

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

**Administration's response to issues raised
at the Bills Committee meeting on 21 July 2005**

PURPOSE

This paper sets out the Administration's response to issues raised by the Bills Committee at its meeting on 21 July 2005.

BACKGROUND

2. At the above meeting, Members referred to LC Paper No. CB(2) 2311/04-05(01) that sets out the number of prosecutions and convictions on Hong Kong-registered aircraft since 2000 pursuant to Article 50(2) of the Air Navigation (Hong Kong) Order 1995 (the Order) (Cap.448), and asked -

- (a) which airlines were involved;*
- (b) what penalties were passed on the offenders;*
- (c) whether force had been used in implementing the Order; if so, the number of cases involved; and*
- (d) whether staff of Hong Kong-registered airlines had experienced difficulties in implementing the smoking ban under the Order; if so, what these difficulties were?*

ADMINISTRATION'S RESPONSE

3. According to information provided by the Civil Aviation Department (CAD), between 2002 and the first quarter of 2005, there were a total of 16 convictions in Hong Kong courts against offences for smoking in aircraft. The airline involved in all these cases was Cathay Pacific Airways, a Hong Kong-registered airline. Penalties for offenders were fines ranging between \$500 and \$3 000.

4. Separately, the Police advised that they were not aware of any case involving Hong Kong-registered aircraft that had resorted to the use of force

in relation to smoking. We have made enquiries with the two Hong Kong-registered airlines, which have both replied that their staff had not experienced much difficulty in implementing the smoking ban, except when passengers smoke behind closed doors (i.e in the toilet). Under these circumstances, there would not be enough evidence to bring about a successful prosecution because nobody actually witnessed the passenger smoking while evidence such as cigarette stubs were already flushed down the toilet.

The Aviation Security (Amendment) Ordinance 2005 (the Amendment Ordinance)

5. Article 50 of the Order only applies to aircraft that are registered in Hong Kong. The question of extending the regulation of smoking to aircraft not registered in Hong Kong is dealt with by the Aviation Security (Amendment) Ordinance 2005 (the Amendment Ordinance). With reference to the Amendment Ordinance, which was enacted by the Legislative Council in June 2005, Members asked -

(e) the feasibility of extending the applicability of the Order to non-Hong Kong-registered aircraft heading for and departing from Hong Kong;

6. To deal with unruly passengers on board civil aircraft, the Amendment Ordinance extends Hong Kong's jurisdiction over certain offences¹ committed outside Hong Kong in connection with non-Hong Kong-controlled civil aircraft² which next *land* in Hong Kong. The amendment was made in reference to the International Civil Aviation Organization (ICAO) Resolution of October 2001 and a Model Legislation developed by ICAO for dealing effectively with the problem of unruly passenger offences.

7. There are restrictive conditions for jurisdiction to be extended over the above offences that take place on board non-Hong Kong-controlled aircraft while in flight outside Hong Kong. These conditions are –

¹ Smoking in aircraft is one of the offences.

² See Annex for definition of "Hong Kong controlled aircraft" under section 2(1) of the Aviation Security Ordinance (Cap. 494).

- (a) the next place of landing of the aircraft is in Hong Kong; and
- (b) the commander of the aircraft, in the form set out in Schedule 3 –
 - (i) makes a request to the Hong Kong Police Force to commence proceedings against the person; and
 - (ii) gives an undertaking that he, and the operator of the aircraft, has not made and will not make a similar request to the authorities of any place outside Hong Kong.

(f) enforcement actions taken by aircraft crew in implementing the smoking ban in non-Hong Kong-registered aircraft heading for and departing from Hong Kong;

8. As the above Amendment Ordinance will come into effect on 10 November 2005, there is no statistics in this regard.

(g) the number of smoking versus non-smoking flights operated by non-Hong Kong-registered aircraft heading for and departing from Hong Kong?

9. According to CAD, smoking has already been banned on all international flights.

(h) which airport passenger terminal outside Hong Kong applied total smoking ban, i.e. no designated smoking area was allowed?

(i) which airport terminals outside Hong Kong implemented total smoking ban step-by-step and which in one go?

10. According to information provided by the Airport Authority (AA), all major neighboring international airports provide smoking lounges for smokers. These airports include Incheon (Seoul), Changi (Singapore), Narita (Tokyo), Kansai (Osaka), Kuala Lumpur International, Shanghai Hongqiao International and Beijing Capital International.

11. Thus far, we are not aware of any major international airports that do not provide smoking rooms/lounges for passengers at their terminal buildings.

(j) what protection the Airport Authority was providing to its staff assigned to clean the smoking rooms at the airport passenger terminals?

12. The cleaning work for smoking rooms at the Hong Kong International Airport has been contracted out to outside parties. We are seeking the information from the relevant contractor.

(k) findings of overseas studies on ways to mitigate health risks of persons exposed to secondhand smoking;

13. An excerpt from a paper published by the British Medical Association in November 2002 entitled "Towards smoke-free public places" stated that -

"Partial restrictions are only partially effective. One study found that employees at worksites with partial restrictions on smoking were almost three times more likely to be exposed to second-hand smoke than those at smoke-free worksites. Workers at sites where smoking was not restricted were 8.5 times more likely to be exposed.

Designated smoking areas are of little use unless they are physically isolated from non-smoking areas. One US study measured exposure to second-hand smoke among casino workers on smoking and non-smoking tables, but found no difference either in the ambient levels of tobacco smoke or in the amount of nicotine absorbed by workers in smoking and non-smoking areas.

The evidence shows that conventional ventilation cannot effectively protect non-smokers from the health effects of second-hand smoke."

14. Separately, Health Canada advised that increasing ventilation will dilute the smoke but will not make it safe.³ Research showed that ventilation technology could not possibly achieve acceptable indoor air quality in the presence of smoking. The ventilation rate and the

³ The Facts about Tobacco. What is second-hand smoke? Health Canada.

corresponding air-change rate would have to be increased by many times, requiring an indoor tornado to attain *de minimis* risk from second-hand smoke.⁴

15. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) also remarked that the only means of effectively eliminating health risk associated with indoor exposure is to ban smoking activity.⁵

16. In 2002, the Australian Government conducted a study on indoor air quality in premises where smoking was permitted in not more than 25% of the public area of the restaurant or 50% of licensed premises (where liquor is served). Summary of the Australian government response to environmental tobacco smoke (ETS)⁶ includes:

- (i) ETS is present at detectable levels in non-smoking areas of many exempt premises.
- (ii) The presence of tobacco smoke in these areas means that the provision of “choice” for people who wish to avoid tobacco smoke exposure is more an illusion than a reality; and patrons and employees in these premises experience increased health risks associated with both short term and long term exposure to ETS.
- (iii) Mechanical air handling systems cannot be relied upon to protect patrons and employees from ETS exposure where smoking and non-smoking occur within the same airspace.

(l) number of prosecutions and convictions made due to failure in observing the no smoking ban in restaurants under the Smoking (Public Health) Ordinance (Cap. 371) (the Ordinance) from July 1999 up to present;

17. Throughout the years, around 90% of the prosecutions were made in relation to smoking inside amusement game centres, followed by cases in

⁴ Repace J. Controlling tobacco smoke pollution. ASHRAE IAQ Application 2005; 6(3):11-15.

⁵ ASHRAE Environmental Tobacco Smoke Position Document. (June 30, 2005).

⁶ Government Response to the Report on Indoor Air Quality Monitoring for Environmental Tobacco Smoke in Premises with Exemptions under the Australian Capital Territory. Health Protection Service, ACT Health. October 2003

shopping malls. Since 1999, seven prosecutions were made in relation to smoking in restaurant premises. Separately, since its establishment, the Tobacco Control Office under the Department of Health has given 52 advisory letters to restaurant premises, for their inaction in enforcing the no smoking requirement, or inadequate designation of no smoking area as required under the law.

(m) estimation of additional TCO inspectors required to cope with the increasing workload after the enactment of the Bill; and

18. It is estimated that about 30 additional staff will be required under TCO to cope with the additional enforcement, publicity and education work arising from the new regulatory requirements.

(n) examples why some prosecutions pursuant to section 3(2) of the Ordinance had ended in no conviction, including whether this was due to witnesses subsequently decided not to appear in court proceedings.

19. According to the Judiciary, for those cases not having ended in conviction, most of them were withdrawn while a few were ended with order of "Absolute discharge" and "Acquittal". There is neither judgment nor any specified remarks given for cases with order of "Absolute discharge" and "Acquittal".

The Aviation Security Ordinance

As defined in section 2(1) of the Aviation Security Ordinance (Cap.494), Hong Kong-controlled aircraft (香港控制的飛機) means an aircraft –

- (a) which is for the time being registered in Hong Kong; or
- (b) which, being for the time being registered outside Hong Kong, is for the time being chartered by demise to a person who, or to persons each of whom-
 - (i) is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in Hong Kong; and
 - (ii) resides or has his principal place of business in Hong Kong; or
- (c) which is not for the time being registered in any place but in the case of which either the operator of the aircraft or each person entitled as owner to any legal or beneficial interest in it-
 - (i) is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in Hong Kong; and
 - (ii) resides or has his principal place of business in Hong Kong.