offered for sale in the shop;
- (d) the room is independently ventilated and completely partitioned off from the remainder of the shop; and
- (e) no natural person is required to enter the room while it is being occupied for cigar tasting (whether or not he could have been required to do so by contract or otherwise).”;

(5) Subsection (1AA) does not apply to –

- (a) domestic premises;

- (b) any premises used exclusively for the provision of ~~sleeping~~ living accommodation by any employer to his employees and their families, whether or not any monetary consideration is received by the employer for so providing the ~~sleeping~~ living accommodation;
- (c) a bedspace apartment in respect of which a licence or certificate of exemption issued under the Bedspace Apartments Ordinance (Cap. 447) is in force;
- (d) a room or suite of rooms in a hotel or guesthouse if –
 - (i) in respect of the hotel or guesthouse there is in force a licence or certificate of exemption issued under the Hotel and Guesthouse Accommodation Ordinance (Cap. 349); and
 - (ii) the room or suite of rooms is being hired for use as sleeping accommodation;

- (e) an area designated by the Airport Authority as a smoking area as referred to in section 16 of the Airport Authority Bylaw (Cap. 483 sub. leg. A);
- (f) an area in a correctional facility that is set aside for smoking by prisoners who are allowed to do so in accordance with orders under rule 25 of the Prison Rules (Cap. 234 sub. leg. A); and
- ~~(g) a building if~~
 - ~~(i) the building is not the subject of a valid occupation permit or temporary occupation permit issued under section 21(2) of the Buildings Ordinance (Cap. 123); and~~
 - ~~(ii) no part of the building is the subject of a valid temporary occupation permit issued under that section.~~
- (g) a room designated for tobacco tasting in the manufacturing or business premises of a business engaged in the tobacco trade if all

the following requirements are
complied with

- (i) the business is not
engaged in the retail sale
of tobacco products;
- (ii) the tobacco tasting is
carried out for the
purpose of conducting
research and
development or quality
control of tobacco
products in the normal
course of the business;
- (iii) the room is only used for
carrying out the tobacco
tasting;
- (iv) the room is
independently ventilated
and completely
partitioned off from the
remainder of the
premises; and
- (v) no natural person, other
than one who carries out
the tobacco tasting, is
required to enter the
room while it is being
occupied for the tobacco
tasting (whether or not he
could have been required

to do so by contract or otherwise).

(6) For the avoidance of doubt, it is declared that subsections (1) and (1AA) apply to any premises that are owned or occupied by, or under the management and control of, the Government.”.

6. Display of signs where smoking prohibited

Section 5 is amended –

- (a) by renumbering it as section 5(1);
- (b) in subsection (1) –
 - (i) by adding “and keep in place” after “place”;
 - (ii) by adding “indoor” before “no smoking area” where it twice appears;
 - (iii) by repealing “and such signs shall be of the prescribed description and shall be maintained by the manager in legible condition and good order”;
- (c) by adding –

“(2) If an establishment that is designated as a no smoking area is or includes an outdoor area, the manager of the establishment shall place and keep in place in a prominent position at each entrance of the establishment a sign in English and Chinese to indicate that smoking is prohibited in the establishment.

(3) A sign required by this section shall be –

 - (a) of the prescribed description and form; and
 - (b) maintained by the manager in legible condition and good order.”.

7. Display of signs outside restaurants

Section 6A is repealed.

8. Offences under Part II

Section 7 is amended –

- (a) in subsection (3), by repealing “Any manager who fails to place” and substituting “Subject to subsection (5), any manager who fails to place or keep in place”;
- (b) by repealing subsection (4);
- (c) by adding –
 - “(5) Subsection (3) does not permit proceedings to be taken against, or impose any criminal liability on, the Government or any person who does any act or omits to do any act in the course of carrying out his duties in the service of the Government.”.

9. Sales of cigarettes and tobacco products

Section 8(1)(b) is amended by repealing “格式及方式載有” and substituting “式樣及方式展示”.

10. Sale of cigar, pipe tobacco or cigarette tobacco

Section 9 is amended by repealing “the container thereof” and substituting “it is in a retail container that”.

11. Offences under Part III

Section 10 is amended –

- (a) in subsection (1), by repealing “level 4” and substituting “level 5”;
- (~~a~~b) in subsection (2), –
 - (i) by repealing “載有” and substituting “展示”;
 - (ii) by repealing “level 4” and substituting “level 5”;

- (bc) in subsection (3), by repealing everything after “retail container” and substituting “the words “light”, “lights”, “mild”, “milds”, “low tar”, “醇” or “焦油含量低”, or other words which imply or suggest that the cigarettes are less harmful than others, commits an offence and is liable on summary conviction to a fine at ~~level 4~~ level 5.”.

12. Seizure and forfeiture

Section 10A(1)(a)(i) is amended by repealing “格式和方式載有” and substituting “式樣及方式展示”.

13. Tobacco advertisements in printed publications

Section 11(~~3~~) is amended –

- (a) in subsection (2)(b), by adding “printed,” after “document”;
- (b) in subsection (3), by repealing everything after “publication” and substituting “that is published for the tobacco trade or as the “in house” magazine of any company engaged in that trade.”.

14. No display of tobacco advertisement

Section 12 is amended –

- (a) by repealing subsection (2);
- (b) by repealing subsection (3);
- (c) in subsection (5), by repealing “載有” and substituting “展示”.

15. Meaning of tobacco advertisement

Section 14 is amended –

- (a) in subsection (3), by repealing everything after “if” and substituting –
 - “the name, trade name, trade mark, brand name or pictorial device or part thereof mentioned in that subsection –
 - (a) is included exclusively for –
 - (i) a non-tobacco product or service; or
 - (ii) job recruitment purposes; and
 - (b) does not form ~~the most~~ a prominent part of the advertisement or object.”;
- (b) in subsection (4) –
 - (i) by repealing “Subsection” and substituting “If the conditions set out in subsection (4A) are satisfied, subsection”;
 - (ii) by repealing everything after “being tobacco” and substituting a full stop;
- (c) by adding –
 - “(4A) The conditions mentioned in subsection (4) are –
 - (a) that the name mentioned in that subsection is included as the sponsor of an event or for congratulating another person or thing on an achievement of, or event relating to, such person or thing;

- (b) that the name does not form the most a prominent part of the advertisement or object; and
 - (c) that the advertisement or object does not mention the words “cigarette”, “cigarettes”, “smoking”, “tobacco”, “cigar”, “cigars”, “pipe” or “pipes” or “香煙”, “吸煙”, “煙草”, “雪茄” or “煙斗”.”;
- (d) by repealing subsection (6) and substituting –
 - “(6) The display of the following at any premises where tobacco products are offered for sale is not a tobacco advertisement –
 - (a) one price marker for one type of tobacco product offered for sale in the premises that –
 - (i) contains only the name and price of that type of tobacco product; and
 - (ii) is of a size –
 - (A) not greater than the size of the price marker of any of the non-tobacco products offered for sale in the premises; and

(B) not greater than
50 square
centimetres; or

~~(b) one price board not exceeding
1 500 square centimetres listing
only the names and prices of the
tobacco products offered for
sale.”.~~

(b) one price board if –

(i) it lists only the names
and prices of the tobacco
products offered for sale
in the premises;

(ii) it is of a size not greater
than 1500 square
centimetres;

(iii) each item on the board
containing the name and
price of one type of
tobacco product is of a
size not greater than 50
square centimetres; and

(iv) it bears a health warning
in the prescribed form
and manner; or

(c) in case of a shop in which
nothing except cigars and cigar
accessories are offered for sale, 3
sets of catalogues, each listing
only the name and price of each

type of cigars offered for sale in
the shop.”.

16. Removal and disposal of tobacco advertisement

Section 14A is amended –

- (a) in subsection (1), by repealing “Any public officer authorized in writing by the Secretary” and substituting “An inspector”;
- (b) in subsection (2), by repealing “any public officer authorized in writing by the Secretary” and substituting “an inspector”.

16A. Offences under Part IV

Section 15(1) is amended by repealing “level 4” and substituting “level 5”.

17. Prohibition on selling or giving of tobacco products, etc.

Section 15A(3) is amended –

- (a) in paragraph (f), by repealing “or” at the end;
- (b) by adding –
 - “(fa) sell, offer for sale or possess for the purposes of sale a tobacco product and a non-tobacco product as a single item; or”.

18. Part IVB added

The following is added immediately after section 15D –

“PART IVB

PROVISIONS RELATING TO INSPECTORS

15E. Meaning of “relevant offence” in Part IVB

In this Part, “relevant offence” (有關罪行) means any offence under this Ordinance other than an offence under Part III.

15F. Appointment of inspectors

The Secretary may appoint in writing any public officer to be an inspector to exercise any of the powers and perform any of the duties conferred or imposed on an inspector by this Ordinance.

15G. General powers and duties of inspectors

(1) Without limiting any other provisions of this Ordinance, an inspector may, subject to subsections (2) and (3) –

- (a) at any time enter any place in which the inspector reasonably suspects that a relevant offence has been, is being or is likely to be committed; and
- (b) in any place entered under paragraph (a) –
 - (i) seize any thing that appears to the inspector to be evidence of any relevant offence;
 - (ii) require any person found in that place to give his name and address and to produce proof of identity; and
 - (iii) take any necessary action for the purpose of obtaining evidence in connection with any relevant offence.

(2) If so requested by any person in any place entered under subsection (1), an inspector shall produce his authority as an inspector.

(3) An inspector shall not enter under subsection (1)(a) –

- (a) any domestic premises; or

(b) any correctional facility without the approval of the Commissioner of Correctional Services.

(4) A person who wilfully obstructs an inspector who is in the exercise of a power or the performance of a duty conferred or imposed by this Ordinance commits an offence and is liable on summary conviction to a fine at level 3.

(5) A person who fails to give his name and address or to produce proof of identity when required to do so under subsection (1)(b)(ii), or who then gives a false or misleading name or address commits an offence and is liable on summary conviction to a fine at level 3.

(6) In this section, “place” (地方) includes an open area, whether or not it is enclosed.

15GA. Disposal of property seized by inspectors

If an inspector seizes any property while exercising a power or performing a duty conferred or imposed by this Ordinance, section 102 of the Criminal Procedure Ordinance (Cap. 221) shall apply as if the inspector were the police within the meaning of that section and such property were property that had come into possession of the police in connection with a criminal offence.

15H. Inspectors not personally liable for certain acts and omissions

(1) An inspector is not personally liable for any act done or omitted to be done by the inspector while exercising a power or performing a duty conferred or imposed by this Ordinance if the inspector did the act or omitted to do the act in the honest belief that the act or omission was required or authorized by or under this Ordinance.

(2) Subsection (1) does not affect any liability that the Government may have because an inspector has done an act or omitted to do an act to which that subsection applies.”.

19. Regulations and Orders

Section 18(2)(a) is amended by repealing “the form of” and substituting “the form (including specifications) of”.

20. Designated no smoking areas

Schedule 2 is amended –

(a) by repealing item 4;

(b) by adding –

“4A. Any escalator.

5. Any child care centre.

6. Any school.

7. Any approved institution.

8. Any place of detention.

9. Any place of refuge.

10. Any reformatory school.

11. An indoor area in any –

(a) shop, department store or shopping mall;

(b) ~~public market;~~ market (whether publicly or privately operated or managed);

(c) supermarket;

(d) bank;

(e) restaurant premises;

(f) bar;

- (g) karaoke establishment;
- (h) mahjong-tin kau premises;
- (i) bathhouse;
- (j) hospital;
- (k) maternity home;
- (l) residential care home;
- (m) treatment centre;
- (n) post secondary school; or
- (o) specified educational establishment.”.

21. Schedule 3 repealed

Schedule 3 is repealed.

22. Premises specified under section 3(1B) that may be designated as no smoking areas

Schedule 4 is repealed.

PART 3

AMENDMENTS TO SUBSIDIARY LEGISLATION MADE UNDER SMOKING (PUBLIC HEALTH) ORDINANCE

Division 1 – Amendments to Smoking (Public Health) Regulations

23. Tar groups

Regulation 2 of the Smoking (Public Health) Regulations (Cap. 371 sub. leg. A) is repealed.

24. Determination by the Government Chemist

Regulation 3 is amended –

- (a) in paragraph (i), by repealing “or tar group designation, as the case may be,”;
- (b) in paragraph (ii) –

- (i) by repealing the semicolon and substituting a full stop;
- (ii) by repealing “載有” and substituting “展示”;
- (c) by repealing paragraph (iii).

25. Determination by the proprietor of the brand

Regulation 4 is amended –

- (a) in paragraph (a), by repealing everything after “Ordinance” and substituting “; or”;
- (b) in paragraph (b), by repealing “or designation”;
- (c) by repealing “and the tar group”;
- (d) by repealing “regulation 2 and”.

26. Minor variations between past and present determinations

Regulation 5 is repealed.

27. Notification of retail sales

Regulation 6 is amended –

- (a) in paragraph (1) –
 - (i) by repealing “Government Chemist” and substituting “Director of Health”;
 - (ii) by repealing “載有” and substituting “展示”;
- (b) in paragraph (2), by repealing “Government Chemist” and substituting “Director of Health”.

28. Tobacco advertisements in printed publications

Regulation 6A is repealed.

29. Additional provisions applying to tar group designations

Regulation 6B is repealed.

30. Exemption of certain advertisements from Part IV of the Ordinance

Regulation 7 is amended –

- (a) in paragraph (a), by repealing everything after “before” and substituting “31 December 1999.”;
- (b) by repealing paragraph (b).

31. Health warnings on tobacco advertisements in printed publications

The Schedule is repealed.

**Division 2 – Amendments to Smoking (Public Health)
(Notices) Order**

31A. No smoking signs

Paragraph 2 of the Smoking (Public Health)(Notices) Order (Cap. 371 sub. leg. B) is amended –

- (a) by renumbering it as paragraph 2(1);
- (b) in paragraph 2(1), by repealing “No smoking signs placed under section 5” and substituting “A sign required by section 5(1)”;
- (c) by adding –

“(2) A sign required by section 5(2) of the Ordinance shall comply with all the following specifications –

- (a) it is in a form as set out in Part IA of the Schedule;
- (b) it contains the words “此場所內嚴禁吸煙”, “No Smoking in this

Establishment” and “Maximum
Penalty: \$5,000”;

(c) it also contains the words "最高
罰款\$5,000" or "最高罰款伍仟
元”;

(d) it is square in shape with sides of
at least 15 centimetres in length;

(e) it is in plain and readily legible
characters and letters;

(f) the characters and letters are of a
colour which contrasts with the
colour of the background upon
which they are printed;

(g) the characters are printed in “華
康中黑體” typeface; and

(h) the letters are printed in Univers
Bold.”.

32. Paragraph substituted

Paragraph 3 of the ~~Smoking (Public Health)(Notices) Order (Cap. 371 sub-
leg. B)~~ is repealed and the following substituted –

“3. Health warning and indication of tar and nicotine yields on packet or retail container of cigarettes

(1) For the purposes of section 8 of the Ordinance, this paragraph applies to any packet of cigarettes containing 20 or more cigarettes and any retail container of cigarette packets containing any number of cigarettes.

(2) Subject to subparagraph (3), each cigarette packet and each retail container shall bear a health warning and indication of tar and nicotine yields in one of the forms set out in Part II of the Schedule.

(3) For each brand of cigarette, each of the forms so set out shall be borne on the packets containing that brand of cigarette and on the retail containers containing those packets with equal frequency during any continuous period of 12 months.

(4) Subject to subparagraphs (5) and (8) –

- (a) the health warning and indication of tar and nicotine yields shall appear on the 2 largest surfaces of the packet and of the retail container;
- (b) one of those surfaces shall bear the Chinese version of the health warning and indication of tar and nicotine yields and the other surface shall bear the English version of the same health warning and indication of tar and nicotine yields; and
- (c) the top side of the area containing the Chinese or English version of the health warning and indication of tar and nicotine yields shall be no more than 12 millimetres from the top of the surface on which that version appears.

(5) If a packet or retail container is in the form of a drum, the Chinese version of the health warning and indication of tar and nicotine yields shall appear on the curved surface of the drum and the English version of the same health warning and indication of tar and nicotine yields shall appear on the lid.

(6) The Chinese or English version of the health warning and indication of tar and nicotine yields shall be of a size that covers at least 50% of the area of the surface on which that version appears.

(7) No health warning and indication of tar and nicotine yields shall appear in such a manner that it is obscured by any affixture to the packet or retail container, the wrapping of the packet or retail container or any affixture to the wrapping of the packet or retail container.

(8) The health warning and indication of tar and nicotine yields may be printed on a label securely affixed to the packets or retail containers –

- (a) if the packets or retail containers are made of metal or are plastic drums;
- (b) with the approval of the Commissioner of Customs and Excise where he is satisfied that –
 - (i) the circumstances in which the packets or retail containers are in Hong Kong, or are to be brought to Hong Kong, are such that they could not reasonably be expected to have had printed on them a health warning and indication of tar and nicotine yields at the time of their manufacture; and
 - (ii) the approval is required for a limited period of time or in relation to a particular consignment of cigarettes only.”.

33. Paragraphs substituted

Paragraph 4A is repealed and the following substituted –

“4A. Health warning on retail container of cigar, pipe tobacco or cigarette tobacco (other than retail container containing one cigar)

(1) For the purposes of section 9 of the Ordinance, this paragraph applies to any retail container of any cigar, pipe tobacco or cigarette tobacco (other than a retail container containing one cigar).

(2) Subject to subparagraph (3), each retail container shall bear a health warning in one of the forms set out in Part IIA of the Schedule.

(3) For each brand of cigar, pipe tobacco or cigarette tobacco, each of the forms so set out shall be borne on the retail containers containing that brand of cigar, pipe tobacco or cigarette tobacco with equal frequency during any continuous period of 12 months.

(4) Subject to subparagraphs (5) and (8) –

(a) the health warning shall appear on the 2 largest surfaces of the retail container; and

(b) one of those surfaces shall bear the Chinese version of the health warning and the other surface shall bear the English version of the same health warning; and

~~(c) — the top side of the area containing the Chinese or English version of the health warning shall be no more than 12 millimetres from the top of the surface on which that version appears.~~

(5) If a retail container is in the form of a drum, the Chinese version of the health warning shall appear on the curved surface of the drum and the English version of the same health warning shall appear on the lid.

(6) The Chinese or English version of the health warning shall be of a size that covers at least 50% of the area of the surface on which that version appears.

(7) No health warning shall appear in such a manner that it is obscured by any affixture to the retail container, the wrapping of the retail container or any affixture to the wrapping of the retail container.

(8) The health warning may be printed on a label securely affixed to the retail containers with the approval of the Commissioner of Customs and Excise where he is satisfied that the circumstances in which the retail containers are in Hong Kong, or are to be brought to Hong Kong, are such that they could not reasonably be expected to have had printed on them a health warning at the time of their manufacture.

4AA. Health warning on retail container containing one cigar

(1) For the purposes of section 9 of the Ordinance, this paragraph applies to any retail container containing one cigar.

(2) Subject to subparagraph (3), each retail container shall bear a health warning in one of the forms set out in Part IIB of the Schedule.

(3) For each brand of cigar, each of the forms so set out shall be borne on the retail containers containing that brand of cigar with equal frequency during any continuous period of 12 months.

(4) Subject to subparagraph (6), the Chinese and English versions of the health warning shall appear on the largest surface of the retail container.

(5) No health warning shall appear in such a manner that it is obscured by any affixture to the retail container, the wrapping of the retail container or any affixture to the wrapping of the retail container.

(6) The health warning may be printed on a label securely affixed to the retail containers with the approval of the Commissioner of

Customs and Excise where he is satisfied that the circumstances in which the retail containers are in Hong Kong, or are to be brought to Hong Kong, are such that they could not reasonably be expected to have had printed on them a health warning at the time of their manufacture.”.

34. Restaurant signs

Paragraph 4B is repealed.

35. Tobacco advertisements on display

Paragraph 5 is repealed.

35A. Paragraph added

The following is added –

“5A. Health warning on price board of tobacco products

(1) For the purposes of section 14(6)(b)(iv) of the Ordinance, this paragraph applies to any price board that lists the names and prices of the tobacco products offered for sale in any premises .

(2) Subject to subparagraph (3), such a price board shall bear a health warning in a rectangular area as set out in the form in Part IIIA of the Schedule.

(3) The area containing the health warning shall –

(a) be in white colour and surrounded by a black line with the lettering and characters of the health warning printed in black colour;

(b) occupy not less than 20% of the total area of the price board; and

(c) contain nothing except the health warning.

(4) The health warning on the price board shall comply with all the following specifications -

- (a) it is rectangular in shape and surrounded by a black line as demarcation;
- (b) it contains the words “香港特區政府忠告市民”, “吸煙足以致命”, “HKSAR GOVERNMENT WARNING” and “SMOKING KILLS” as set out in the Schedule;
- (c) the characters are printed in black and at least in 35 kyu (級) in “華康中黑體” typeface;
- (d) the letters are printed in black and at least in 50 points Univers Bold typeface, all capitals;
- (e) the characters and the letters are given equal prominence.”.

36. Schedule amended

The Schedule is amended –

- (a) by repealing “[paras. 3, 4A, 4B, 5 & 8]” and substituting “[paras. 2, 3, 4A, 4AA, 5A & 8]”;
- (b) by repealing Part II and substituting –

“PART IA

FORM OF NO SMOKING SIGN REQUIRED BY SECTION 5(2)
OF THE ORDINANCE



PART II

FORMS OF HEALTH WARNING AND INDICATION OF TAR AND NICOTINE YIELDS ON PACKET OR RETAIL CONTAINER OF CIGARETTES

Form 1

Chinese version

[Removed]

English version

[Removed]

Form 2

Chinese version

[Removed]

English version

[Removed]

Form 3

Chinese version

[Removed]

English version

[Removed]

Form 4

Chinese version

[Removed]

English version

[Removed]

Form 5

Chinese version

[Removed]

English version

[Removed]

Form 6

Chinese version

[Removed]

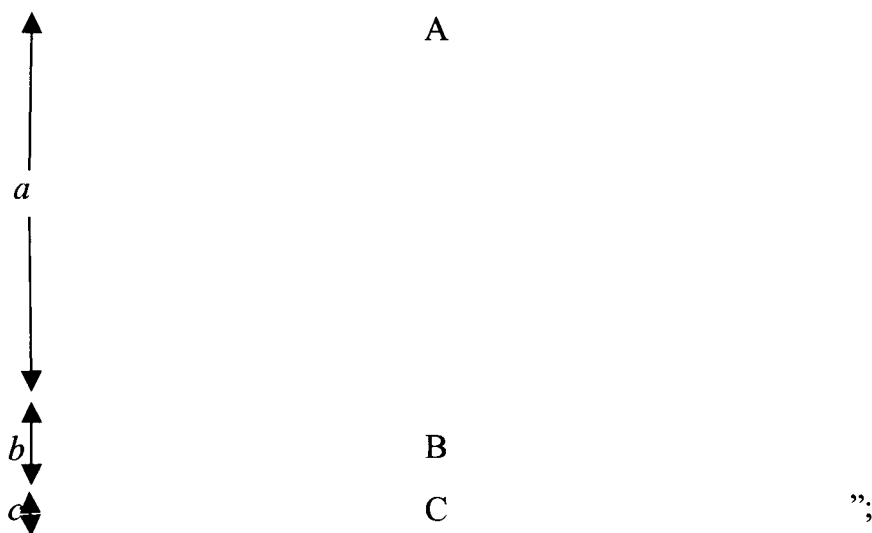
English version

[Removed]

Specifications:

1. Each form is rectangular in shape and surrounded by a black line as demarcation.
2. Each form is divided into 3 rectangular areas (marked “A”, “B” and “C” in the diagram below). The ratio of the length of area A to that of area B to that of area C (marked “a”, “b” and “c” respectively in that diagram) is 9 to 2 to 1.
3. Area A contains the graphic (on which “香港特區政府忠告市民” (in the Chinese version) or “HKSAR GOVERNMENT WARNING” (in the English version) is printed) as set out in the form. Area B contains the message in words as set out in the form. Area C contains an indication of tar and nicotine yields as set out in the form.
4. For the Chinese version, the characters and numbers are printed in “中黑體” typeface. For the English version, the letters and numbers are printed in Univers Bold typeface.
5. In relation to area A –
 - (a) the characters and letters are printed in white;
 - (b) the graphic is printed by 4-colour printing with a minimum resolution of 300 dpi.
6. In relation to areas B and C –

- (a) the background colour is white;
- (b) the characters, letters and numbers are printed in –
 - (i) 100% black for black; and
 - (ii) 100% yellow plus 100% magenta for red.



- (c) by repealing Part IIA and substituting –

“PART IIA

FORMS OF HEALTH WARNING ON RETAIL CONTAINER OF CIGAR, PIPE TOBACCO OR CIGARETTE TOBACCO (OTHER THAN RETAIL CONTAINER CONTAINING ONE CIGAR)

Form 1

Chinese version

[Removed]

English version

[Removed]

Form 2

Chinese version

[Removed]

English version

[Removed]

Form 3

Chinese version

[Removed]

English version

[Removed]

Form 4

Chinese version

[Removed]

English version

[Removed]

Form 5

Chinese version

[Removed]

English version

[Removed]

Form 6

Chinese version

[Removed]

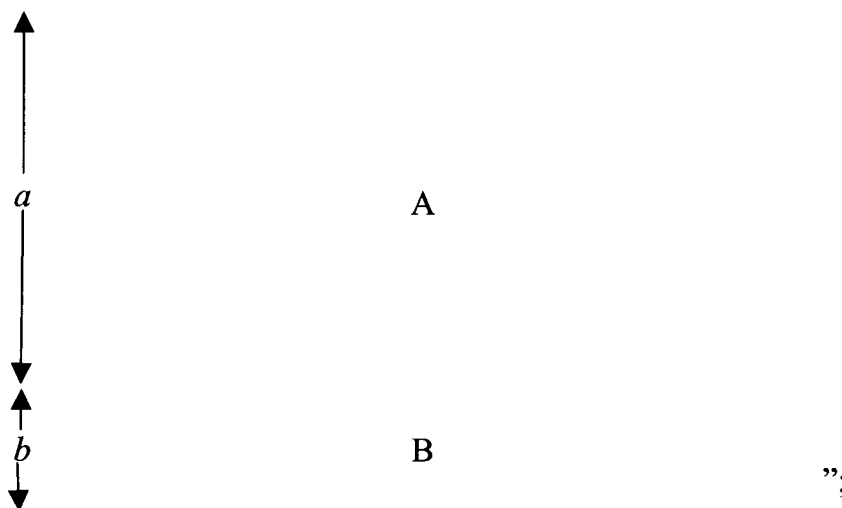
English version

[Removed]

Specifications:

1. Each form is rectangular in shape and surrounded by a black line as demarcation.
2. Each form is divided into 2 rectangular areas (marked “A” and “B” in the diagram below). The ratio of the length of area A to that of area B (marked “*a*” and “*b*” respectively in that diagram) is 3 to 1.

3. Area A contains the graphic (on which “香港特區政府忠告市民” (in the Chinese version) or “HKSAR GOVERNMENT WARNING” (in the English version) is printed) as set out in the form. Area B contains the message in words as set out in the form.
4. For the Chinese version, the characters are printed in “中黑體” typeface. For the English version, the letters are printed in Univers Bold typeface.
5. In relation to area A –
 - (a) the characters and letters are printed in white;
 - (b) the graphic is printed by 4-colour printing with a minimum resolution of 300 dpi.
6. In relation to area B –
 - (a) the background colour is white;
 - (b) the characters and letters are printed in –
 - (i) 100% black for black; and
 - (ii) 100% yellow plus 100% magenta for red.



- (d) by repealing Part IIB and substituting –

“PART IIB

FORMS OF HEALTH WARNING ON RETAIL
CONTAINER CONTAINING ONE CIGAR

Form 1

Chinese version

[Removed]

English version

[Removed]

Form 2

Chinese version

[Removed]

English version

[Removed]

Form 3

Chinese version

[Removed]

English version

[Removed]

Form 4

Chinese version

[Removed]

English version

[Removed]

Form 5

Chinese version

[Removed]

English version

[Removed]

Form 6

Chinese version

[Removed]

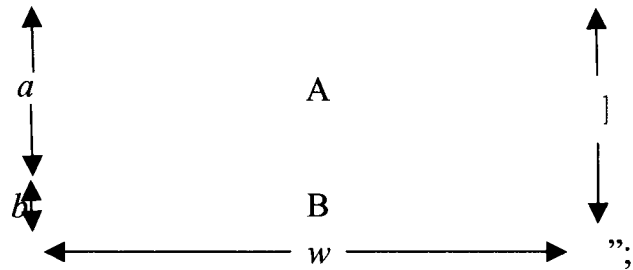
English version

[Removed]

Specifications:

1. Each form is rectangular in shape and surrounded by a black line as demarcation. The width and the length (marked “w” and “l” respectively in the diagram below) are 7 cm and 3 cm respectively.
2. Each form is divided into 2 rectangular areas (marked “A” and “B” in that diagram). The lengths of area A and area B (marked “a” and “b” respectively in that diagram) are 2.25 cm and 0.75 cm respectively.
3. Area A contains the graphic (on which “香港特區政府忠告市民” (in the Chinese version) or “HKSAR GOVERNMENT WARNING” (in the English version) is printed) as set out in the form. Area B contains the message in words as set out in the form.
4. For the Chinese version, the characters are printed in “中黑體” typeface. For the English version, the letters are printed in Univers Bold typeface.
5. In relation to area A –
 - (a) the characters and letters are printed in white;
 - (b) the graphic is printed by 4-colour printing with a minimum resolution of 300 dpi.

6. In relation to area B –
- (a) the background colour is white;
 - (b) the characters and letters are printed in –
 - (i) 100% black for black; and
 - (ii) 100% yellow plus 100% magenta for red.

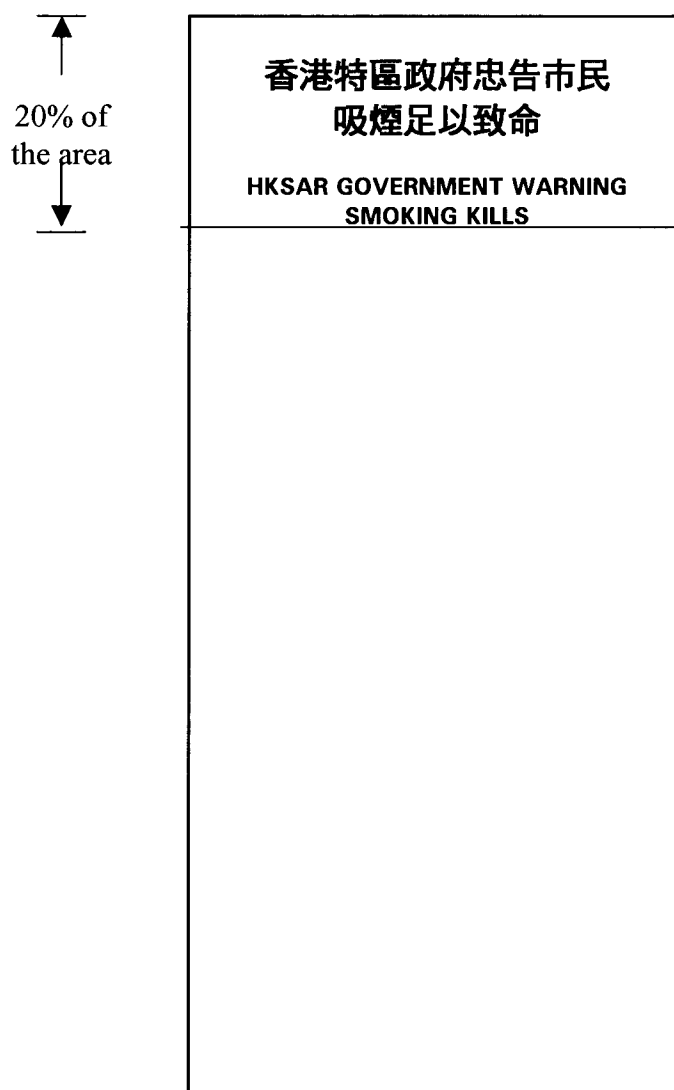


(e) by repealing Part III;

(ea) by adding –

“PART IIIA

FORM OF HEALTH WARNING ON PRICE BOARD OF TOBACCO PRODUCTS



(f) by repealing Part V.

PART 4

CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS

Division 1—Consequential amendments

Child Care Services Regulations

37.—Spitting

Regulation 38(1) of the Child Care Services Regulations (Cap. 243 sub. leg. A) is repealed.

Division 2—Transitional provisions**PART 4****TRANSITIONAL PROVISIONS****37. Section added**

The Smoking (Public Health) Ordinance (Cap. 371) is amended by adding –

**“19. Transitional provisions relating to the
Smoking (Public Health) (Amendment)
Ordinance 2006**

Schedule 5 provides for the transitional arrangements relating to
the Smoking (Public Health) (Amendment) Ordinance 2006 (_____ of
2006).”.

38. Schedule added

The following is added –

“SCHEDULE 5

[s. 19]

TRANSITIONAL PROVISIONS RELATING TO THE
SMOKING (PUBLIC HEALTH) (AMENDMENT)
ORDINANCE 2006

PART 1
DEFERMENT OF SMOKING BAN IN QUALIFIED
ESTABLISHMENTS

1. InterpretationIn this Part –“Director” (署長) means the Director of Health;

“displayed name” (展示名稱), in relation to an establishment, means any
name, style or description of the establishment that appears –

(a) outside the establishment; or

(b) on a signboard or any advertising structure
relating to the establishment;

“entry restriction” (入場限制) means any of the restrictions set out in
section 3(2);

“licensed premises” (領有牌照處所) means any licensed premises within
the meaning of regulation 2(1) of the Dutiable Commodities
(Liquor) Regulations (Cap. 109 sub. leg. B);

“licensee” (持牌人) means a licensee within the meaning of regulation 2(1)
of the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub.
leg. B);

“light refreshment” (小食) means any snack, bakery product (including
pastry), sandwich, hot dog, hamburger, cold cut made from pre-
cooked meat, vegetable salad or fruit salad;

“liquor licence” (酒牌) means a liquor licence within the meaning of section 2(1) of the Dutiable Commodities Ordinance (Cap 109);

“list of qualified establishments” (合資格場所名單) means the list maintained under section 7(1);

“person in charge” (負責人) –

(a) in relation to a qualified bar, means the licensee of the liquor licence that is in force in respect of the bar;

(b) in relation to a qualified mahjong club, means the person in whose name the certificate of compliance for the club-house is issued; and

(c) in relation to a qualified nightclub, means the licensee of the liquor licence that is in force in respect of the nightclub;

“qualified bar” (合資格酒吧) has the meaning assigned to it by section 4;

“qualified establishment” (合資格場所) has the meaning assigned to it by section 3;

“qualified mahjong club” (合資格麻將會所) has the meaning assigned to it by section 5;

“qualified nightclub” (合資格夜總會) has the meaning assigned to it by section 6.

2. Smoking ban deferred in qualified establishments

Despite section 3(1) and (1AA) of the Ordinance, a designation of no smoking area under that section does not have effect before 1 July 2009 in relation to an indoor area if and only for so long as –

(a) that area is in a qualified establishment; and

(b) the name and address of the establishment appear in the list of qualified establishments.

3. Meaning of a qualified establishment

(1) For the purposes of this Part, an establishment is a qualified establishment if and only for so long as –

- (a) it is a qualified bar, qualified mahjong club or qualified nightclub; and
- (b) it complies with all the entry restrictions.

(2) An establishment complies with all the entry restrictions if-

- (a) no person under the age of 18 years is permitted to enter the establishment;
- (b) a sign in Chinese and English is placed and kept in place in a prominent position at each entrance of the establishment indicating that no person under the age of 18 years is permitted to enter the establishment; and
- (c) such signs are maintained in legible condition and good order.

4. Meaning of a qualified bar

For the purposes of this Part, an establishment is a qualified bar if all the following requirements are complied with –

- (a) the establishment is the licensed premises of a bar, and the liquor licence in respect of it is in force;
- (b) no displayed name of the establishment contains “酒家”, “酒樓”, “餐廳”, “卡拉 OK”, “網吧”, “restaurant”, “café”, “karaoke”, “internet” or similar expressions;
- (c) except for beverages and light refreshments, no food is sold, supplied, or offered for sale or supply in the establishment; and

- (d) the establishment is not used primarily as a karaoke establishment.

5. Meaning of a qualified mahjong club

For the purposes of this Part, an establishment is a qualified mahjong club if all the following requirements are complied with –

- (a) the establishment is a club-house within the meaning of section 2 of the Clubs (Safety of Premises) Ordinance (Cap. 376);
- (b) in respect of the club-house there is in force a certificate of compliance issued under that Ordinance;
- (c) at least 70% of the gross floor area of the club-house as defined in regulation 2 of the Clubs (Safety of Premises) (Fees) Regulations (Cap. 376 sub. leg. B) is permanently and completely partitioned into individual rooms for playing mahjong;
- (d) the club-house is open 24 hours on any day on which it is open to members and their accompanied guests; and
- (e) the club-house is not located within and does not share the same premises with a karaoke establishment or restaurant premises.

6. Meaning of a qualified nightclub

For the purposes of this Part, an establishment is a qualified nightclub if all the following requirements are complied with –

- (a) the establishment is licensed premises, and the liquor licence in respect of it is in force;
- (b) each displayed name of the establishment -

- (i) in case it is in Chinese, contains the expression “夜總會”, each character of which not being smaller than any other character appearing in the displayed name; and
- (ii) in case it is in a language other than Chinese, contains the expression “night club” or “nightclub”, each letter of which not being smaller than any other letter appearing in the displayed name;
- (c) no displayed name of the establishment contains “酒家”, “酒樓”, “餐廳”, “酒吧”, “網吧”, “restaurant”, “café”, “bar”, “internet” or similar expressions;
- (d) except for beverages and light refreshments, no food is sold, supplied, or offered for sale or supply in the establishment; and
- (e) the establishment is not open for business between 6 a.m and 3 p.m. on any day.

7. List of qualified establishments

(1) The Director shall maintain a list containing the name and address of each qualified establishment notified under this section.

(2) The person in charge of a qualified establishment may request the Director to include the name and address of the establishment in the list of qualified establishments by submitting to the Director a notification in a form specified by the Director.

(3) The Director may include in the form a statutory declaration required to be made by the person in charge of a qualified establishment to the effect that all the information contained in the

notification submitted by that person is true and correct to the best of his knowledge and belief.

(4) After receiving a duly completed notification submitted under subsection (2) in respect of an establishment, the Director shall include the name and address of the establishment in the list of qualified establishments.

(5) The Director shall make the list of qualified establishments available for inspection by the public, free of charge, during the ordinary opening hours of his office.

8. Person in charge to inform the Director of a change in respect of qualified establishment

(1) Where there is a change in any information contained in the notification submitted under section 7 in respect of a qualified establishment, the person in charge of the establishment shall, within 7 days after the change, inform the Director of the change by submitting to the Director a notification in a form specified by the Director.

(2) A person who fails to comply with subsection (1) commits an offence and is liable to a fine of level 5.

(3) It shall be a defence to a charge under this section for the person charged to prove that –

(a) the offence was committed without his knowledge or consent; and

(b) he had exercised all due diligence to prevent the commission of the offence.

9. Removal of name and address from the list of qualified establishments

(1) The Director may remove the name and address of an establishment from the list of qualified establishments if –

(a) a notification is received under section 8; or

(b) he is otherwise satisfied that the establishment is no longer a qualified establishment.

(2) The Director shall not exercise his power under subsection (1)(b) without giving the person in charge a reasonable opportunity to make a written representation.

(3) As soon as practicable after removing the name and address of an establishment from the list of qualified establishments, the Director shall notify the person in charge of the establishment in writing of that fact.

10. Expiry of this Part

This Part shall expire on 1 July 2009.

PART 2 **HEALTH WARNINGS, ETC.**

38. Section added

~~The Smoking (Public Health) Ordinance (Cap. 371) is amended by adding—~~

“19. Transitional provisions relating to Smoking (Public Health)(Amendment) Ordinance 2005

~~(1) In this section—~~

1. Interpretation

In this Part –

“amendment Ordinance” (修訂條例) means the Smoking (Public Health) (Amendment) Ordinance 2005⁶ (of 2005⁶);

“relevant day” (有關日期) means the ninetieth day after the day on which the amendment Ordinance is published in the Gazette.

2. Health warning etc.

(21) It shall not be an offence under this Ordinance to sell, offer for sale or possess for the purposes of sale packets or retail containers of tobacco products which do not comply with the provisions of this Ordinance relating to health warnings and indication of tar and nicotine yields if, but only if, the packets or retail containers comply with the provisions of this Ordinance, as in force immediately before the relevant day, relating to health warnings and indication of tar and nicotine yields.

(32) Section 10(3) does not apply to any cigarettes which have on their packet or their retail container a brand name which includes the words “light”, “lights”, “mild”, “milds”, “low tar”, “醇” or “焦油含量低” or other words which imply or suggest that the cigarettes have a low tar yield if, but only if, the cigarettes have been determined, before the relevant day, under section 16 and the regulations to have a tar yield of 9 milligrams or less.

(43) This section shall expire on the first anniversary of the day on which the amendment Ordinance is published in the Gazette.”.