

**Bills Committee on
Smoking (Public Health) (Amendment) Bill 2005
Display of “No Smoking” signs by managers of statutory no smoking areas**

PURPOSE

This paper seeks to inform Members of the Administration’s latest proposal on the statutory requirement for managers to place and maintain in good condition signs in the prescribed form to indicate that smoking is prohibited in the no smoking area.

BACKGROUND

2. Under Section 5 of the Smoking (Public Health) Ordinance (“the Ordinance”), it is specified that -

‘The manager shall place (and keep in place)¹ in a prominent position in each no smoking area or public transport carrier, as the case may be, a sufficient number of signs in English and Chinese to indicate that smoking is prohibited in the no smoking area or the public transport carrier and such signs shall be of the prescribed description and shall be maintained by the manager in legible condition and good order.’

3. It is further provided in Section 7(3) of the Ordinance that any manager who fails to place signs in accordance with Section 5 and maintain the signs in the manner required by that section commits an offence and is liable on summary conviction to a fine at level 4.

4. Section 2 of the Smoking (Public Health) (Notices) Order prescribes the manner and words to be displayed in the “No Smoking” signs.

Concerns expressed by the Bills Committee and the public

(A) Onerous duty on managers

5. At earlier meetings of the Bills Committee, Members expressed concern that the requirement under Section 5 would impose too onerous a duty on managers of statutory no smoking areas. There was, for example, concern that managers might find it difficult to determine what positions would be regarded as “*prominent*” in the no smoking areas, as well as the extent or scope of “*each*” no smoking area and how many signs would be considered “*sufficient*” in each and

¹ The words in brackets are proposed amendments in the Smoking (Public Health)(Amendment) Bill 2005.

every case. Some members queried whether it would require a “no smoking” sign be placed in each room of no smoking premises, including for example each toilet cubicle or each classroom, or whether a “no smoking” sign at the entrance of a no smoking building would suffice. Members also noted that given the different layout and configuration, different floor areas and unique interior designs of commercial complexes, office buildings, hotels, restaurants, etc., it would be practically difficult for managers to know if they have fully complied with the requirement of displaying “no smoking” signs as set out in Section 5 of the Ordinance.

(B) Managers not easily identifiable in some premises

6. In relation to the discussion on the definition of “managers” in the Bill, Members expressed concern over situations where a manager or person in charge of the management of a building is not easily identifiable or non-existent in reality. Examples are old residential buildings where no owners’ corporation was formed and no management company was appointed, or in some cases there could be no Deed of Mutual Covenant (DMC) or the DMC had not spelt out who was/were to be in charge of the common areas of the building. This would pose practical difficulty for the enforcement authority in the enforcement of the relevant provision. Although it is proposed in the Bill that in such cases, the statutory responsibility of “managers” would fall on the owners of the building, there was, however, concern that the owners might not be aware of this responsibility as these owners might be elderly people, or have emigrated or actually did not reside in the said building. We have received a letter from members of the public expressing similar concern.

(C) Opportunity for misunderstanding

7. Members have raised that, in the event one of the rooms in no smoking premises incidentally did not carry such a sign, the absence of sign could mislead a person into believing that smoking was allowed in that particular room. Legal advice is that the absence of such signs would not be a defence for smokers who smoke therein.

8. In the light of the above, the Administration has reconsidered the issue.

THE ADMINISTRATION’S CONSIDERATIONS

Scope of designated no smoking area significantly enlarged

9. It is worth noting that when the Ordinance was amended in 1992 and 1997, only a small number of public venues were then designated no smoking areas. These include cinemas, concert halls, theatres, amusement game centres, banks, supermarkets, shopping malls and public transport carriers. The vast majority of

the indoor areas of workplaces and public places were still not subject to any smoking ban. It therefore became necessary to take effective measures to remind the public, in particular the smokers, of the areas where smoking was prohibited. Furthermore, in all the afore-mentioned venues, “managers” who are responsible for the management of those venues are easily identifiable. The Administration henceforth imposed a legislative requirement on managers to display “no smoking signs” in prominent positions and in sufficient numbers so that members of the public are made aware of premises that are designated no smoking areas.

10. With the introduction of the Bill, we have taken a big step forward in tobacco control. Under the current proposal, all indoor areas of workplaces and public places - with very few exceptions - are designated no smoking areas. Smokers will accept and that society will gradually build up a culture that smoking is basically prohibited in all indoor premises. If that is the case, it becomes questionable as to whether there is a continued need to require venue managers to display “no smoking” signs extensively in indoor areas, especially publicly accessible areas, when this has become the societal culture and common practice.

Whether no smoking signs should be a tool or a responsibility for managers

11. Given that members of the public are expected to be clear about the requirement of the law and cannot rely on the presence of no smoking signs as an absolute indication of whether smoking is prohibited in premises in which they are present, no-smoking signs should be regarded as one of the tools that managers may deploy to manage their premises as statutory no smoking areas. It is questionable as to whether it should be a statutory requirement.

Managers may use different measures

12. Indeed, other than the display of signs, managers should be allowed or encouraged to adopt measures which in their view are most effective or appropriate to achieve the no smoking objective in statutory no smoking areas. For example, the manager of a cinema or a concert hall/theatre may choose to remind smokers through a public announcement before a performance / a film starts instead of displaying signs on the walls which may not be noticed by the audience. Clubs restricting entry to their premises to members may wish to remind their members of the no smoking requirement through internal means of communication rather than putting up signs. Where managers prefer to put up signs, they may wish to have signs designed in such a way that the message is clear but the outlook of the sign blends in well with the interior design or style of the premises. Employers and employees of statutory no smoking area should be encouraged to work together to devise effective measures to manage their premises to safeguard customers and themselves against secondhand smoke, but should be given more flexibility to achieve the aim.

PROPOSAL

13. We propose that the statutory requirement of the display of signs under Section 5 of the Ordinance and Section 2 of the Smoking (Public Health) (Notices) Order which provides for the prescribed signs to be displayed should be repealed. The sanction against managers under Section 7(3) will also be repealed as a consequence. In other words, managers will no longer be required under law to put up signs in the prescribed form and in the prescribed manner. Instead, they will be given the flexibility to decide on the measures to take to enable them discharge their duty as a manager of a statutory no smoking area.

Public education and publicity

14. We understand that most managers may still prefer to display “no smoking” signs in their premises to serve as a reminder to their customers/employees and to facilitate their management of the no smoking area. The Tobacco Control Office (TCO) of the Department of Health will continue to make available advice and guidance on the message that the signs should convey. The TCO will also continue to supply display signs to managers free of charge on request. To assist managers of statutory no smoking areas to carry out their duties, the TCO will also continue to launch workshops and issue publicity material.

ADVICE SOUGHT

15. Members are requested to express views on the proposal in paragraph 13. Subject to Members’ views, we will prepare Committee Stage Amendments for Members’ consideration in due course.