

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 17 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;”;
- ~~(c) 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 –
- (a) that is within the meaning of section 3(1) of the Commercial Bathhouses Regulation (Cap. 132 sub. leg. I); and
- (b) in respect of which there is in force a licence granted under that Regulation;
- “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);
- “children’s playground” (兒童遊樂場) means a pleasure ground, or any part of a pleasure ground, that –

- (a) is within the meaning of section 3 of the Pleasure Grounds Regulation (Cap. 132 sub. leg. BC); and
- (b) has been specified to be used as a children's playground as mentioned in section 24 of that Regulation;

“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;

“employees’ accommodation” (僱員居所) means any premises used exclusively for the provision of 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 living accommodation;

“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) employees’ accommodation; 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 by adding “and keep in place” after “place”.

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 1 500 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 names and prices of each

type of the 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.

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;

“relevant provision” (有關條文) means any provision in this Ordinance other than a provision 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) and on production of his authority as an inspector if requested, do all or any of the following —

(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~~ or is being committed;

(b) at any reasonable time enter and inspect a no smoking area in a public place for the purpose of ascertaining whether the relevant provisions of this Ordinance are complied with;

~~(b) — in any place entered under paragraph (a) —~~

- (~~ic~~) seize any thing that appears to the inspector to be evidence of any relevant offence;
- (~~iid~~) require any person found in that place to give his name and address and to produce proof of identity if the inspector reasonably suspects that the person has committed a relevant offence or is able to provide evidence of the commission of a relevant offence; and
- (~~iiie~~) take any necessary action—photographs or make sound or video recording for the purpose of obtaining evidence in connection with any relevant offence;
- (~~f~~) require any person to produce for inspection documents or records under the control of the person for the purpose of enabling the inspector to ascertain whether the relevant provisions of this Ordinance are complied with;
- (~~g~~) make copies of all or any part of any such documents or records;
- (~~h~~) require any person to provide the inspector with such assistance or information as is reasonably necessary to enable the inspector to exercise any power or perform any duty conferred or imposed by this Ordinance.

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

- (32) 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.

(3) An inspector shall not enter under subsection (1)(b) any public place that is a common part of any premises to which the public are not entitled or permitted to have access.

(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.

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 –

(aa) by adding –

“2A. Any escalator.

2B. Any children’s playground.”.

(a) by repealing item 4;

(b) by adding –

“5. Any child care centre.

6. Any school.

6A. Any specified educational establishment except
for employees’ accommodation.

7. Any approved institution.

8. Any place of detention.

9. Any place of refuge.

10. Any reformatory school.

10A. Any hospital.

10B. Any maternity home;

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; or
- (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**

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 a price board that lists the names and prices of the tobacco products offered for sale in any premises .

(2) The price board shall bear a health warning in the form set out in Part IIIA of the Schedule.

(3) The health warning shall be of a size that covers at least 20% of the surface of the price board.”.

36. Schedule amended

The Schedule is amended –

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

“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]

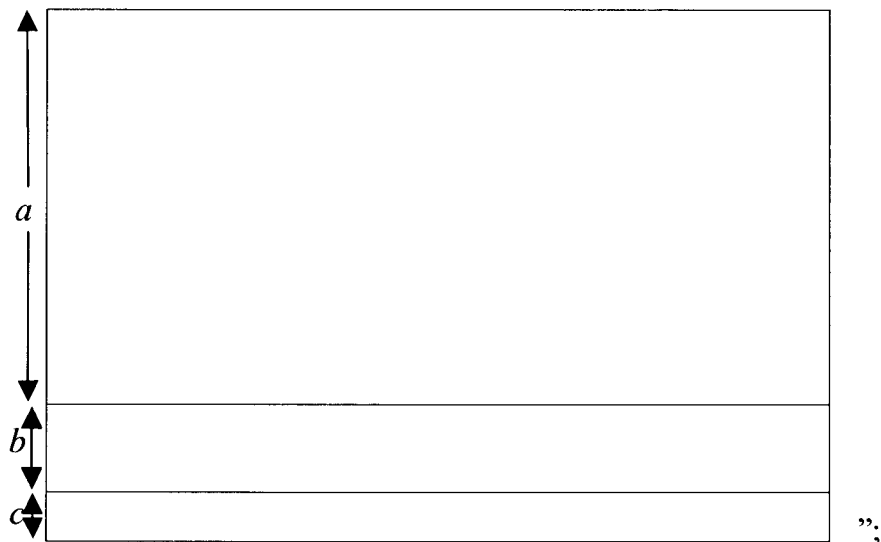
English version

[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

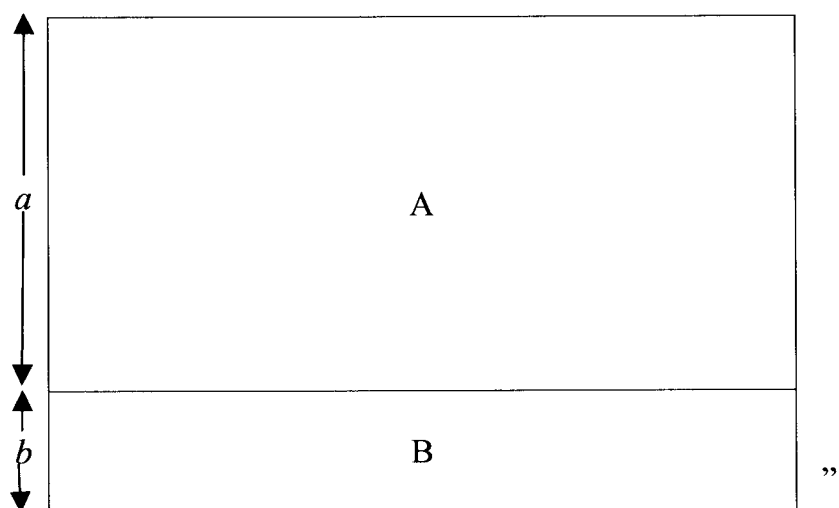
Chinese version

	[Removed]
	<u>English version</u>
	[Removed]
Form 3	
	<u>Chinese version</u>
	[Removed]
	<u>English version</u>
	[Removed]
Form 4	
	<u>Chinese version</u>
	[Removed]
	<u>English version</u>
	[Removed]
Form 5	
	<u>Chinese version</u>
	[Removed]
	<u>English version</u>
	[Removed]
Form 6	
	<u>Chinese version</u>
	[Removed]
	<u>English version</u>
	[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]

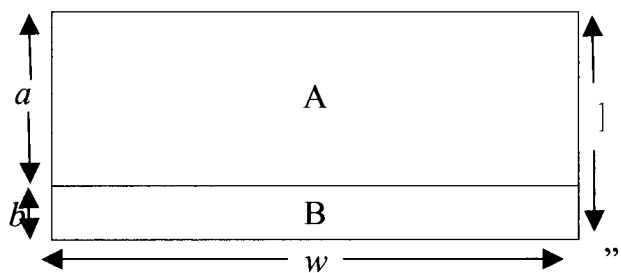
English version

[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



Specifications:

1. The form is rectangular in shape and surrounded by a black line as demarcation.
2. The background colour is white.
3. The characters “香港特區政府忠告市民” are printed in 35 kyu (級).

4. The characters “吸煙足以致命” are printed in 90 kyu (級).
5. All characters referred to in paragraphs 3 and 4 are printed in black and in “華康中黑體” typeface.
6. The letters “HKSAR GOVERNMENT WARNING” are printed in 25 points.
7. The letters “SMOKING KILLS” are printed in 70 points.
8. All letters referred to in paragraphs 6 and 7 are printed in black and in Univers Bold typeface, all capitals.
9. If the price board is smaller than 1500 square centimetres, the characters and letters of the health warning may be proportionally reduced in kyu (級) and points by reference to the specifications in paragraphs 3, 4, 6 and 7.”;

(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. Interpretation

In this Part –

“Appeal Board” (上訴委員會) means the Appeal Board established by section 12;

“certificate of compliance” (合格證明書) means a certificate of compliance within the meaning of section 2 of the Clubs (Safety of Premises) Ordinance (Cap. 376);

“club-house” (會址) means a club-house within the meaning of section 2 of the Clubs (Safety of Premises) Ordinance (Cap. 376);

“designated mahjong room” (指定麻將房) has the meaning assigned to it by section 5(2);

“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;

“exclusive entrance” (專用入口), in relation to an establishment, means an entrance that leads exclusively to the establishment;

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

“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);

“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);

“listed establishment” (列明場所) means an establishment with its name and address included in the list of qualified establishments;

“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 club, means the person in whose name the certificate of compliance for the club-house is issued;
- (c) in relation to a qualified nightclub, means the licensee of the liquor licence that is in force in respect of the nightclub;
- (d) in relation to a bathhouse, means the person to whom a licence in respect of the bathhouse is granted under the Commercial Bathhouses Regulation (Cap. 132 sub. leg. I); and
- (e) in relation to mahjong-tin kau premises, means the person to whom a licence is issued in respect of the premises under section 22(1)(b) of the Gambling Ordinance (Cap. 148);

“prescribed sign” (訂明標誌) has the meaning assigned to it by section 8(2);

“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(1);

“qualified club” (合資格會所) has the meaning assigned to it by section 5(1);

“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) the area -
 - (i) is a designated mahjong room in a listed establishment that is a qualified club; or
 - (ii) is in any other listed establishment; and
- (b) a prescribed sign is displayed in relation to the establishment in accordance with section 8(1).

3. Qualified establishment and entry restrictions

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

(2) For the purposes of this Part, 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) no person can enter the establishment except through an exclusive entrance;
- (c) a sign in Chinese and English is placed and kept in place in a prominent position at each exclusive entrance of the establishment indicating that no person under the age of 18 years is permitted to enter the establishment; and

- (d) such signs are maintained in legible condition and good order.

4. 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 a bar in respect of which there is in force a liquor licence relating exclusively to the bar;
- (b) the establishment is permanently and completely partitioned off from any other establishment;
- (c) 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; and
- (d) the establishment complies with all the entry restrictions.

5. Qualified club and designated mahjong room

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

- (a) the establishment is a club-house in respect of which there is in force a certificate of compliance;
- (b) the club-house is open 24 hours on any day on which it is open to members and their accompanied guests;
- (c) the establishment consists of one or more designated mahjong rooms; and
- (d) the establishment complies with all the entry restrictions.

(2) For the purposes of this Part, a room in an establishment is a designated mahjong room if –

- (a) the room is furnished and used for the purpose of playing mahjong; and
- (b) the room is permanently and completely partitioned off from the remainder of the establishment.

6. Qualified nightclub

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

- (a) there is in force a liquor licence in respect of the establishment;
- (b) either –
 - (i) each displayed name of the establishment in Chinese contains the expression “夜總會” in plain and readily legible characters; or
 - (ii) each displayed name of the establishment in a language other than Chinese contains the expression “night club” or “nightclub” in plain and readily legible letters;
- (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) the establishment is not open for business between 6 a.m and 12 p.m. on any day; and

(e) the establishment complies with all the entry restrictions.

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 person in charge shall in the notification make a declaration stating that all the information given in the notification is true, correct and complete.

(4) After receiving a duly completed notification submitted under this section 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. Listed establishment to display prescribed sign

(1) The person in charge of a listed establishment shall ensure that –

(a) a prescribed sign is placed and kept in place –

(i) in the case of a listed establishment that is a qualified club, in a prominent position at the exclusive entrance of each designated mahjong room in the club; and

(ii) in the case of any other listed establishment, in a prominent position at each exclusive entrance of the establishment; and

(b) the sign is maintained in legible condition and good order.

(2) For the purposes of this Part, a sign is a prescribed sign if it complies with all the following specifications –

(a) it is rectangular in shape and measures 15 cm x 15 cm;

(b) it is surrounded by a black line as demarcation and the background colour is white;

(c) it reads –

(i) in the case of a listed establishment that is a qualified club, “此房間是合資格會所的指定麻將房，而此會所已列入根據《吸煙(公眾衛生)條例》備存的合資格場所名單，此房間將於 2009 年 7 月 1 日起實施禁煙規定。 This is a designated mahjong room in a qualified club that has been included in the list of qualified establishments maintained under the Smoking (Public Health) Ordinance. The smoking ban will apply to this room with effect from 1 July 2009.”; and

(ii) in the case of any other listed establishment, “此場所已列入根據《吸煙(公眾衛生)條例》備存的合資格場所名單，此場所的室內區域將於 2009 年

7 月 1 日起實施禁煙規定。 This establishment has been included in the list of qualified establishments maintained under the Smoking (Public Health) Ordinance. The smoking ban will apply to an indoor area in this establishment with effect from 1 July 2009.”; and

(d) all characters and letters are printed in black and are plain and readily legible.

(3) The manager of a no smoking area that is not in a listed establishment shall ensure that no prescribed sign, or any other sign implying or suggesting that smoking is permitted in the area, is displayed in or outside the area.

(4) A person who fails to comply with subsection (1) or (3) commits an offence and is liable to a fine at level 5 and, in the case of a continuing offence, to a further penalty of \$1500 for each day during which the offence continues.

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

(1) Where there is any change in any information given in the notification submitted under section 7 in respect of a listed establishment, and as a result the establishment is no longer a qualified establishment, the person in charge of the establishment shall, within 10 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) Without prejudice to subsection (1), if the person in charge of a listed establishment wishes to have the name and address of the establishment removed from the list of qualified establishments, he may

request the Director to do so by submitting to the Director a notification in a form specified by the Director.

(3) After receiving a notification submitted under this section in respect of a listed establishment, the Director shall remove the name and address of an establishment from the list of qualified establishments.

(4) If it otherwise comes to the knowledge of the Director that a listed establishment is no longer a qualified establishment or section 8(1) is not complied with, the Director may, on his own initiative, remove the name and address of the establishment from the list of qualified establishments.

(5) The Director shall not make a decision under subsection (4) in respect of a listed establishment without giving the person in charge concerned prior notice and an opportunity to make a written representation within 10 days after the issue of the prior notice.

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

10. Defence to offences under this Part

In any proceedings for an offence under this Part, it is a defence 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.

11. Appeal to Appeal Board against Director's decision

(1) A person aggrieved by a decision of the Director under section 9(4) may, within 14 days after the decision, appeal to the Appeal Board by giving a notice of appeal to the Secretary stating the substance of the matter and reasons for the appeal.

(2) An appeal under this section against a decision does not suspend the decision unless the Secretary decides otherwise.

12. Constitution of Appeal Board

(1) There is established an Appeal Board for the purpose of hearing and determining an appeal under section 11.

(2) The Appeal Board is to be constituted according to this section.

(3) Where a notice of appeal is given under section 11, the Secretary shall appoint 3 members from the Appeal Board Panel constituted according to section 13 to serve as members on the Appeal Board for the purpose of hearing and determining the appeal to which the notice relates.

(4) The Secretary shall appoint one of those 3 members to be the Chairman of the Appeal Board in the hearing of that appeal.

(5) The Secretary shall ensure that no person having a financial or other personal interest in the matter involved in an appeal is to serve as a member on the Appeal Board for hearing and determining that appeal.

13. Constitution of Appeal Board Panel

(1) Subject to subsection (2), the Secretary shall appoint an Appeal Board Panel ("the Panel") consisting of such persons as he considers suitable to serve as members of the Appeal Board.

(2) A public officer is not eligible for appointment to the Panel.

(3) An appointment under subsection (1) shall be for such period as the Secretary may determine.

(4) A member of the Panel may resign his office by giving notice in writing to the Secretary.

(5) The Secretary shall publish in the Gazette notice of every appointment under subsection (1).

14. Proceedings before Appeal Board

(1) The Chairman of the Appeal Board shall notify the appellant and the Director of the time and place of the hearing of the appeal.

(2) The appellant and the Director may be represented by an agent or legal representative at the proceedings before the Appeal Board.

(3) The Appeal Board shall determine its procedure for hearing the appeal.

15. Powers of the Appeal Board

(1) The Appeal Board may -

(a) order a person to attend before the Board and give evidence; and

(b) order a person to produce documents.

(2) The Appeal Board may-

(a) confirm or revoke the decision of the Director under appeal; and

(b) make any order it thinks fit with regard to the payment of costs of proceedings under this section and the costs of the Director or the appellant.

(3) The decision of an Appeal Board on an appeal shall be binding on the appellant and the Director and shall be final.

(4) The Appeal Board shall notify the appellant and the Director of its decision and the reasons for it.

(5) Costs awarded or imposed under this section are recoverable as a civil debt.

16. 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 2006 (of 2006);

“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.

(1) 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.

(2) 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.

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