

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 -

"public swimming pool" (公眾泳池) means a public swimming pool within the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132);

"stadium" (體育館) means a stadium within the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132);".

5

(a) By deleting paragraph (a) and substituting -

"(a) by repealing subsection (1) and substituting -

"(1) The areas described in Part 1 of Schedule 2 are designated as no smoking areas.

(1AA) Subsection (1) does not apply to the exempt areas described in Part 2 of Schedule 2.";".

(b) In paragraph (c), by deleting the proposed section 3(5).

6 By deleting the clause and substituting -

"6. Display of signs where smoking prohibited
Section 5 is repealed."

8 By deleting the clause and substituting -

"8. Offences under Part II
Section 7(3) and (4) is repealed."

18 In the proposed section 15G, by repealing subsection (1)(b)(ii) and substituting -

"(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;"

19 By deleting the clause and substituting -

"19. Regulations and Orders
Section 18(2)(a) is amended by repealing "the form of any notice that smoking is prohibited," and substituting "the form (including specifications) of"."

20 By deleting the clause and substituting -

"20. Schedule substituted

Schedule 2 is repealed and the following substituted -

"SCHEDULE 2 [s. 3]

Part 1

DESIGNATED NO SMOKING AREAS

Item	Type of area
1.	Any cinema, theatre or concert hall.
2.	Any public lift.
3.	Any escalator.
4.	Any amusement game centre.
5.	Any children's playground.
6.	Any child care centre.
7.	Any school.

8. Any specified educational establishment.
9. Any approved institution.
10. Any place of detention.
11. Any place of refuge.
12. Any reformatory school.
13. Any hospital.
14. Any maternity home.
15. The following areas within any public swimming pool -
 - (a) any swimming pool;
 - (b) any sidewalk immediately adjacent to the swimming pool;
 - (c) any diving board or other apparatus or facility adjoining the swimming pool; and
 - (d) any spectator stand.

16. The following areas within any stadium -
 - (a) any pitch;
 - (b) any sidewalk immediately adjacent to the pitch; and
 - (c) any spectator stand.

17. The Hong Kong Wetland Park designated under section 24(1) of the Country Parks Ordinance (Cap. 208).

18. An indoor area in -
 - (a) any shop, department store or shopping mall;
 - (b) any market (whether publicly or privately operated or managed);
 - (c) any supermarket;
 - (d) any bank;
 - (e) any restaurant premises;
 - (f) any bar;
 - (g) any karaoke establishment;
 - (h) any mahjong-tin kau premises;
 - (i) any bathhouse;
 - (j) any massage establishment;
 - (k) any residential care home;
 - (l) any treatment centre; or

(m) any communal quarters (as defined in Part 3).

19. An indoor area in a workplace or public place to the extent that it is not an area described in any other item in this Part.

Part 2

EXEMPT AREAS

Item	Type of area
1.	Any area described in item 19 of Part 1 that is situated in domestic premises.
2.	Type 1 private quarters (as defined in Part 3).
3.	Type 2 private quarters (as defined in Part 3) that is not situated within any of the following - (a) a child care centre; (b) a school; (c) a specified educational establishment;

- (d) an approved institution;
- (e) a place of detention;
- (f) a place of refuge;
- (g) a reformatory school;
- (h) a hospital;
- (i) a maternity home.

4. A bedspace apartment in respect of which a licence or certificate of exemption issued under the Bedspace Apartments Ordinance (Cap. 447) is in force.

5. A room or suite of rooms in a hotel or guesthouse if -

- (a) 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
- (b) the room or suite of rooms is being hired for use as sleeping accommodation.

6. 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).

7. 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).

8. 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).

9. 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 -
- (a) the business is not engaged in the retail sale of tobacco products;;
 - (b) 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;
 - (c) the room is only used for carrying out the tobacco tasting;

- (d) the room is independently ventilated and completely partitioned off from the remainder of the premises; and
- (e) 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).

Part 3

Interpretation

In this Schedule -

"communal quarters" (共用宿舍) means any premises that are the living accommodation provided by an employer to two or more employees, or to those employees and their families, whether or not any monetary consideration is received by the employer for providing the accommodation, but does not include -

- (a) any room occupied exclusively by one employee, or by that employee and his family, within any such accommodation; and
- (b) any such accommodation that forms part of the private dwelling of the employer or any other person;

"Type 1 private quarters" (第一類私人宿舍)

means any premises that comply with the following requirements -

- (a) the premises are the living accommodation provided by an employer to one employee, or to that employee and his family, whether or not any monetary consideration is received by the employer for providing the accommodation;
- (b) the accommodation is occupied exclusively by that employee, or by him and his family; and

- (c) the block of building in which the accommodation is situated consists only of such accommodation and the common parts (if any) shared by such accommodation;

"Type 2 private quarters" (第二類私人宿舍)

means any premises that comply with the following requirements -

- (a) the premises are the living accommodation provided by an employer to one employee, or to that employee and his family, whether or not any monetary consideration is received by the employer for providing the accommodation;
- (b) the accommodation is occupied exclusively by that employee, or by him and his family; and

(c) the accommodation is permanently and completely partitioned off from the remainder of any area described in Part 1 within which the accommodation is situated; and

(d) none of any window, door or other closeable opening of the accommodation opens to an indoor part of that area (except a common part).".

New By adding immediately before clause 32 -

"31A. No smoking signs

Paragraph 2 of the Smoking (Public Health) (Notices) Order (Cap. 371 sub. leg. B) is repealed.".

32 By deleting "of the Smoking (Public Health)(Notices) Order (Cap. 371 sub. leg. B)".

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;
- (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; and
- (e) the establishment is not engaged primarily in the sale or supply of meals.

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 at least 10 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.

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) If a matter involved in an appeal may give rise to a conflict of interest between a person's duties as a member on the Appeal Board and his pecuniary or other personal advantage, the Secretary shall not appoint that person 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 matter that may give rise to a conflict of interest between his duties as a member of the Panel and his pecuniary or other personal advantage.

(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."."