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**Background paper prepared by the Legislative Council Secretariat
for the Bills Committee on the
Smoking (Public Health) (Amendment) Bill 2005**

Purpose

This paper gives an account of the past discussions by the Panel on Health Services (the Panel) on the Administration's proposed amendments to the Smoking (Public Health) Ordinance (the Ordinance) (Cap. 371).

Background

2. The Ordinance was first enacted in 1982 to restrict the use, sale and promotion of tobacco products. It was last amended in 1997.
3. Under existing legislation, tobacco advertisement is prohibited, and supermarkets, department stores, shopping malls and banks are designated as no smoking areas. Restaurants providing indoor seating accommodation for more than 200 persons, excluding areas partitioned exclusively for a private event, are required to designate at least one-third of such area as no smoking area.
4. Since the last amendment to the Ordinance in 1997, there have been calls in the community for more stringent control over the use and promotion of tobacco products. Second-hand smoking by non-smokers is a subject of constant complaints in many restaurants. The lack of explicit provisions empowering the Tobacco Control Office (TCO) of the Department of Health to enforce the Ordinance has also proved to be an operational constraint.
5. Following consultation with the Legislative Council (LegCo) Panel on Health Services (the Panel) in May 2001, the Administration launched a public consultation exercise in June 2001 to gauge public opinions on a package of measures to provide protection against second-hand smoking in indoor workplaces and public places. The public consultation reflected broad-based community support for most of the proposed initiatives, although the catering

and tobacco trades were against some of the proposals on the grounds that they would adversely affect their business.

6. The adoption of the Framework Convention on Tobacco Control by the World Health Organization (WHO) in 2003 heightened momentum for tightening tobacco control laws worldwide. At the LegCo meeting on 20 October 2004, a motion calling for expeditious implementation of a total smoking ban in workplaces, restaurants and indoor public areas was carried.

Deliberations of the Panel

7. The Administration consulted the Panel on its proposed amendments to the Ordinance at three meetings on 10 January 2005, 25 February 2005 and 18 April 2005. Most members welcomed the proposals and discussions at the meetings were centred on the following areas -

Exceptional arrangements and transitional provisions

Exceptional arrangements

8. The Administration originally proposed to exclude mahjong premises and commercial bathhouses from the definition of indoor workplace. Sharing the view that the proposal went against the intent to fully protect the public and the employees of such businesses against second-hand smoke in indoor workplaces/public places and would give rise to complaints of unfairness, some members urged the Administration to re-consider the proposal.

9. The Administration explained that the proposal was based on the feedback received in the 2001 public consultation exercise and the fact that customers of such places were mostly smokers and not young people or children. However, the Administration was willing to re-consider the proposal if members advised otherwise.

10. At the Panel meeting on 18 April 2005, the Administration informed members that taking into account the need to protect employees from passive smoking in the workplace, the Administration was inclined not to exclude mahjong premises and commercial bathhouses from the proposed definition of indoor workplace.

Transitional arrangements

11. Questions on the proposed transitional period of three to 12 months were also raised. Some members considered that the proposed transitional period of 12 months for restaurants, bars and karaokes was too long. A few members suggested the adoption of a phased approach to facilitate compliance

of the new requirements.

12. The Administration explained that transitional arrangements were necessary to facilitate compliance with the new statutory requirements. The Administration would also need time for some preparatory work before the legislative amendments could come into operation after enactment. To enable the relevant industries to start making adjustments as early as possible, the Administration would undertake wide publicity on the proposed amendments once they were submitted to LegCo so that the industries could have adequate time to adapt to the new requirements before the enactment of the relevant provisions.

Smoke-free legislation - overseas experience

13. At the request of the Panel, the Administration provided information on smoke-free legislation overseas and their impact on the catering and hospitality industries for discussion at the meeting on 25 February 2005.

14. The Administration pointed out that according to quality reviews of relevant economic studies, the respective percentages of these studies indicating no impact, a positive impact or a negative impact of smoke-free laws on sales and employment of restaurants and bars were more or less the same. However, it was noted that all the studies which had indicated a negative economic impact were those which were directly or indirectly sponsored by the tobacco industry.

15. The Administration also pointed out that based on its initial discussions with the catering industry, some members of the industry also believed that the smoking ban should have no material distorting effect on competitive forces driving the catering industry so long as there was a level playing field and differential treatments were kept to a minimum.

16. The Panel has asked the Research and Library Services Division of the LegCo Secretariat to conduct a study on smoke-free workplace legislation in selected overseas places to facilitate the deliberations of members on the Administration's proposed amendments to the Ordinance. The places included in the study are Ireland, Norway, the United Kingdom, Singapore, Thailand, Japan, Taiwan, the State of California in the United States, the State of Queensland in Australia and the Province of British Columbia in Canada. The study is expected to be completed in June 2005.

Consultation with the catering and hospitality industries

17. In view of the concerns expressed by some members of the catering and hospitality industries, some members urged the Administration to conduct further consultation with the industries concerned before finalising the

proposals.

18. The Administration assured members that the legislative intent and the proposed legislative proposals would be clearly explained to the industries concerned, and consultation with them would continue before and after the bill was introduced.

19. Some members suggested that the Administration should strengthen promotion to employees of the catering and hospitality industries about their right to a safe working environment under the Occupational Safety and Health Ordinance and include them in the consultation process. As there were many employers in support of the statutory smoking ban and some had already made their premises smoke-free, the Administration should contact them and ask them to give their support to the proposed amendments.

Enforcement of the legislation

20. In response to members' concern about legal responsibilities of managers of statutory no smoking areas, the Administration clarified that obligations imposed on such managers were similar to those imposed under the existing Ordinance. Basically, premises managers were only required to post "No smoking" signs in the areas, to take practical steps to prohibit smoking in the areas such as removing ashtrays from the areas, and to take rectification action against smokers upon detection of smoking acts in the areas. Provided that premises managers had taken such measures, they would generally not be held accountable for smoking acts in areas under their supervision. The Administration intended that while some responsibilities would be imposed on the management staff of premises, the primary responsibility of law enforcement should rest with the Government.

21. Noting that inspectors of the TCO would be given powers to deal with certain existing offences and new offences arising from the proposed amendments, some members were concerned whether the TCO would have enough resources to enforce the new legislation effectively. They suggested that other law enforcement agencies should assist in enforcement actions. Staff of other Government departments, such as the Labour Department and the Food and Environmental Hygiene Department, should also be involved in the enforcement of the smoking ban during their inspection of the relevant indoor workplaces and public places.

22. The Administration informed members that the TCO had an establishment of about 30 staff and the number of staff would be doubled to enable the TCO to carry out its duties effectively. Where necessary, manpower resources from the Police would be deployed to the TCO to assist in its work. The Administration would closely monitor the situation and seek additional funding where necessary. The Health, Welfare and Food Bureau

would secure the support of the other bureaux as far as possible in the implementation of the statutory smoking ban.

Youth smoking and public education

23. Many members expressed concern about the growing trend of more and more young people, in particular females, taking up smoking and asked the Administration whether there were anti-smoking measures targeting at youths. While acknowledging the need to educate young people to refrain from taking up smoking, the Administration pointed out that since anti-smoking was a community-wide issue, a comprehensive publicity and public education programme on health hazards caused by smoking should target at the community at large, instead of focusing on specific groups of people. This approach was more effective as recommended by the WHO.

24. Some members asked the Administration to consider imposing a levy on the tobacco industry to provide a source of funding for promotion of the no smoking policy. The Administration explained that it preferred not to adopt such a method for fear that it would send the wrong message to the community that the Government was co-operating with and in support of the tobacco companies. The WHO had also advised against raising funds through a levy on the tobacco industry.

25. Members also asked the Administration to produce more announcements of public interests to promote anti-smoking in the community. The health hazards posed by passive smoking in the workplace on the employees should be one of the important aspects to be focused on in publicity activities.

26. The Administration responded that promotional activities on anti-smoking were on-going through various publicity means including television and radio broadcasting. New rounds of publicity campaigns on the proposed amendments would be launched at different stages of time to heighten public awareness of the proposals and to achieve sustained community support for promoting a no smoking culture. Relevant Government departments would also be assisting in this endeavour.

Duty visit of the Panel on Health Services

27. To facilitate members' consideration of the proposed amendment to the Ordinance, the Panel agreed that an overseas duty visit should be conducted from 10 to 20 August 2005 to obtain first-hand information on the implementation of smoking ban in Singapore, Norway and Ireland. The House Committee's approval will be sought for the visit upon confirmation of the proposed visit by the countries concerned.

Recent development

28. The Administration introduced the Smoking (Public Health) (Amendment) Bill 2005 into the Council on 11 May 2005. The Administration pointed out in the LegCo Brief on the Bill that Members' views and suggestions on the exceptional and transitional arrangements had been factored into the Bill as appropriate.

Relevant papers

29. Members are invited to access the LegCo website (<http://www.legco.gov.hk>) to view the minutes of the meetings of the Panel held on 10 January 2005, 25 February 2005 and 18 April 2005 and the LegCo Brief on the Bill.

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