

**Bills Committee on
Smoking (Public Health) (Amendment) Bill 2005**

**Administration's response to issues raised
at the Bills Committee meetings
on 24 April, 4 May, 9 May, 12 May and 16 May 2006**

PURPOSE

This paper sets out the Administration's response to issues raised by the Bills Committee at its meetings on 24 April, 4 May, 9 May, 12 May and 16 May 2006.

BACKGROUND

2. At the above meetings, Members raised the following issues and requested the Administration to provide a response in writing -

(a) To ascertain whether ferry vessels were still subject to the smoking ban if they were sometimes hired out for private functions or operated as fee-charging public tour boats;

ADMINISTRATION'S RESPONSE

3. Existing section 4 of and Schedule 1 to the Smoking (Public Health) Ordinance (the Ordinance) already bans smoking in "those parts of a ferry vessel operated under a franchise or a licence granted under the Ferry Services Ordinance (FSO) (Cap. 104) opened, kept or used for or in connection with the carriage of passengers or to which the passengers have or are permitted to have access." In other words, smoking is banned in parts of ferry vessels that are accessible to the public, if such vessels are operated under a licence granted under the FSO.

4. Section 5 of the Ordinance sets out a list of services that can be operated without a ferry service franchise or licence under the FSO. These services include "cargo service", "employee service", "permitted service" and "tour service". We understand from the Environment, Transport and Works Bureau that a ferry vessel hired out for private functions is not subject to the licensing requirements of the FSO if it is operating a "tour service" exempted under section 5 of the FSO. Smoking is therefore not prohibited under the Ordinance in this case.

(b) to consider including a food factory or restaurant licence requirement within the meaning of section 31(2) of the Food Business Regulation (Cap. 132 sub. leg. X) in the definition of “restaurant premises”;

5. Paragraph (a) of the definition of “restaurant premises” in the Smoking (Public Health) (Amendment) Bill 2005 (the Bill) already covers the food business of any “restaurant” as defined in section 31(2) of the Food Business Regulation (Cap. 132 sub. leg. X), which can only be carried on under a licence required by section 31(1) of that Regulation.

6. As far as a “food factory” is concerned, it is defined in section 31(2) of that Regulation to refer to any food business that involves the manufacture or preparation of food for sale for human consumption off the premises. As the reference to “restaurant premises” in the Bill is intended to cover businesses that provide food for consumption on the premises, we do not recommend further expanding the definition to specifically encompass a food factory, which involves sale of food for consumption off the premises. Such kind of food business will be covered by the definition of “workplace” as proposed in the Bill and smoking will be prohibited if it is located within an indoor area.

(c) whether the Occupational Safety and Health Ordinance (Cap. 509) could be used by employees to sue their employers for requiring them to live in communal accommodation where they were forced to be exposed to secondhand smoking; and

7. The long title of the Occupational and Safety Health Ordinance (Cap. 509) (‘OSHO’) is “an Ordinance to ensure the safety and health of persons when they are at work, to provide for related matters, and to consequentially amend” It is apparent that the objective of the OSHO is to ensure safety and health of employees while they are at work or working. This may be reflected by the provisions setting out the purposes of the OSHO in section 2. Section 2(a) - (c) of the OSHO deal with those purposes as to ensure safety and health of employees at work, measures to contribute to making workplaces safer and to improve safety standards applicable to hazardous processes and plants and substances used or kept in workplaces; section 2(d) sets out the purpose generally to improve the safety and health aspects of working environments of employees.

8. Under section 3(1) of the OSHO, “work” means work as an employee; “workplace” means (subject to certain exclusions) any place where employees work. Section 3(4) provides that for the purpose of the OSHO, a person is at work only during the time when the person is actually at a workplace. Accordingly, we are of the view that the OSHO is primarily concerned with

the safety and health aspects of employees at work or while they are working in a workplace and those conditions or environments connected with the work processes or the employees' working in a workplace.

9. It follows that a communal accommodation provided by employers to employees for sleeping or rest would not form part of a workplace (in the sense that the accommodation is not used for working by employees or is in any way involved in the work processes). It therefore does not seem that there is a good case for an employee to rely on the OSHO for an action in the matter. We take the view that "working environment" as referred to in section 2(d) of the OSHO does not include those conditions on the premises of a communal accommodation which are used by employees for rest or sleeping after they have finished their work, i.e. not actually a workplace for working.

(d) provide information about where the smoking lounges inside the Hong Kong International Airport were located, what protection was provided to staff assigned to clean these smoking rooms, and the adequacy of such protection to safeguard the staff against secondhand smoking.

10. There are a total of twelve smoking lounges in the Hong Kong International Airport. Seven are located at the Departure Level while five are located at the Arrival Level, three of which are within the Transit Areas. The Airport Authority Hong Kong has also decided to stop the usage of the two smoking lounges situated at the Arrival Hall starting 1 January 2007.

11. Thorough cleaning of the smoking lounges is usually done after mid-night, when the smoking lounges are usually empty. At other times, contractors would inspect the smoking lounges through the glass wall from outside the smoking lounges, without entering, at regular intervals. If deemed necessary, workers would enter the smoking lounges for a fast regular cleaning (i.e. to empty the ash trays).

12. As reported in LC Paper No. CB(2)729/05-06(01), internal working procedures and guidelines of the cleaning contractor already stipulated that workers should wear appropriate personal protective equipment including facemasks during the cleaning process. The time necessary for them to stay in the smoking lounges is also minimal. Job rotations were also arranged to ensure that no worker would be exposed to secondhand smoke for a prolonged period of time.

13. The Administration was also requested to provide the following information in writing -

(a) Examples of local legislation providing similar powers as stipulated in the new 15G of the Ordinance; and

14. Provisions in other Ordinances that provide similar powers as stipulated in the new section 15G proposed in the Administration's draft committee stage amendments to the Bill include –

- Section 38 of the Water Pollution Control Ordinance (Cap. 358);
- Section 23 of the Film Censorship Ordinance (Cap. 392);
- Section 23 of the Occupational Safety and Health Ordinance (Cap. 509); and
- Section 7A of the Broadcasting Ordinance (Cap. 562).

(b) provide information on which areas within the premises of correctional institutions would be subject to and exempted from the smoking ban respectively.

15. Under the Bill and the statutory provision of Rule 25(2) of Prison Rules (Cap. 234), smoking will be prohibited in all indoor areas of correctional institutions except in areas specifically designated by Heads of Institutions as smoking areas. According to the Correctional Services Department, in institutions for adult prisoners, Heads of Institutions will designate smoking areas, e.g. single cells and designated areas in workshops, dayrooms, dining halls and dormitories, etc for prisoners to smoke. However, in institutions for young offenders where they are not allowed to smoke, there will not be any designated smoking areas for prisoners.