

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

**Administration's response to issues raised
at the Bills Committee meetings on 6 & 31 July 2006**

PURPOSE

This paper sets out the Administration's response to issues raised by the Bills Committee at its meetings on 6 July and 31 July 2006.

BACKGROUND

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

(a) In the definition of "restaurant premises" in Clause 4 of the Bill, reference is made to a person who is the holder of a licence under the Hawker Regulation (Cap 132 sub. leg. AI). What is the number of hawkers covered under this definition?

ADMINISTRATION'S RESPONSE

3. The records of the Food and Environmental Hygiene Department (FEHD) show that, as at 30 June 2006, there are a total of 325 Fixed Pitch (Cooked Food or Light Refreshment) Hawker Licences issued under the Hawker Regulation (Cap. 132 sub. leg. AI). The licensee is allowed to sell cooked food or light refreshment at the stall.

4. Of the 325 Fixed Pitch (Cooked Food or Light Refreshment) Hawker Licences, 28 of the licensed stalls are located on-street, 90 in off-street hawker bazaars managed by FEHD and 207 are in Public Housing Estates under the management of the Housing Authority and properties now owned by the Link Real Estate Investment Trust (Hong Kong).

(b) Will the powers of inspectors conferred under the new section 15G be extended to the Police?

General provision of powers

5. Under the existing Smoking (Public Health) Ordinance (Cap. 371), there is no express provision conferring specific powers on police officers for the purpose of taking enforcement action under Cap. 371, except for

sections 3(3)(c) and 4(2)(c)¹. Police officers may however carry out enforcement actions under Cap. 371 by resorting to the general enforcement provisions in the Police Force Ordinance (Cap. 232) (PFO) if there is such a need.

6. Pursuant to section 10 of the PFO, duties of the police force shall be to take lawful measures for, *inter alia*, preventing and detecting crimes and offences (section 10(b)) and exhibiting information and conducting prosecutions (section 10(k)). Enforcement of the existing offence provisions in Cap. 371 by the police force is therefore with reference to the police general powers contained in the PFO.

7. The new Part IVB of Cap. 371 as proposed by the Smoking (Public Health) (Amendment) Bill 2005 deals with appointment and powers of inspectors appointed by the Secretary for Health, Welfare and Food (SHWF) for the purpose of enforcing the relevant provisions under Cap. 371. Powers set out in the new section 15G are conferred only on persons who have been duly appointed as inspectors thereunder. Whether the new section 15G is applicable to a person will depend on whether he is appointed as an inspector under the new section 15F. SHWF has no intention of appointing police officers to become inspectors under that section as they are already empowered to take enforcement actions against offences specified in Cap. 371. It is intended that SHWF will only appoint officers from the Tobacco Control Office (TCO) under the new Part IVB of Cap. 371.

8. In view of the above, despite that police officers and Tobacco Control Office (TCO) officers (appointed as inspectors under the new section 15F) may take enforcement action for offence provisions in Cap. 371 under the new regime, the source and nature of their powers are different.

Power of entry and collection of evidence

9. The new section 15G(1)(a) empowers an inspector at any time to enter any place in which he reasonably suspects that a relevant offence has been or is being committed. New section 15G(1)(b) further empowers an inspector at any reasonable time to enter and inspect a no smoking area in a public place for the purpose of ascertaining whether the relevant provisions are complied with.

¹ Section 3(3)(c) provides that where a person fails to give his name and address and to produce proof of identity; or to leave the no smoking area when required, manager of statutory no smoking areas could remove him from the no smoking area by the use of reasonable force if necessary and detain him and call for the assistance of a police officer to assist in the enforcement. Section 4(2)(c) is a similar provision which applies to public transport carriers in which no smoking is allowed.

10. A police officer, not being an inspector appointed under the new section 15F, does not have powers of entry under section 15G(1)(a) or (b) (although he would still have the general power to enter public places for the purpose of preserving order under the PFO (see paras 5 and 6 above)). Neither could a police officer exercise the power of seizure of evidence under section 15G(1)(c) which is conferred only on an inspector.

11. If a police officer accompanies an inspector in the latter's exercise of power of entry under section 15G of Cap. 371, he is in fact assisting the inspector in the matter. In this respect, the enforcement action is taken by the inspector and not by the police officer. As such, the power of seizure of evidence for a relevant offence under section 15G(1)(c) remains to be exercised by the inspector.

12. It should be stressed that the new section 15G is intended to confer enforcement powers on inspectors appointed under section 15F of Cap. 371 who will otherwise not have any power to take enforcement action for a relevant offence under Cap. 371. In this respect, it does not alter or is not intended to alter in any way those existing powers of the police officers under the PFO for the purpose of general enforcement of the offence provisions in Cap. 371 if there is such a need for the police to take enforcement action.

(c) When the “notation” approach on the package of tobacco product was adopted in Japan and whether such adoption was made before or after it signed the Framework Convention on Tobacco Control (FCTC)?

13. The Japanese Government has informed us that it started to examine the measures to fulfill the requirements under Article 11.1(a) of FCTC during the negotiation of FCTC, revised Regulations for enforcement of the Law for Tobacco Business in November 2003, about six months after the adoption of FCTC in the 56th World Health Assembly in May 2003 and have been implementing necessary measures.

14. The Japanese Government further noted that it has been reviewing the present measures. It was concluded in a review in October 2004 that since it is believed that the purpose of the regulations of the Draft Framework Convention may be achieved if smokers are sufficiently informed that the meaning of the words “Mild” and “Light” is not the degree of the impact on health but the lightness or the heaviness of the taste, it believed that going so far as requiring the prohibition of the use of these words is not appropriate in Japan if proper measures are taken to avoid misunderstanding. Further to this review, the relevant authority implemented the “notation” requirement from July 2005 onwards.

Health, Welfare and Food Bureau
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