

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

**Administration's response to issues raised
at the Bills Committee meeting on 10 June**

Law Enforcement

PURPOSE

This paper seeks to respond to questions raised by Members at the Bills Committee meeting of 10 June 2005 with regard to enforcement actions taken by different Government agencies pursuant to the Smoking (Public Health) Ordinance (Cap. 371) ("the Ordinance").

QUESTIONS ASKED

2. At the above meeting, the following questions were raised by Members -

- (i) *number of prosecutions made by the Police and Customs and Excise Department against persons who refused to abide by the statutory smoking ban in certain indoor public places, such as shopping malls, supermarkets, banks and departments, and in the smokefree seating areas of restaurants providing indoor seating accommodation for more than 200 persons, which came into operation in July 1999;*
- (ii) *number of cases reported to Police for assistance when offenders refused to abide by the "no smoking" requirement; and*
- (iii) *number of cases which managers of statutory "no smoking areas" had to resort to the use of force to stop offenders from smoking since July 1999.*

ADMINISTRATION'S RESPONSE

The legal requirements

3. Under sections 3(3) and 4(2) of the Ordinance, a manager, driver or other authorized person could require any person who is smoking or carrying a lighted cigarette, cigar or pipe in a designated no smoking area to extinguish the lighted

cigarette, cigar or pipe. If that person fails to do so, the manager or authorized person could require him to give his name and address and to produce proof of identity, and to leave the concerned areas. If resistance is encountered, the manager or authorized person could use reasonable force if necessary and detain him and call for the assistance of a police officer.

Number of prosecutions

4. According to information provided by the Judiciary, the number of prosecutions and convictions in the last three years pursuant to section 3(2) of the Ordinance, which stipulates that no person shall smoke or carry a lighted cigarette, cigar or pipe in a “no smoking area” are as follows -

Year	No. of prosecutions	No. of convictions
2002	2 670	2 192
2003	1 765	1 185
2004	1 829	1 542

Cases Requiring Police Assistance

5. We have been informed by the Police that no statistical data has been kept in this regard.

Managers having to resort to the use of force

6. Under the Ordinance, there is no statutory requirement for managers and authorized persons of designated no smoking areas and public transport carriers to report to the Police or any government bureaux/departments cases in which managers and authorized persons have to resort to use force in exercising their power under sections 3 and 4 of the Ordinance. According to our understanding, most smokers adopt a co-operative attitude and would extinguish their lighted cigarette upon request by the manager.

ADVICE SOUGHT

7. The Bills Committee is invited to note the Administration’s response.