

SMOKING (PUBLIC HEALTH) (AMENDMENT) BILL 2005

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Health, Welfare and Food

Clause

Amendment Proposed

4(h)

By adding -

““massage establishment” (按摩院) means a massage
establishment -

(a) that is within the meaning of
section 2 of the Massage
Establishments Ordinance (Cap.
266); and

(b) in respect of which a licence
granted under that Ordinance is in
force;”.

18

By deleting the proposed section 15G and substituting -

“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 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;
- (c) seize any thing that appears to the inspector to be evidence of any relevant offence;
- (d) require any person 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;
- (e) take 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) 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)(d), 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."

20(b)

(a) In the proposed item 11, by adding -

"(ia) massage establishment;".

(b) By adding -

"12. The Hong Kong Wetland Park, being the area of Government land designated under section 24(1) of the Country Parks Ordinance (Cap. 208).".

36

By adding -

"(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 30 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 30 points.
7. The letters "SMOKING KILLS" are printed in 90 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." ;".

37 By deleting the clause and substituting -

"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 6 provides for the transitional arrangements relating to the Smoking (Public Health) (Amendment) Ordinance 2006 (of 2006).".

38. Schedule added

The following is added -

"SCHEDULE 6 [s. 19]

Transitional Provisions relating to the Smoking (Public Health)(Amendment) Ordinance 2006

Part 1

Deferment of Smoking Ban in Listed 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;

"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);

(e) in relation to a massage establishment, means the person to whom a licence to operate the establishment is issued under the Massage Establishments Ordinance (Cap. 266); and

(f) 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;

"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 listed 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

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

(a) the establishment is -

- (i) a qualified bar;
- (ii) a qualified club;
- (iii) a qualified nightclub;
- (iv) a bathhouse;
- (v) a massage establishment; or
- (vi) mahjong-tin kau premises; and

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

(2) For the purpose of subsection (1)(b), 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 as defined in section 2 of the Ordinance;
- (b) the establishment is permanently and completely partitioned off from any other establishment;
- (c) there is in force a liquor licence in respect of and relating exclusively to the

establishment; and

- (d) 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.

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; and
- (c) the establishment consists of one or more designated mahjong rooms.

(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; and
- (d) the establishment is not open for business between 6 a.m and 12 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 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) such signs are 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 square in shape and each side is at least 15 centimetres in length;

(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 written 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 any pecuniary or other personal interest, direct or indirect, 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) 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).

(6) Upon his appointment, a member of the Panel shall submit to the Secretary, in a form specified by the Secretary, a written declaration stating the particulars of any pecuniary or other personal interest, direct or indirect, that he has in any matter that raises or may raise a conflict with his duties as a member of the Panel.

(7) Where there is any change in any matter stated in a declaration submitted under subsection (6), the member shall, within one month after the change, submit to the Secretary another declaration stating the change.

14. Proceedings before Appeal Board

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

(2) The Chairman shall fix the date of the hearing on -

(a) a date that is within 14 working days after the receipt of the notice of appeal; or

(b) a later date if requested by the appellant.

(3) The hearing of the appeal shall be conducted in public unless the Chairman of his own motion, or at the request of the appellant or the Director, orders that all or any persons should be excluded from the whole or any part of the hearing.

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

(5) 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 confirm or revoke the decision of the Director appealed against.

(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.

16. Expiry of this Part

This Part shall expire on 1 July 2009."