

立法會
Legislative Council

LC Paper No. CB(2)35/06-07

Ref : CB2/BC/11/04

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

Purpose

This paper reports on the deliberations of the Bills Committee on the Smoking (Public Health) (Amendment) Bill 2005.

Background

2. The Smoking (Public Health) Ordinance (Cap. 371) (the Ordinance) was first enacted in 1982 to restrict the use, sale and promotion of tobacco products. The last major amendment exercise took place in 1997.

3. Under the existing legislation, smoking is prohibited in certain indoor public places such as shopping malls, supermarkets, banks and department stores. Restaurants providing indoor seating accommodation for over 200 persons are required to designate not less than one-third of such area as smoke-free area. This requirement has failed to protect restaurant customers and employees from second-hand smoke because tobacco smoke can diffuse from smoking areas to neighbouring no smoking areas. Operationally, it has caused inconvenience to restaurant management and is inductive to conflicts between smokers and non-smokers. In other public areas not covered by the existing smoking ban and workplaces, the public is still subject to the impact of second-hand smoking.

4. The Administration launched a consultation exercise in June 2001 to gauge public opinions on a package of proposals similar to those in the Bill. The outcome of the public consultation exercise reflected broad-based community support for most of the initiatives, although the catering and tobacco trades were against some of the proposals on the grounds that they would adversely affect their business. Internationally, the adoption of the Framework Convention on Tobacco Control (FCTC) by the World Health Organisation (WHO) in May 2003 has heightened the momentum for tightening tobacco control laws worldwide.

5. To address the problems highlighted in paragraph 3 above, the Administration proposes amending the Ordinance to designate indoor workplaces and public areas as statutory no smoking areas. Under the Administration's proposal, the smoking ban will apply to the indoor areas of all restaurant premises, regardless of their size and seating capacity, as well as the indoor areas of karaokes, bars, mahjong parlours, commercial bathhouses and public markets, etc.

The Bill

6. The Bill seeks to amend the Ordinance and its subsidiary legislation to –
- (a) expand the scope of statutory no smoking areas;
 - (b) amend the form of health warnings to be borne on packets and retail containers of tobacco products;
 - (c) amend the law relating to tobacco advertisements and the sale of tobacco products;
 - (d) provide for the appointment, powers and duties of inspectors for the enforcement of certain provisions of the Ordinance; and
 - (e) provide for consequential, transitional and related matters.

The Bills Committee

7. At the House Committee meeting on 13 May 2005, Members formed a Bills Committee to study the Smoking (Public Health) (Amendment) Bill 2005. The membership list of the Bills Committee is in **Appendix I**.

8. Under the chairmanship of Hon Andrew CHENG, the Bills Committee has held 57 meetings with the Administration and met with representatives of various organisations and individuals in three rounds of meetings to listen to their views on the Bill and the proposed amendments to the Bill. Of the 57 meetings held, one was a full day meeting comprising four meeting slots and 14 were double-slot meetings. The Bills Committee has also met with two ventilation experts who made presentations on the subject for members' reference. A list of the organisations and individuals who have made representations to the Bills Committee is in **Appendix II**.

9. The Bills Committee visited several hospitality establishments, including a nightclub, a karaoke establishment, as well as several bars and mahjong premises, to obtain a better understanding of their operation and to

listen to the concerns of the employers and employees. In addition, the Chairman and two members of the Bills Committee participated in a duty visit organised by the Panel on Health Services in August 2005 to study the experience of Thailand, Norway and Ireland in the implementation of anti-smoking measures. During the course of scrutiny of the Bill, members have made references to the relevant legislation in various overseas jurisdictions which have imposed a smoking ban in enclosed workplaces and public places.

Deliberations of the Bills Committee

Main subjects of deliberations

10. The deliberations of the Bills Committee are set out in this report under the following subjects -

<u>Subject</u>	<u>Paragraphs</u>
(a) definition of “indoor”;	11 - 17
(b) definition of “manager”;	18 - 20
(c) restructuring of section 3 and Schedule 2 of the Ordinance;	21 - 22
(d) designated no smoking areas;	23 - 73
(e) prohibition of smoking in public transport carriers;	74 - 76
(f) smoking prohibition arrangements at cross-boundary ferry terminals;	77 - 78
(g) premises exempted from the smoking ban;	79 - 102
(h) other exempt areas proposed by members;	103 - 105
(i) display of tobacco advertisement;	106 - 117
(j) price boards of tobacco products;	118 - 122
(k) health warnings on retail container of cigar, pipe tobacco or cigarette tobacco;	123 - 127
(l) use of misleading descriptors;	128 - 143

(m)	exemption for live performance or recording for film or television programme (New Schedule 5);	144 - 151
(n)	enforcement of the Ordinance;	152 - 158
(o)	power and scope of a venue manager;	159 - 172
(p)	display of “No Smoking” signs by managers of statutory no smoking area;	173 - 190
(q)	general powers and duties of inspectors;	191 - 196
(r)	inspectors not personally liable for certain acts and omissions;	197 - 201
(s)	prohibition of sale of tobacco products to persons in school uniform;	202 - 203
(t)	work plan of Tobacco Control Office;	204
(u)	Tobacco Control Office staffing;	205 - 210
(v)	handling of complaints;	211 - 212
(w)	smoking cessation service;	213 - 214
(x)	the penalty system;	215 - 216
(y)	proposed fixed penalty system (FPS) for smoking offence; and	217 - 220
(z)	commencement dates and adaptation periods.	221

Definition of “indoor”

11. One of the main objectives of the Bill is to provide for protection against second-hand smoking in indoor workplaces and public places. Under clause 5 of the Bill, an indoor area in a workplace or public place is designated as a no smoking area. The meaning of “indoor” is set out in clause 4(h) of the Bill as follows –

- (a) *having a ceiling or roof, or a cover that functions (whether temporarily or permanently) as a ceiling or roof; and*
- (b) *completely or substantially enclosed (whether temporarily or permanently), except for any window or door, or any closeable*

opening that functions as a window or door.

12. Some members opine that the meaning of “indoor” as set out in the Bill, in particular the term “substantially enclosed”, lacks clarity and precision. They have asked the Administration to consider whether a more precise description could be used for the meaning of “indoor”.

13. In response to members’ request, the Administration has provided some relevant examples in other jurisdictions for the Bills Committee’s reference. Broadly speaking, the following approaches are adopted in defining the meaning of “indoor” or “enclosed” areas –

- (a) without any definition;
- (b) mathematical approach; and
- (c) descriptive approach.

14. Most members are in favour of the mathematical approach as it is more precise. They note that under the Public Health (Tobacco) Act of Ireland, the smoking ban is not imposed on –

*“a place or premises, or part of a place or premises, that is wholly uncovered by any roof, whether fixed or movable”, and
“an outdoor part of a place or premises covered by a fixed or movable roof, provided that not more than 50 per cent of the perimeter of that part is surrounded by one or more walls or similar structures (inclusive of windows, doors, gates or other means of egress from that part)”.*

15. The Administration agrees that generally speaking, the mathematical approach, irrespective of how the surface area of openings as proportion of the total surface area of the premises is calculated and regardless of the percentage level that is set to determine whether the premises is “substantially enclosed”, provides clearer guidance in some otherwise doubtful cases as to whether certain premises are considered “substantially enclosed”. The Administration has, however, pointed out that for some special architectural designs such as perforated walls, it would be difficult for both the manager of the premises and for the enforcement officers to do the measurement. In respect of enforcement, the collection of sufficient evidence to launch a prosecution could be arduous if the mathematical approach is adopted. Since a specific percentage is adopted in the formulation, enforcement officers would need to obtain precise evidence to proceed with the charge and even the difference of 1% could have substantial impact.

16. The Administration has explained that its original policy intent is for the

two terms “completely” and “substantially” as appeared in the relevant provisions of the Bill to be understood by their ordinary meanings. The Administration believes that whether a particular area is “completely or substantially enclosed” is a question of fact. When the enforcement authority perceives that smoking has taken place in a “substantially enclosed” area while the smoker argues otherwise, the case can be decided by the court according to the relevant factual circumstances. The approach would allow flexibility to cater for the many different kinds of premises structure and designs in Hong Kong, whereas for most of the premises, there should be no doubt as to whether they are “indoor” according to the definition in the Bill.

17. The Administration has advised that an administrative guideline will be issued to help venue managers and the public in understanding what is meant by “indoor”. After examining the draft guideline, members remain of the view that a mathematical approach should be adopted as it is more precise. The Administration has accepted members’ view and will amend paragraph (b) of the definition of “indoor” in the Bill to read as follows –

- (b) *enclosed (whether temporarily or permanently) at least up to 50% of the total area on all sides, except for any window or door, or any closeable opening that functions as a window or door.*

Definition of “manager”

18. Under the existing Ordinance, managers of statutory no smoking area are empowered to take immediate remedial actions, including requesting a smoker to extinguish a lighted cigarette, cigar or pipe or where the person fails to do so, requiring him to give his name and address and to produce proof of identity or leave the no smoking area, etc.

19. Clause 4(c) of the Bill amends the definition of “manager” of a no smoking area or a public transport carrier. Under the proposed definition, “manager” in relation to a no smoking area (other than a lift) or a public transport carrier refers to anyone responsible for the management or in charge or control of the no smoking area or public transport carrier, while “manager” in relation to a lift includes the owner, occupier or lessee of the building.

20. Members consider that there is no need to single out lifts from other indoor common part of a building and the scope of the term “manager” of all indoor common part of a building should be the same. In the light of members’ views and to ensure consistency and facilitate enforcement, the Administration has proposed to amend the definition as follows –

- “manager” (管理人), in relation to a no smoking area or a public transport carrier, means –*

- (a) *any person who is responsible for the management or is in charge or control of the no smoking area or public transport carrier, and includes an assistant manager and any person holding an appointment analogous to that of a manager or assistant manager; or*
- (b) *in the case where there is no such person in relation to any premises, the owner of the premises;*

Restructuring of section 3 and Schedule 2 of the Ordinance

21. Under section 3(1) of the Ordinance, the areas described in Schedule 2 are designated as no smoking areas. Clause 5 of the Bill amends section 3 to designate all other indoor areas in workplaces or public places as no smoking areas (new subsection (1AA)). It also sets out a number of exceptions to this new subsection, such as domestic premises and hotel rooms (new subsection (5)).

22. To improve the presentation and clarity of the provisions setting out the designated no smoking areas and exempted premises, the Administration will move amendments to restructure section 3 and Schedule 2. The revised Schedule 2 will consist of three parts. Parts 1 and 2 set out the designated no smoking areas and the exempted areas respectively, while Part 3 sets out the definitions of three types of staff quarters referred to in the Schedule.

Designated no smoking areas

Proposals in the Bill

23. Clause 20 of the Bill amends Schedule 2 by adding a number of items, such as schools and indoor areas of public markets, restaurant premises, bars, karaoke establishments, mahjong tin-kau premises, commercial bathhouses and hospitals. To enable the premises to adapt to the new arrangements, an adaptation period of 90 days is provided.

Indoor workplaces, restaurants, bars and other hospitality premises

24. Since the introduction of the Bill, the restaurant and entertainment industries have expressed concerns about the impact of the Bill on their business. They have made representations to the Bills Committee and the Administration about the special characteristics of their trades, and the potential economic impact of the Bill, including their worries that the smoking ban would affect customer patronage and result in revenue and job losses.

25. During their discussions with the Administration, representatives of the industry suggested that the Government should issue two types of licences to

operators, i.e. smoking and non-smoking licences, in order to provide operators and their customers with a choice. The Administration has pointed out that the proposal will not effectively protect customers and staff members from exposure to second-hand smoking, which is contrary to the principle of safeguarding public health. In addition, issuing two types of licences will lead to unfair competition.

26. There were also proposals urging the Government to allow indoor establishments to set up “smoking rooms” to segregate smoking and non-smoking customers, or allow customers to smoke during certain periods of time and forbid smoking during other periods. The Administration has pointed out that medical evidence has proved that toxic substance in cigarettes would remain in the rooms for a prolonged period of time and there is yet to be an internationally approved ventilation system capable of completely extracting residual smoke from smoking rooms. As international organisations, including the WHO, have yet to develop a so-called “safety standard” for air quality in indoor smoking locations, Hong Kong is not in a position to arbitrarily draw up “healthy” or “safe” air quality for “smoking rooms” and “non-smoking rooms” with scientific basis, which is acceptable to the medical sector and the international community.

27. In view of the broad-based community support for a comprehensive ban on smoking in indoor workplaces and indoor areas of restaurants, and the fact that customers of restaurants are from all age groups, including children, elders, pregnant women and non-smokers, the Administration considers that a comprehensive ban on indoor smoking should be enforced in these premises as soon as possible in order to protect the health of the public and the employees. The Administration also considers it necessary to prohibit smoking in billiard rooms, karaoke establishments, and bars open to persons of all ages as early as possible as many youngsters and students patronise these establishments. The Administration subsequently agrees to adjust the implementation date of the smoking ban for indoor workplaces, restaurants, billiard rooms, karaokes and bars open to all age groups from the originally proposed 90-day grace period to 1 January 2007.

28. Hon Tommy CHEUNG has proposed an amendment to provide that the relevant provisions shall come into operation on the ninetieth day after the day on which the Ordinance is published in the Gazette, i.e. 27 January 2007, in order to allow an adaptation period of 90 days as proposed in the Bill.

29. Having regard to the fact that many bars in Hong Kong operate in high-rise commercial buildings and the requirement for smoker-customers to smoke outside may cause inconvenience for bar operators and customers, and taking into account the unique mode of operation of mahjong parlours, commercial bathhouses, massage parlours, mahjong clubs and nightclubs, which makes it difficult for customers to go outdoors to smoke and return to

the premises afterwards, the Administration accepts that certain industries might need more flexible arrangements to help them tide over the regulatory changes, transform their mode of operation, as well as to facilitate their smoker-customers to gradually adjust to the legislative requirements. The Administration therefore proposes that the implementation date of the smoking ban for bars open to those aged 18 and above only, mahjong parlours, commercial bathhouses, massage parlours, mahjong clubs, and nightclubs can be deferred to 1 July 2009, in order to allow a longer adaptation period for such establishments.

30. The transitional provisions in respect of the qualified establishments referred to in paragraph 29 above are set out in Part 2 of a new Schedule 6 to the Ordinance. The new Schedule sets out the definitions of the six categories of qualified establishments, the entry restrictions, the requirements for prescribed signs to be displayed, the procedures for inclusion in the list of qualified establishments and removal of an establishment from the list, as well as the appeal mechanism and other relevant matters. The Administration has taken into account the views expressed by members during the discussion of the proposed new Schedule and has incorporated most of their suggestions in the final version.

31. In response to questions raised by members regarding staff recreation clubs and bars of Government departments, the Administration has added a new subsection (2) to section 1 in Part 2 of the new Schedule 6, which sets out the interpretation and application of the deferment of the smoking ban in listed premises, to provide that Part 2 does not apply to any premises that are under the management and control of the Government.

32. The Administration has explained that it hopes that a longer adaptation period will help strike a balance between achieving its ultimate goal of a comprehensive ban on smoking in indoor workplaces and addressing the needs of operators. It also hopes that these premises could proactively set up some “non-smoking” rooms or designated no smoking areas during the adaptation period to reduce the harm of second-hand smoke on non-smoking customers in an indoor environment. The Administration envisages that by mid-2009, the community as a whole, including patrons of the qualified establishments, will have accepted and grown accustomed to the no smoking regulations. By then, people from all walks of life will find it easier to accept and adjust to having a smoking ban in places of entertainment.

33. While some members welcome the Administration’s proposal to provide a longer adaptation for the six categories of qualified establishments, other members consider that the Administration should not have made the concession and they have only accepted the proposed arrangement in order not to hold up the passage of the Bill.

Educational institutions

34. The existing legislation provides that the management authority of a school, university or tertiary institution may designate the educational premises or part thereof as no smoking area. To promote a smokeless learning environment and to curb youth smoking, the Administration proposes imposing a smoking ban on both the indoor and outdoor areas of all child care centres, kindergartens, primary and secondary schools, and on the indoor premises of all universities and post-secondary institutions.

35. Members have queried the reasons for excluding the outdoor areas of universities and post-secondary institutions from the smoking ban. The Administration's reasons are that students of universities and post-secondary institutions are adults and second-hand smoke causes less harm in outdoor areas as it can disperse easily in an open environment. Members do not accept the Administration's arguments and consider that it is more logical to impose a total ban in a consistent manner in all educational institutions. Members have requested the Administration to seek the views of the educational institutions concerned on the Bills Committee's proposal to extend the smoking ban to cover the outdoor areas of their campuses as well.

36. Following consultation with the specified educational establishments concerned, the Administration has agreed to extend the smoking ban to cover both the indoor and outdoor areas of their campuses, except for employees' quarters which will be exempted from the smoking ban.

37. Members consider that there should be a consistent policy on exemption of staff quarters in all educational institutions as there are a number of school premises which cover quite a large area of land within which staff quarters are provided. After considering members' views, the Administration has agreed to move amendments to exempt private quarters in child care centres, schools, specified educational establishments, approved institutions, places of detention, places of refuge, reformatory schools, hospitals and maternity homes from the smoking ban, subject to their meeting the requirements for Type 1 private quarters as set in Part 3 of the new Schedule 2. The proposed exemption will not cover employees' communal quarters in the premises of the establishments concerned, which will be subject to the smoking ban.

Communal quarters

38. Apart from amending section 3 of the Ordinance to designate indoor areas in workplaces and public places as no smoking areas, clause 5 of the Bill also sets out a number of exceptions, one of which is "any premises used for the provision of sleeping accommodation by any employer to his employees and their families".

39. Members share the view that living accommodation provided by an employer shared by two or more employees should be designated as a no smoking area to protect the health of the employees and to avoid dispute arising from nuisance caused by smoking within the premises. Members have asked the Administration to take into consideration the fact that the non-smoking employees in shared accommodation should not be forced to inhale second-hand smoke when the smokers could go outdoors to smoke. Moreover, statistically the number of smokers is considerably less than the number of non-smokers, and therefore the balance should be in favour of the latter.

40. The Administration has explained that even though the communal quarters are provided by employers to employees, they are in the nature of domestic premises. As such, the employees are entitled to their privacy in their domestic life. Prohibiting smoking in such accommodation would compromise their privacy.

41. Following consultation with the Labour Advisory Board (LAB) on the issue, the Administration reported that all members of LAB disagreed with the banning of smoking in private dormitories by legislative means. They foresaw that such legislation would polarise the relationship between employers and employees and among employees living under one roof and create unnecessary conflicts. It might also create an unintended excuse for dismissal, which would not work to the advantage of employees in the end. They considered that employers could actually help protect employees' health through administrative means, such as through providing separate accommodation for smoking and non-smoking employees, which would be more flexible and effective.

42. While the Administration agrees with the assessment of LAB, members of the Bills Committee share the view that allowing smoking in shared accommodation is much more likely to lead to conflict than making it smoke-free. They consider using administrative means to request employers to provide separate accommodation for smoking and non-smoking employees not workable in practice. Members unanimously agree that an amendment should be moved by the Bills Committee to make employees' shared accommodation a no smoking area.

43. On review, the Administration has agreed to move an amendment to add "any communal quarters (as defined in Part 3)" to the list of designated no smoking areas in Part 1 of Schedule 2.

Hospitals and residential care institutions

44. At present, there is no requirement under the Ordinance to prohibit smoking in hospitals, treatment centres, and residential care homes for the

elderly. Following consultation with the licensing authorities, the Administration proposes in the Bill to designate the indoor areas of these premises as statutory no smoking areas under the Ordinance for the benefits of patients, elders and staff members in these premises.

45. Members consider that smoking should also be banned in the outdoor areas of hospitals. The Administration has consulted the Hospital Authority and the Hong Kong Private Hospitals Association on the proposal. The Hospital Authority and two private hospitals support the proposal. Two other private hospitals have written to the Administration objecting to the proposal as they are gravely concerned about the enforcement of the smoking ban and their legal liability for failing to monitor compliance with the ban in the hospitals' open areas. In view of the Hospital Authority's existing rule that smoking is prohibited in the totality of hospital areas, and the health conditions of patients staying in hospitals, the Administration proposes expanding the smoking ban to both the indoor and outdoor areas of all hospitals and will move an amendment to this effect. The Administration would explain to the hospitals in detail their legal obligations and implementation arrangements.

Public markets

46. Under the Bill, "public market" is defined as "*a market specified in the Tenth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132)*";".

47. Members consider that the smoking ban should also cover markets in housing developments in the private sector. The Administration has accepted members' view and will delete the proposed definition in the Bill and replace the term "public markets" with "markets (whether publicly or privately operated or managed)" in Part 1 of Schedule 2 which sets out the designated no smoking areas.

Outdoor escalators

48. Some members have asked the Administration to consider expanding the smoking ban to certain outdoor areas, including escalators and queues. The Administration believes that the question of extending the smoking ban to outdoor areas should be deliberated by the community before a final decision is taken. However, the Administration also recognises that there is a gradual trend of including some outdoor areas where there is limited space between individuals in the smoking ban overseas. After consideration, the Administration proposes to start with including outdoor escalators in the smoking ban based on the following factors –

- (a) the space between individuals on escalators is limited;

- (b) there is little room on the escalators for the non-smokers to manoeuvre to avoid inhaling second-hand smoke if there is someone smoking nearby;
- (c) in some cases there is little or no alternative to using the escalators, especially for the elderly, young children, the frail and the handicapped; and
- (d) the delineation of “escalators” is clear and easily recognisable by the general public.

49. As regards “queues”, the Administration has found it difficult to delineate a “queue” under different circumstances. Various questions need to be considered carefully, taking into consideration public views as well as the views of public transport operators and managers of other venues, such as theme parks where queuing is likely to occur, before making a decision. In order not to delay the enactment of the present Bill, the Administration proposes to deal with the questions in the next stage, having regard to the community sentiment.

Public pleasure grounds

50. After considering an amendment proposed by Hon Andrew CHENG to designate any public pleasure ground within the meaning of the Public Health and Municipal Service Ordinance (Cap.132) as a no smoking area under Schedule 2, the Administration agreed to take over the proposed amendment. Most members have expressed support for the proposed amendment as people using the facilities, many of whom are young people and children, want to enjoy fresh air and should not be subject to the harm of second-hand smoke.

51. As public pleasure grounds include different types of recreational and sports facilities and beaches, some members have pointed out that the expansion of the smoking ban to such areas might lead to more people smoking at home or on streets where it is more difficult for second-hand smoke to disperse.

52. The Administration has explained that its decision is based on several factors. Many of the public pleasure grounds, especially beaches, are gathering places for young people. They are also places where people hope to breathe fresh air. An earlier smoking ban in these places would be beneficial from a public health perspective.

53. In September 2006, the Administration reported to the Bills Committee that it had received different views on its proposed amendment to designate all public pleasure grounds as listed in Schedule 4 to the Public Health and Municipal Services Ordinance (Cap. 132) as no smoking areas. Some

suggested that due consideration should be given to the many types of users of these public pleasure grounds and the overall readiness of the community in terms of such a ban in parks and gardens.

54. The Administration has pointed out that currently, public pleasure grounds (apart from bathing beaches) comprise a large variety of facilities including active sports facilities and passive amenities, such as sitting out areas and rest gardens, etc. Some of the facilities are popular among the elderly, including regular smokers. An across-the-board smoking prohibition in all public pleasure grounds may force these people to smoke on crowded pavements or at home. Adding the number of smokers on the streets would worsen the air quality and increase the harm for people like street vendors and passers-by. Compelling people to smoke at home would harm the health of the smokers' family members.

55. In order to balance the varying needs of users, the Administration proposes that the smoking ban in public pleasure grounds should not be applied to "smoking areas" to be designated by the Director of Leisure and Cultural Services (DLCS) under section 107 of the Public Health and Municipal Services Ordinance (Cap. 132). DLCS intends to consult the relevant District Councils (DCs) in the process of designation because DCs are most familiar with the needs of the local community in terms of the use of parks and gardens in their districts. Moreover, in line with the Government's plan, DCs will participate in the management of these public pleasure grounds in the future.

56. The Administration has stated that as a matter of principle, in considering the designation of such areas, DLCS will be mindful that the "smoking areas" should not be inside or near the following areas –

- (a) any sports facility and active recreation facility, including children's playground / play area;
- (b) any barbecue area / picnic area;
- (c) any spectator stand;
- (d) any area with precious wood or ecological protection value;
- (e) any aviary or cages for animals; and
- (f) any road safety town.

The Leisure and Cultural Services Department will take appropriate measures (such as displaying notices and demarcating the smoking areas with clear indication) to effectively draw users' attention to the location and extent of the designated "smoking areas" within the public pleasure grounds.

57. Some members have voiced strong objection to the Administration's proposal to designate "smoking areas" in public pleasure grounds for the convenience of habitual smokers. They have pointed out that it is illogical to make such a proposal when the Government's policy is to discourage smoking. Members have also expressed concern that different criteria might be adopted by the DCs in designating "smoking areas" resulting in varying practices in the districts. Members have asked the Administration to provide more detailed criteria for designating the proposed "smoking areas".

58. The Administration has supplemented that in large parks, e.g. Victoria Park and Kowloon Park, the Administration proposes to designate no more than 1% of the total area as smoking area. The locations will be far away from any children area or areas with active sport elements, etc. The number and locations of these smoking areas will be determined on a case-by-case basis, having regard to the configuration and layout of facilities in individual venues. The actual designation will be made after consultation with DCs.

59. Members consider that the information provided by the Administration is unable to address their concerns about the lack of clarity of the criteria to be used in designating the proposed no smoking areas. Members agree that the Chairman should move an amendment on behalf of the Bills Committee to designate any public pleasure ground within the meaning of the Public Health and Municipal Services Ordinance (Cap.132) as a no smoking area under Schedule 2, without any provision for designated smoking areas.

Bathing beaches

60. To address members' concern about the boundary of bathing beaches, the Administration will set them apart from other public pleasure grounds and specify the following areas within any bathing beach as designated no smoking areas –

- (a) any part of the waters set aside for the sole use of swimmers under section 10 of the Bathing Beaches Regulations (Cap.132 sub. leg. E) (which includes any beach raft and any other thing on the surface of or above those waters);
- (b) the shore covered with sand or stones, together with any structure, showering facilities or natural feature on such shore; and
- (c) any area specified under section 107(3) of the Public Health and Municipal Services Ordinance (Cap. 132) to be used as a barbeque area, camp site or children's play area.

61. Members have suggested that maps showing clearly the boundary of the

no smoking areas of the bathing beaches should be displayed on signboards on the beaches concerned to facilitate compliance of the law by the public.

The Hong Kong Wetland Park

62. Following the opening of the Hong Kong Wetland Park on 20 May 2006, Hon Fred LI proposed an amendment to make the Park a designated no smoking area under Schedule 2. Having regard to the fact that one of the objectives of the Park is to provide opportunities for education and raise public awareness of wetland conservation, the Administration has decided to take over the proposed amendment.

63. Members have also requested the Administration to consider expanding the statutory no smoking areas to include country parks, and theme parks such as Disneyland and Ocean Park. The Administration has explained that the Bill is aimed at protecting the public from the hazards of second-hand smoke in indoor workplaces and public places. With regard to outdoor areas, the Administration believes that there should be consultation on the matter and that a comprehensive approach should be taken. In view of the long lead time required for public consultation, the Administration proposes to deal with the question of tobacco control in outdoor areas in the next phase after the Bill has been enacted and the extended smoking ban implemented.

Ocean Park

64. Dr Hon KWOK Ka-ki has proposed an amendment to add Ocean Park to the list of designated no smoking areas.

65. The Chief Executive of Ocean Park has written to the Bills Committee to request that consideration be given to exclude the Park from the Amendment Bill. He has pointed out that there is already provision under the existing Ocean Park Bylaw for the Ocean Park Corporation to designate areas as no smoking areas by notice, and the Bylaw also specifies that smoking in the designated areas is an offence liable on conviction to a fine at level 1 (up to \$2,000).

66. With reference to the practice of overseas theme parks, Ocean Park has designated the whole Ocean Park, with the exception of four designated smoking areas, as a no smoking area with effect from 15 July 2006. Ocean Park has explained that the arrangement is to balance the needs and desires of non-smoking guests and smoking guests, who would normally stay for five to six hours. Ocean Park has further pointed out that it has a core business objective of guest service and therefore must find a position on the issue that will meet the needs of all guests without impacting the visitation patterns to the Park, or the length of stay within the Park.

Stadia and public swimming pool

67. Dr Hon KWOK Ka-ki has proposed to add stadia and public swimming pool as specified in Schedules 12 and 14 to the Public Health and Municipal Services Ordinance (Cap. 132) to the list of designated no smoking areas. After consideration, the Administration has agreed that it will propose amendments to include specified areas of stadia and swimming pools, including the pitch/pool area, any immediately adjacent sidewalk, any diving board or other apparatus or facility adjoining the swimming pool, and any spectator stand, in the list of designated no smoking areas.

68. Members have asked why the running track area of a stadium is not mentioned. The Administration has explained that there are only two stadia specified in Schedule 12 to the Public Health and Municipal Services Ordinance, namely, the Hong Kong Stadium and Mong Kok Stadium, and both of them do not have any running tracks. Members consider that the track area should be included in the specified no smoking areas to cater for any future stadium that may include running tracks.

69. On review, the Administration has agreed to add the reference to any running track to the specified areas of a stadium in the list of designated no smoking areas.

Transport interchanges

70. Hon Andrew CHENG has proposed an amendment to add “any transport interchange” to the list of designated no smoking areas in Part 1 of Schedule 2. Under his proposed amendments to section 2, two new definitions of “transport interchange” and “public transport interchange” are added. The former means a transport interchange within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556), while the latter means any area, space or building the purpose of which is to effect or facilitate interchange between any public transport carrier. According to information provided by the Transport Department, there were a total of 259 public transport exchanges as at February 2006, including 100 in covered premises and 159 in the open air.

71. After consideration, the Administration has agreed to take over the proposed amendments by adding under clause 5 a new subsection (1AB) to section 3 of the Ordinance. The Administration’s proposed amendment provides that the Director of Health, may by notice publish in the Gazette, designate as a no smoking area the whole or a part of –

- (a) any area that consists of the termini of two or more modes of public transport and is used for effecting and facilitating interchange between them; or

- (b) any bus terminus of more than one specified route as defined in section 2 of the Public Services Ordinance (Cap. 230).

72. Because of the large number of transport interchanges involved and the need to consider the boundary of the no smoking area in each of them, the Administration proposes that implementation of the proposal will be deferred until it has completed its work on setting up a Fixed Penalty System for smoking offence in 12 to 15 months' time following the enactment of this Amendment Bill. Members have asked the Administration about its criteria for setting the priority in dealing with the various exchanges. The Administration explains that priority will be given to those in covered places.

73. In response to the Bills Committee's request, the Administration has agreed to give an undertaking that it will implement the proposal as soon as practicable and to outline its plan and time-table for such implementation in the speech to be given by the Secretary for Health, Welfare and Food when the Second Reading on the Bill is resumed.

Prohibition of smoking in public transport carriers

74. Section 4 of the Ordinance prohibits smoking in public transport carriers. As some taxi drivers smoke when the vehicles are not carrying passengers, members have asked the Administration to clarify whether a taxi not on hire is subject to the smoking ban.

75. The Administration has explained that the term "public transport carrier" is defined in section 2 of the Ordinance to mean "any public bus, public light bus, taxi, train, light rail vehicle, car, tramcar or ferry vessel mentioned in Schedule 1 while the public bus, taxi, train, light rail vehicle, car, tramcar or ferry vessel is, subject to Schedule 1, carrying members of the public". As Schedule 1 to the Ordinance has not altered this definition in relationship to a taxi, a taxi will fall under the meaning of "a public transport carrier" and subject to the smoking ban only when it is carrying members of the public.

76. In view of the lingering effect of tobacco smoke particles in a transport vehicle which may cause discomfort and harm to passengers, members consider that taxis and other public transport carriers should be smoke-free even when they are not carrying passengers. Following consultation with the Environment, Transport and Works Bureau which does not have any objection to the proposal, the Administration has agreed to move a Committee Stage amendment to the definition of "public transport carrier" under section 2 to that effect.

Smoking prohibition arrangements at cross-boundary ferry terminals

77. Under clause 5 of the Bill, it is proposed that apart from certain

exceptions, all indoor area in a workplace or public place will be designated as a no smoking area. Members have asked the Administration to clarify whether the two cross-boundary ferry terminals, namely the Macau Ferry Terminal in Sheung Wan and the China Ferry Terminal in Tsim Sha Tsui, which have smoking rooms at present, would be required to become smoke-free.

78. The Administration has informed the Bills Committee that taking into account the relatively short journey time of the ferry trips, the absence of the need for passengers to wait within the premises of the terminals for transit and that the passengers comprise all age group, including children and pregnant women, the Administration has come to the considered view that from the policy angle, it is appropriate to apply the smoking ban to the two cross-boundary terminals without any exemption for the smoking rooms. The Administration has consulted the Marine Department which manages the two passenger terminals. The Marine Department has no objection to imposing a total ban at the terminals.

Premises exempted from the smoking ban

Proposals in the Bill

79. Clause 5 of the Bill amends section 3 of the Ordinance by, inter alia, adding a new subsection (5) to specify that the smoking ban does not apply to the following –

- (a) domestic premises;
- (b) any premises used for the provision of sleeping accommodation by any employer to his employees and their families;
- (c) a bedspace apartment;
- (d) a room or suite of rooms in a hotel or guesthouse being hired for use as sleeping accommodation;
- (e) an area designated by the Airport Authority as a smoking area;
- (f) an area in a correctional facility that is set aside for smoking by prisoners; and
- (g) a building under construction, renovation or demolition.

80. Members have raised a number of questions regarding the above exempted premises.

Domestic premises

81. Under the Bill, “domestic premises” is defined as “*any premises which are constructed or intended to be used for habitation*”.

82. Members have pointed out that it is unclear whether it also covers the common parts of a building such as corridors, staircases and lift lobbies. The Administration has clarified that the meaning of “domestic premises” in this case should refer strictly to individual units, but not the common parts of buildings to which the smoking ban will apply. As the Administration only intends to exempt individual units from the smoking ban, it has proposed a new definition which reads as follows to clarify the term –

“domestic premises” means any premises that have been constructed to be used, and are used, as a private dwelling;”

83. Members have pointed out that some domestic premises are used for giving private tuitions or music lessons to individuals, many of whom are children and young people. They have asked the Administration to consider making that part of the domestic premises while being used for such purposes a no smoking area to protect the young people concerned from second-hand smoke.

84. The Administration considers that the proposal would have enforcement difficulty as inspectors do not have power of entry to domestic premises. The Administration has also pointed out that should the teachers in question smoke in front of their pupils, the parents concerned could exercise their choice as consumers and find another teacher for their children.

85. Following the Administration’s decision to include communal quarters in the list of designated no smoking area, members have asked the Administration to review its decision relating to domestic premises being used for private tuition. Members have pointed out that similar to communal quarters, enforcement action need only be taken on receiving a complaint of a smoking offence.

86. The Administration has pointed out that there are many problems with the proposal. Apart from the problem of enforcement, it is necessary to consider the types of activities involved. In addition to private tuition and music lessons, there are other lessons and activities conducted by self-employed persons in domestic premises. Having regard to the difficulty in drawing a line in relation to the various activities and the possible implications on other relevant provisions, the Administration has informed the Bills Committee that it is unable to accept the proposal.

87. Hon Tommy CHEUNG has proposed an amendment to designate any

room in domestic premises while being used for private teaching activities as a no smoking area under Part 1 of the new Schedule 2.

88. As regards “private kitchens” in domestic premises, the Administration has pointed out that although presently they are not regulated by the Food Business Regulation (Cap. 132 sub. leg. X), they will fall within the new definition of “restaurant premises” in the Bill. As a designated no smoking area listed in item 19 of Part 1 of the new Schedule 2, “restaurant premises” are not intended to enjoy any exemption under item 1 of Part 2 of the new Schedule 2. An indoor restaurant therefore will not be excluded from the smoking ban even if it is operated within domestic premises.

Living accommodation provided by an employer to an employee

89. The Administration has proposed to include two new definitions of “Type 1 private quarters” and “Type 2 private quarters” in the new Part 3 of Schedule 2.

90. Under the proposed definition, “Type 1 private quarters” 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.

91. For “Type 2 private quarters”, in addition to meeting the requirements in paragraph 90(a) and (b) above, they have to satisfy the following requirements as well in order to qualify for exemption from the smoking ban –

- (a) the accommodation must be permanently and completely partitioned off from the remainder of any area described in Part 1 of Schedule 2 within which the accommodation is situated; and
- (b) none of any window, door or other closeable opening of the accommodation opens to an indoor part of that area (except a common part).

Hotel/guesthouse rooms hired for use as sleeping accommodation

92. Some members query the exemption for rooms/suites in a hotel or guesthouse hired for use as sleeping accommodation as they are also indoor workplaces for the hotel employees servicing these rooms. The Administration explains that sleeping accommodation in a hotel or guesthouse is a private dwelling during the period of hire and therefore exempted from the smoking ban. However, hotels could designate non smoking rooms or floors to meet the need of non-smokers and families with children.

Designated smoking areas within the premises of correctional institutions

93. In response to members' questions, the Administration has clarified that under the Bill and the statutory provision of Rule 25(2) of the Prisons Rules (Cap. 234 sub. leg. A), smoking will be prohibited in all indoor areas of correctional institutions except in areas specifically designated by Heads of Institutions as smoking areas. According to the Correctional Services Department, in institutions for adult prisoners, Heads of Institutions will designate smoking areas, e.g. single cells and designated areas in workshops, dayrooms, dining halls and dormitories, etc for prisoners to smoke. However, in institutions for young offenders where they are not allowed to smoke, there will not be any designated smoking areas for the inmates.

Buildings under construction or demolition

94. The new section 3(5)(g) added by Clause 5 provides that a building which is not the subject of a valid occupation permit or temporary occupation permit will be exempted from the smoking ban. Members hold the view that on both health and work safety grounds, there is no reason to exempt such premises.

95. After considering members' views, the Administration has agreed to remove the proposed exemption. As a result, no specific exemption would be applicable to buildings under construction or demolition. Similar to other workplaces, smoking will be banned in indoor areas.

Smoking areas designated by the Airport Authority

96. Some members have queried the reasons for allowing smoking areas in the Hong Kong International Airport. They consider that smoking areas should only be provided in the transit area or in an open air area. They have asked the Administration to provide information on the arrangements at international airports in neighbouring cities, and the measures that the Airport Authority has put in place to protect staff who are assigned to clean the smoking rooms.

97. The Administration explains that the main reason for providing smoking lounges at the Hong Kong International Airport is that the passengers in the restricted areas, including transit passengers, cannot go outside to smoke while waiting for their flights. At present, there are 12 smoking lounges. Seven are located at the Departure Level, five are located at the Arrival Level, and three are within the Transit Areas. The Airport Authority has decided to stop the usage of the two smoking lounges situated at the Arrival Hall starting from 1 January 2007.

98. According to information provided by the Airport Authority, all major neighbouring international airports provide smoking lounges for smokers. These airports include Incheon (Seoul), Chiangi (Singapore), Narita (Tokyo), Kansai (Osaka), Kuala Lumpur International, Shanghai Hongqiao International and Beijing Capital International. Thus far, the Administration is not aware of any major international airports that do not provide smoking rooms/lounges for passengers at their terminal buildings. The Administration has undertaken to review the arrangement in the light of international developments in this regard in the next phase of the tobacco control legislation.

99. As regards cleaning of the smoking lounges, thorough cleaning is normally done after midnight when the smoking lounges are usually empty. At other times, the cleaning contractors would inspect the smoking lounges through the glass partition, without entering, at regular intervals. If deemed necessary, workers would enter the smoking lounges for a fast cleaning or to clear the ash trays. Internal working procedures and guidelines have been issued by the janitorial service contractors for smoking rooms at the airport. It is stipulated that workers should wear appropriate personal protective equipment including facemasks during the cleaning process. Job rotations are also arranged to ensure that no worker would be exposed to second-hand smoke for a prolonged period of time.

Cigar and tobacco tasting rooms

100. The cigar trade has pointed out that as there are many brands of cigars, tasting is a necessary part of their mode of business, and has asked for exemption of their cigar-tasting rooms from the smoking ban.

101. After consideration, the Administration has decided to exempt cigar-tasting rooms in cigar shops from the smoking ban. Each shop will be allowed to designate one fully-enclosed room with a separate ventilation system as a "cigar-tasting room" for customers. Employers are prohibited from asking their staff to provide any service in these rooms. It will also be specified in the proposed amendment that nothing except cigars and cigar accessories are offered for sale in the shops concerned and that 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.

102. Taking into consideration the special need of the tobacco industry, the Administration has also proposed to exempt one room designated for tobacco tasting in the manufacturing or business premises of a tobacco company if the following requirements are met –

- (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 the one who carries out the tobacco tasting, is required to enter the room while it is being used for the tobacco tasting (whether or not he could have been required to do so by contract or otherwise).

Other exempt areas proposed by members

Smoking rooms

103. Both Hon Tommy CHEUNG and Hon Albert CHAN have proposed amendments to exempt smoking rooms in certain premises. Mr CHEUNG's proposal covers restaurant premises, bars, karaoke establishments, mahjong-tin kau premises, mahjong clubs, bathhouses and nightclubs while Mr CHAN's proposal covers bars, karaoke establishments, bathhouses and nightclubs.

Mahjong-tin kau premises

104. Hon Albert CHAN has proposed an amendment to exempt mahjong-tin kau premises from the smoking ban.

Outdoor smoking areas

105. Hon Albert CHAN has proposed amendments to allow management committees/sponsoring bodies of schools and specified educational establishments to designate outdoor smoking areas within the boundary of their schools or campuses.

Display of tobacco advertisement

Requirements of the Framework Convention on Tobacco Control (FCTC)

106. Article 13(2) of FCTC provides that “each party shall, in accordance with its constitution or constitutional principles, undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship”.

Revocation of exemptions for licensed hawker stalls and retail outlets with two employees or less

107. Under section 12 of the Ordinance, the display of tobacco advertisement is prohibited except at licensed hawker stalls and retail outlets employing not more than two employees. The Administration has found that such exemptions have become a source of abuse. Numerous tobacco advertisements are being displayed at small retail stalls and many large light-boxes displaying tobacco advertisements can be found in small shop premises throughout the territory. To plug the loophole, the Administration proposes revoking the exemptions currently applicable to licensed hawker stalls and retail outlets with two employees or less.

108. Clause 14 of the Bill revokes the two exemptions. Taking into consideration that the affected hawkers might require some time to find other sources of revenue as replacement, the Administration originally proposed an adaptation period of one year for these hawkers and retail outlets.

109. Having regard to the representations made by licensed hawkers, some members of the Bills Committee have expressed concern about the possible adverse financial impact on the trade if this exemption is revoked. Members have asked the Administration to seek legal advice as well as clarification from WHO as to whether only a complete ban on tobacco advertisement in licensed hawker stalls would fulfil the requirements of the comprehensive ban on all tobacco advertising and promotion imposed by Article 13(2) of FCTC.

110. The Administration has sought advice from the International Law Division of the Department of Justice. According to legal advice, the current exceptions provided for in sections 12(2) of the Ordinance run a real risk of falling foul of the comprehensive ban on all tobacco advertising and promotion imposed under Article 13(2) of FCTC, unless it could be demonstrated that the removal of such exceptions is restrained by our constitution and constitutional principles. The legal advice further points out that the amendment could be effective on a date not later than the expiry of the five-year period after the entry into force of this Convention for China in mid-January 2006. In the light of the advice obtained, the Administration has come to the view that in the long run, the exemption for tobacco advertising at licensed hawker stalls should be removed as a matter of policy.

111. In his reply to the Administration's enquiry, Mr Burke A Fishburn, the Regional Coordinator of the Tobacco Free Initiative of WHO Western Pacific Regional Office, has pointed out that "Due to the tobacco industry's ability to get around direct advertising bans or restrictions, it is clear that the law must address not only direct forms of advertising but also indirect forms of advertising and promotion, such as sponsorship and brand stretching. There should, therefore, be a complete ban on direct and indirect tobacco advertisement at hawker stalls and retail outlets in order to fulfil the requirements of the WHO FCTC." Moreover, having been briefed on the unique situation in Hong Kong, WHO's reply emphasises that "a complete ban of tobacco advertisement in licensed hawker stalls is in line with the comprehensive ban called for under Article 13 of the WHO FCTC".

112. The Administration has pointed out that the affirmation from WHO has secured the Administration's position on the policy. However, in order to provide greater relief to licensed newspaper stall hawkers, the Administration is prepared to extend the adaptation period from the proposed one year to three years from the date the Ordinance is published in the Gazette. The Administration has subsequently proposed to fix 1 November 2009 as the effective date for revoking this exemption. With this longer adaptation period, the Administration believes that the licensed newspaper hawkers would have sufficient time to adjust to the new legislative framework and look for alternative revenue sources. In addition, even if tobacco companies stop supporting the hardware needs of hawkers such as their stall structures, licensed hawkers would still have sufficient time to look for alternative advertisement that provide similar support.

113. The exemption presently applicable to retail outlets employing less than two employees (including newspaper shops) would be revoked as proposed in the Bill, that is, on the first anniversary of the day on which the Amendment Ordinance is published in the Gazette. The Administration has subsequently proposed to fix 1 November 2007 as the effective date for revoking this exemption.

Meaning of tobacco advertisement

114. Section 14(2) of the Ordinance provides that, subject to subsections (3) to (5), where an advertisement or any object, other than a tobacco product, which is displayed to the public, includes the name or trade name of any person associated with the marketing of a tobacco product, or any trade mark or brand name of a tobacco product, or any pictorial device or part thereof commonly associated therewith, then the advertisement or object will be deemed to be a tobacco advertisement. Members have asked the Administration to clarify whether the deeming provision under the section is a rebuttable presumption or an irrebuttable presumption.

115. The Administration explains that the purpose of section 14(2) is to provide a further meaning for the defined term “tobacco advertisement” and does not raise a rebuttable presumption. When “deemed” is used in statutory definitions to extend the denotation of the defined term, it is a convenient device for reducing the verbiage of the legislation. This drafting technique is used in Part IV of the Ordinance, which regulates the printing, publication, display and distribution of certain materials and objects used for promoting tobacco products. All these materials and objects are referred to as “tobacco advertisements”, the meaning of which is provided by section 14.

116. Section 14(1) first of all gives the basic meaning of a “tobacco advertisement”. Section 14(2) extends the meaning by providing that certain advertisement or object is also deemed to be a tobacco advertisement unless it falls within the provisions in subsections (3) to (5). The effect of section 14(2) is not to presume certain acts to have been done when in fact it is not done. Section 14(2) is simply an indisputable statement of an additional meaning of “tobacco advertisement”.

Non-tobacco products displaying the name/logo of a tobacco product

117. Some members have expressed concern about the tobacco industry making use of non-tobacco products to display the name and/or logo of a tobacco product and have suggested that the Administration should only allow those existing before a certain date. In response to members’ request, the Administration has provided information on overseas experience in regulating non-tobacco products displaying tobacco brand element for the Bills Committee’s reference. The Administration has pointed out that it does not have an exhaustive list or exact number of the non-tobacco products in question and would have difficulty in the proposed “grandfathering” of existing products only. Nevertheless, the Administration has undertaken to examine the viability of prohibiting the display of the name and/or logo of a tobacco product on non-tobacco products in the next phase of the tobacco control legislative exercise.

Price boards of tobacco products

118. Section 14(6) of the Ordinance stipulates that a price marker for each tobacco product should contain only the name and price of the tobacco product and be of a size not greater than the size of the price marker of any of the non-tobacco products sold in the premises. It further stipulates that for a price board, it should not exceed 2 000 square centimetres listing only the names and prices of the tobacco products for sale.

119. Clause 15 of the Bill seeks to tighten up the restriction on the sizes of price boards and price markers. For individual price markers, a new

requirement is imposed so that their size should not exceed 50 square centimetres. For price boards, the maximum size is reduced from 2 000 to 1 500 square centimetres.

120. Members have asked the Administration to amend the new section 14(6) to the effect when a price board is used to list a few names and prices of tobacco products, the size of each tobacco product listed should be subject to the same restriction as an individual price marker, i.e. not exceeding 50 square centimetres. There should be a textual warning on each price board with detailed specifications. The Administration has agreed to move an amendment to that effect and to add a new paragraph 5A and a new Part IIIA in the Schedule to the Smoking (Public Health) (Notices) Order (Cap. 371 sub. leg. B) to prescribe the manner of display and the form of the health warning required to be borne on price boards of tobacco products.

121. After studying the prescribed form of the health warning proposed by the Administration, members have suggested that the font size of the words “HKSAR GOVERNMENT WARNING” in English and “香港特區政府忠告市民” in Chinese should be made smaller to make the words “SMOKING KILLS” in English and “吸煙足以致命” in Chinese more prominent. The Administration has accepted members’ suggestion.

122. Taking into consideration the unique mode of operation of cigar shops, the Administration proposes allowing them to have three sets of catalogues containing the names and prices of cigar products on sale, apart from the use of price markers and the price boards inside the shop. The said catalogues can be offered for customers’ sight upon request.

Health warnings on retail container of cigar, pipe tobacco or cigarette tobacco

123. Under the Ordinance, health warnings in prescribed size and wording as well as the amount of nicotine yields are required to be shown on the package of tobacco products. To enhance the visual impact and deterrent impact of the warnings, the Administration proposes amending the Smoking (Public Health) (Notices) Order (Cap. 371 sub. leg. B) to require the packets or retail containers of tobacco products to bear graphic health warnings. In conformity with international practices, the Chinese and English version of the health warning and indication of the tar and nicotine yields are required to be of a size that covers at least 50% of the principal surface areas of the packet/container of any tobacco product.

124. In response to members’ request for information on the use of graphic health warnings in other overseas jurisdictions, the Administration has provided details of the required health warnings in Australia, Brazil, Canada, Singapore, Thailand, Venezuela and the European Union for members’ reference. Members note that the requirements in the jurisdictions concerned are similar

to those proposed in the Bill.

125. Having regard to the views of the tobacco industry, the Administration will delete the requirement in the new paragraph 4A(4)(c) of the Smoking (Public Health) (Notices) Order that the top side of the area containing the Chinese and English version of the health warning shall be no more than 12 millimetres from the top of the surface on which that version appears.

126. The Bill provides that within a transitional period of one year, it is not an offence to sell any tobacco product in packets or retail containers that bear the pre-amended forms of health warnings. Tobacco companies and retailers have asked for an extension of the period. Following consultation with the printing experts in the Government Logistics Department, the Administration has pointed out that the time required for printing the new packets depends on the amount of resources put into it. Should members consider that retailers need more time to dispose of their old stock, the time allowed for tobacco companies to produce the new packets would have to be shortened correspondingly. Most members agree that the proposed transitional period of one year is appropriate. Tobacco companies could work out with wholesalers and retailers regarding the supply and recall arrangements during the transitional period and retailers should avoid holding large stock of products bearing the old forms of warnings during the period.

127. Hon Albert CHAN has proposed an amendment to extend the transitional period for retailers to 18 months so that they will have six more months to dispose of their old stock.

Use of misleading descriptors

Proposal in the Bill

128. Section 10(3) of the Ordinance prohibits the sale of cigarettes which have on their packet or their retail container a brand name which includes words implying that the cigarettes have a low tar yield, such as “light” and “mild” unless the cigarettes have a tar yield of nine milligrams or less. Clause 11 of the Bill amends that section to expand the prohibition so that it covers sale of cigarettes which have on their packet or retail container the words “light”, “mild”, “milds”, “low tar”, “醇” or “焦油含量低” or other words which imply or suggest that the cigarettes are less harmful than others, regardless of the tar yield of the cigarettes.

Submission from Japan Tobacco Inc.

129. Japan Tobacco Inc. submitted to the Bills Committee in May 2005 that the proposed amendment to section 10(3) would amount to a prohibition of their trade mark Mild Seven and thus, would –

- (a) be a “de facto” deprivation of their property under Article 105 of the Basic Law (BL 105); and
- (b) fail the “fair and balance test” as the ban on their trade mark is disproportionate.

The Administration’s response

130. After consulting the Department of Justice and the Intellectual Property Department, the Administration informed the Bills Committee in January 2006 that in view of the complexity of the legal issues involved and the risk that litigation might follow if clause 11 was passed in the present form, the Administration proposed to amend the clause to the effect that the prohibition would not prevent the use of trade mark containing any such misleading words on the packet or retail container if two conditions are met –

- (a) the trade mark has, as of the day on which the Amendment Ordinance is enacted, been registered with the Trade Mark Registry under the Trade Marks Ordinance (TMO) (Cap. 559); or, if the trade mark has not been registered under the TMO, its owner is able to prove that the mark is used in Hong Kong in relation to the retail sale of cigarettes on the day immediately before the enactment of the Amendment Ordinance; and
- (b) the packet or retail container bears a notation in the prescribed form and manner.

The purpose of the notation is to bring to the smoker’s attention that the use of misleading words does not in any way indicate that the cigarettes contained therein are less harmful than others.

131. Some members expressed strong objection to the proposed amendment which they considered would set a very bad example for the Mainland and other countries in the region. These members were also concerned about the implications of the proposal, in particular whether it was in compliance with the WHO FCTC. Even those members who supported the proposed amendment considered that the cut-off date for the “grandfathering” arrangements should be the date of gazettal of the Bill instead of the date of the enactment of the Amendment Ordinance.

132. In response to queries raised by members, the Administration has pointed out that BL 105 provides, inter alia, that the Hong Kong Special Administrative Region shall, in accordance with the law, protect the right of individuals and legal persons to compensation for lawful deprivation of their property. Compensation equivalent to the real value of the property shall be

payable where there is a deprivation of private property by the state. Thus legislative or executive acts resulting in the deprivation of property without compensation corresponding to its real value will be unconstitutional.

133. Members have expressed serious doubts that the amendment proposed in clause 11 would constitute deprivation of property. The Administration's response is that although clause 11 of the Bill taken on its own does not necessarily constitute (de facto) deprivation of property without compensation within the meaning of BL 105, there is a serious risk that the cumulative effect of clause 11 and other provisions of the Bill and the existing law as contained in the Ordinance (particularly those relating to tobacco advertisements) amounts to such a deprivation as far as registered trademarks incorporating the words mentioned in clause 11 are concerned. This proposition applies to a certain extent also to trademarks duly registered after the gazettal of the Bill and before its enactment and commencement.

134. The Administration has also pointed out that consideration should also be given to Hong Kong's international intellectual property legal obligations, namely, those under the Paris Convention for the Protection of Industrial Property (Paris Convention), and the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Trademarks, including unregistered trademarks, trade names and well-known trademarks, are categories of intellectual property subject to protection.

135. Members opposing the Administration's proposal urged the Administration to review its decision that a "grandfathering" provision (with notation) should be introduced to cover registered and unregistered trademarks referred to above. They pointed out that in recent relevant overseas court cases, the tobacco companies concerned had all lost their cases. Members also noted that the Australian Competition and Consumer Commission had obtained court-enforceable undertakings from Imperial Tobacco Australia Limited on 7 November 2005 to remove its "light", "mild" and similar descriptors from its products. The British American Tobacco Australia Limited and Philip Morris Limited had taken the same move in May 2005.

136. On 22 June 2006, the Administration provided the Bills Committee with the first draft of its proposed amendments to clause 11 and a new Schedule 5A setting out the exemption from section 10(3) of the Ordinance. Under the proposed amendments, on the condition that a notation in a prescribed form is included, words such as "light" and "mild" are allowed to be used on the packets or retail containers of any tobacco product having a tar yield of 9 milligrams or less if these words, prior to the publication of the Amendment Ordinance in the Gazette, are, or, part of the –

- (a) trademarks that have been registered under the TMO in respect of the tobacco product; or

- (b) unregistered trademarks that have been used continuously in the retail sale of tobacco products in Hong Kong; or
- (c) trademarks that have been well known in respect of tobacco products in Hong Kong.

137. To assist members in considering the Administration's proposed amendment to clause 11, the Bills Committee decided that the Chairman should write to the Coordinator of WHO FCTC Office to seek WHO's views as to whether the proposed amendments are in compliance with the FCTC. The letter was sent on 5 July 2006, and the WHO's response is still outstanding despite a reminder sent on 19 September 2006.

138. At the meeting in late September 2006, the Administration has advised in response to members' question that the Administration and its legal advisers are of the view that Article 11 1(a) of the FCTC does not require specific words to be stipulated in domestic legislation giving effect to the Article, and setting out the prohibited words goes beyond the FCTC requirements. Members also note that an absolute ban of specific words is not adopted in some countries which have given effect to the Article, and no concern of non-compliance with TRIPS obligations has been raised. Some members have therefore suggested that instead of adopting the "grandfathering"-cum-notation approach, a general ban on the use of misleading words on tobacco packaging without an absolute ban on the prohibited words should be considered.

139. The Administration has advised the Bills Committee that according to the Basic Law Unit of the Department of Justice, if the law does not seek to impose an absolute ban on specific words but only imposes a general ban on misleading descriptors, such a general prohibition would likely be consistent with BL 105.

140. The Administration has pointed out that the serious risk of successful legal challenge under BL 105 faced by the original clause 11 of the Bill (which imposes an absolute ban on specific words) only applies to registered trademarks under the TMO. Registered trademarks using misleading descriptors would be liable to revocation under section 52(2)(c) of the TMO on the ground that the trademarks are liable to mislead the public if there is sufficient evidence of the misleading effect. The Basic Law Unit is of the view that it would therefore be difficult to advance the argument that a general ban on misleading descriptors would cause a de facto deprivation of the property in the affected registered trademarks.

141. The Administration has also pointed out that the Intellectual Property Department believes that, compared with a ban on specific words, a general ban would alleviate the concern of possible non-compliance with Hong Kong's

TRIPS obligations.

142. Despite the above, the Administration has reiterated that naming the words to be banned has the following advantages –

- (a) it is clear to tobacco companies the words and terms that cannot be used; and
- (b) it obviates the need for litigation on a case by case basis to prove that using the words or terms in a particular context creates misleading effect, as the use of the words or terms are completely banned.

143. As members support the imposition of a general ban and are prepared to accept the financial implications of taking litigation on a case by case basis, the Administration has eventually agreed to withdraw its previous proposal of adopting an absolute ban on specific words (which requires the exemption for pre-existing intellectual property using the “grandfathering”-cum-notation approach). Under the new proposed amendment to clause 11, subsection (3) of section 10 reads as follows –

“(3) Any manufacturer of tobacco products or his agent, or any wholesale distributor of tobacco products, who sells, offers for sale or possesses for the purpose of sale any tobacco product to which section 8 or 9 applies commits an offence if any packaging of the product (including any packet, retail container, wrapping, and any label attached to or printed on the packaging or the product) –

- (a) bears any term, descriptor, trademark, figurative or any other sign that is likely to create an erroneous impression that the product is less harmful to health than other tobacco products the packaging of which does not bear such term, descriptor, trademark, figurative or sign; or
- (b) promotes the product by any means that is false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions.

Exemption for live performance or recording for film or television programme
(New Schedule 5)

144. To meet the special needs of performing arts, the Administration has proposed to add a new section 3(2A) to clause 5 and a new clause 22A to provide for a new Schedule 5 on exemption for live performance or recording for film or television programme.

145. In the new Schedule 5, “live performance” is defined as a performance given or done before a live audience, whether on payment or otherwise. An exemption from section 3(2) of the Ordinance applies to a person who does a smoking act in a no smoking area if all the following conditions are satisfied –

- (a) the person is performing in a live performance, and his smoking act forms part of that performance;
- (b) the no smoking area in which the live performance takes place is not a school or specified educational establishment except a designated performance venue;
- (c) the manager of the no smoking area has given his prior permission for the live performance with the smoking act to take place in the no smoking area;
- (d) the live performance takes place only within the time and at the location permitted by the manager; and
- (e) the smoking act complies with all the requirements specified in relation to such an act under section 5.

146. The requirements set out in section 5 of the Schedule are as follows –

- (a) the act does not expressly or impliedly induce, suggest or request any person to purchase or smoke any tobacco product;
- (b) the act does not illustrate smoking in a manner that is calculated, expressly or impliedly, to promote or encourage the use of any tobacco product;
- (c) the act does not illustrate the package of any tobacco product; and
- (d) the act does not illustrate any quality of any tobacco product except for the purpose of publicising the harm of smoking.

147. Exemption is also allowed for recording for films or television programmes, whether live or otherwise, subject to similar conditions. It is further specified that the film or television programme is not, and does not form part of, a tobacco advertisement.

148. Members have questioned why, for the purposes of the Schedule, only a venue situated in The Hong Kong Academy for Performing Arts and designated by the manager of that establishment as a venue for any live performance is a

designated performance venue. The Administration has explained that the venue in question is often hired out for live performances and The Hong Kong Academy for Performing Arts relies on the rental charges as a source of revenue. Members have pointed out that the auditoriums in the Hong Kong Polytechnic University and the Hong Kong Baptist University are also hired out frequently for live performances and have asked the Administration to reconsider whether only The Hong Kong Academy for Performing Arts should be given preferential treatment. Some members have pointed out that some school auditoriums are also used for live performances which might sometimes involve smoking acts, including lighting a cigarette in order to convey an anti-smoking message.

149. On review, the Administration has agreed to amend the new Schedule to allow the manager of a secondary school or a post-secondary institution to decide whether to designate a venue in the school or institution as a designated performance venue for the purpose of Schedule 5. In response to members' request, the Administration has specified in section 2(c) of the proposed Schedule that in the case of a designated performance venue in a secondary school, prior permission in writing has to be obtained from the manager of the designated performance venue.

150. Similarly, in relation to exemption for recording for films or television programmes, in the case of a school that provides any nursery, kindergarten, primary or secondary education, prior permission in writing has to be obtained from the manager of the no smoking area in which the performance is to take place.

151. The Administration has also accepted members' proposal to include the final rehearsal in the exemption for live performance.

Enforcement of the Ordinance

152. Clause 18 adds a new Part IVB to the Ordinance to enhance the enforcement of the Ordinance. The new Part contains provisions about the appointment and the general enforcement powers of inspectors. In response to members' request, the Administration has provided information on its enforcement plan for the Bills Committee's reference.

Role of the Tobacco Control Office

153. The Tobacco Control Office (TCO) was established under the Department of Health in February 2001 with a specialised role to enhance the Government's tobacco control efforts. Its current functions can be classified broadly into three areas, namely, health education and promotion, monitoring of law compliance and smoking cessation services.

154. At present, several Government departments are involved in enforcing the Ordinance, notably the Police and the Customs and Excise Department. However, there is no concurrent conferment of legal powers on TCO staff to take enforcement actions under the Ordinance. As the lack of such provisions has proved to be an operational constraint for TCO, the Bill proposes to empower tobacco control inspectors to take enforcement actions.

155. Under the new Part IVB of the Ordinance, an inspector is empowered to enter any premises, other than domestic premise or a correctional facility, if he reasonably suspects of a relevant offence, to seize evidence of the relevant offence and to require any person to give his name and address and to produce proof of identity and other necessary action so that prosecution may be instigated.

Role of the venue manager

156. For expeditious handling of smoking-related complaints and removal of nuisance caused by second-hand smoke, managers of statutory no smoking areas are empowered under the existing Ordinance to take immediate remedial actions and to mitigate the situation on the spot. These include requiring a smoker to extinguish a lighted cigarette, cigar or pipe. Where the person fails to do so, the manager may require him to give his name and address and to produce proof of identity or to leave the no smoking area. If the person fails to respond, the manager may remove him by the use of reasonable force if necessary, detain him and call for the assistance of a Police officer.

157. The manager is also required to place in a prominent position in each no smoking area a sufficient number of signs to indicate that smoking is prohibited in the no smoking area, and to maintain the signs in legible condition and good order. Under the Bill, the Administration proposes that the powers and duties of the managers under the existing Ordinance be extended to managers of new statutory no smoking areas.

Role of the Police and Customs and Excise Department

158. The Police have general enforcement powers under the Ordinance. In addition, under section 3(c)(ii) of the Ordinance, a manager of a statutory no smoking area may call for the assistance of a Police officer to assist him in the enforcement of the relevant section of the Ordinance. The Customs and Excise Department is empowered to enforce Part III of the existing Ordinance in relation to the sale of tobacco products. The Department will continue to carry out its current enforcement duties under the new legislation.

Power and scope of a venue manager

159. Some members have expressed concern about the power and scope of

the manager of a no smoking area as set out in section 3(3) of the Ordinance. They are particularly concerned that the manager may remove a smoker 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 of the section.

160. The Administration has pointed out that the section provides managers with the necessary powers to enable them to take immediate action on the spot. However, there is no penalty if they fail to take any action. According to the Administration's understanding, most smokers adopt a co-operative attitude and would extinguish their lighted cigarette upon request by the manager.

161. Hon Tommy CHEUNG has proposed an amendment to repeal subsections (3) and (4) of section 3. Subsection (4) provides that where a person is, under subsection (3), required to leave a no smoking area or detained, he shall not be entitled to a refund of any admission fee or money paid by him for entry into the premises or building in which the no smoking area is situated.

162. As there is no penalty for managers of premises for not taking action under section 3(3), some members are concerned about enforcement of the smoking ban in restaurants and entertainment establishments. In this connection, they note that in Ireland, where a person smokes in contravention of the law, the occupier, manager or any other person for the time being in charge of the place where the contravention occurs shall each be guilty of an offence. Hon Martin LEE has asked whether the Administration has any plan to introduce a demerit point system for catering and entertainment premises which fail to stop smoking acts in statutory no smoking areas.

163. The Administration has explained that different catering and entertainment establishments are licensed under different ordinances which are not related to the present Ordinance. Its legal advice is that any licensing condition to be imposed in respect of a type of licence must be reasonable, related to and for the purpose of the particular ordinance under which the licence is granted. In this respect, enforcement of the present Ordinance may not reasonably be taken as for or in connection with the purposes of particular licensing ordinance under which the licence is granted. In view of this advice, the Administration has no plan to consider any mechanism that links inaction of managers in face of a smoking act to any demerit point system which may lead to eventual loss of their respective establishment's licence.

164. Members have asked the Administration whether any labour disputes have arisen since managers have been authorised to stop people from smoking in statutory no smoking areas. The Administration has advised that the Labour Relations Division of the Labour Department does not have any record on labour disputes cases relating to the enforcement of the Ordinance.

165. As to whether employees who suffer bodily harm outside their workplaces for their action in asking customers not to smoke in statutory no smoking area would be entitled to compensation under existing labour legislation, the Administration has pointed out that pursuant to section 5 of the Employee's Compensation Ordinance (Cap. 282), unless any of the exceptions apply, if personal injury by accident arising out of and in the course of the employment is caused to an employee, his employer shall be liable to pay compensation in accordance with the Ordinance. Each specific case would have to be considered and determined on its particular facts and circumstances.

166. The Bills Committee has also asked the Administration to clarify whether the removal of the owner, occupier or lessee who smokes in the common area of his/her building from that common area by the manager of the building under section 3(3)(c) would be in breach of the Bill of Rights, the Basic Law and other legislation, as the private property rights of the owner, occupier or lessee in enjoying the common parts of his/her building would be affected.

167. Legal advice obtained by the Administration in relation to the legal position of an owner of a building unit is as follows –

- (a) an owner holds a number of undivided shares in the building, which relates to the exclusive use of his own flat and the right to use over the common area. He is entitled to use the common area subject to the terms of the Deed of Mutual Covenant (DMC);
- (b) the owner holds proprietary interest in the common area of the building represented by his undivided shares and enjoys the right to use over the common area, subject to the terms of the DMC; and
- (c) an occupier or lessee of domestic premises enjoys the right to use (derived from the owner) over the common area, subject to the terms of the DMC.

168. Taking the interest/right of the owner and the right of the occupier or lessee in the common area of the building as a property right for the purpose of Article 105 of the Basic Law, it is necessary to consider whether there is any deprivation (or de facto deprivation) of the property right of the owner, occupier or lessee who smokes in the common area of his/her building if the latter is removed from that common area by the manager in accordance with section 3(3)(c) of the Ordinance. It is clear that the exercise of the power of removal exercised by the manager against the owner, occupier or lessee would not cause a formal deprivation of the latter's property right.

169. The Administration has also pointed out that according to the review of Hong Kong, European and American jurisprudence, a de facto deprivation exists if the property affected is left without any meaningful alternative use or if the restrictions have denied the owner of all economically viable use of the property. Under this test, the removal of the owner, occupier or lessee from the common area of the building is unlikely to amount to a de facto deprivation because it is unlikely that the interest of the owner in the common area would be left without any meaningful alternative use. Furthermore, the right of use of the owner, occupier or lessee over the common area would only be affected in limited circumstances, i.e. when the owner, occupier or lessee is smoking in the common area, has failed to extinguish the lighted cigarette and has also refused to provide personal details or leave that common area, upon request by the manager. It would be difficult to argue that the right of use of the owner, occupier or lessee over the common area is left without any meaningful alternative use, when he may use the common area anytime he is not smoking or carrying a lighted cigarette.

170. The Administration has further explained that the question of deprivation aside, it is necessary to consider whether a fair balance is struck between the overriding interest in protecting public health and property right of the owner, occupier or lessee, should Hong Kong courts adopt the fair balance test developed under European jurisprudence. Under this test, there must be a reasonable relationship of proportionality between the means employed and the aim to be realised.

171. In order to protect the health of the occupant of the building as a whole, and that the common parts of a building should not be treated any differently from other statutory no smoking areas, the Administration considers it reasonable and necessary for the manager to be empowered to remove a person smoking or carrying a lighted cigarette in the circumstances mentioned above. There is no other alternative to remove the second-hand smoke that is generated by the lighted cigarette. The Administration considers that there is sufficient justification for having the power of removal excisable by the manager in accordance with section 3(3)(c) of the Ordinance and that the fair balance test would also be met.

172. The Administration has also looked into the issue from the human rights perspective. There is a potential argument that the exercise of a manager's power under section 3(3) of the Ordinance in the common areas of a domestic building would interfere with the privacy of the owners, occupiers and lessees as protected under Article 28 of the Basic Law and Article 17 of the International Covenant on Civil and Political Rights. However, having considered the objective to be pursued (i.e. protection of public health) and the less intrusive steps which the manager has to take before exercising the power of removal under section 3(3) of the Ordinance, even if there is an interference with the privacy of the owners, occupiers and lessees as a result of the exercise

of the manager's statutory power under section 3(3), the Administration is of the view that the interference would not be "arbitrary". In other words, it would not be inconsistent with the protection under Article 28 of the Basic Law and Article 17 of the International Covenant on Civil and Political Rights.

Display of "No Smoking" signs by managers of statutory no smoking areas

Proposal in the Bill

173. Under section 5 of the Ordinance, it is specified that –

"The manager shall place in a prominent position in each no smoking area or public transport carrier, as the case may be, a sufficient number of signs in English and Chinese to indicate that smoking is prohibited in the no smoking area or the public transport carrier and such signs shall be of the prescribed description and shall be maintained by the manager in legible condition and good order."

Clause 6 of the Bill seeks to amend section 5 by adding "and keep in place" after "place".

174. It is further provided in section 7(3) of the Ordinance that any manager who fails to place signs in accordance with section 5 and maintain the signs in the manner required by that section commits an offence and is liable on summary conviction to a fine at level 4.

175. Section 2 of the Smoking (Public Health) (Notices) Order prescribes the manner and words to be displayed in the "No Smoking" signs.

Concerns expressed by members

176. Some members have expressed concern that managers might find it difficult to determine what positions were regarded as "*prominent*" in the no smoking area, and how many signs were considered "*sufficient*" in each and every case. Some other members have queried whether a "no smoking" sign had to be placed in each room of no smoking premises, including for example each toilet cubicle or each classroom, or whether a "no smoking" sign at the entrance of a no smoking building would suffice. Members also note that given the different layout and configuration of commercial complexes, office buildings, hotels, restaurants, etc., it would be difficult for managers to know if they have complied fully with the requirements of displaying "no smoking" signs as set out in section 5 of the Ordinance.

177. Some members have expressed concern that in the event that one of the rooms in no smoking premises does not carry such a sign, the absence of the sign could mislead a person into believing that smoking is allowed in that

particular room. The Administration's legal advice is that the absence of such signs would not be a defence for smokers who smoke therein.

178. Members have also expressed concern that "managers" might not be easily identifiable or are non-existent in some premises. Examples are old residential buildings where no owners' corporation has been formed and no management company has been appointed, or in some cases there could be no DMC or the DMC has not spelt out who is/are to be in charge of the common areas of the building. The lack of clarity as to who will fulfil the role of a manager in such buildings would make it difficult for the enforcement authority to enforce the relevant provision.

179. Although it is proposed in the Bill that in such cases, the statutory responsibility of "managers" would fall on the owners of the buildings, there is concern that the owners might not be aware of this responsibility as these owners might be elderly people, have migrated or actually do not reside in the said buildings.

180. In the light of the above reasons, the Administration has reconsidered the issue and its revised proposal is to repeal the requirement.

The Administration's proposal to repeal the requirement

181. The Administration proposes that the statutory requirement of the display of signs under section 5 of the Ordinance and section 2 of the Smoking (Public Health) (Notices) Order which provides for the prescribed signs to be displayed should be repealed. The sanction against managers under section 7(3) will also be repealed. In other words, managers will no longer be required under the law to put up signs in the prescribed form and in the prescribed manner. Instead, they will have the flexibility to decide on the appropriate measures to make known to visitors of their venues that smoking is prohibited there.

182. The Administration has pointed out that when the Ordinance was amended in 1992 and 1997, only a small number of public venues were designated no smoking areas and it was necessary to take effective measures to remind the public, in particular the smokers, of the areas where smoking was prohibited. Furthermore, the "managers" of those venues were easily identifiable. The Administration therefore imposed a legislative requirement on managers to display "no smoking" signs in prominent positions and in sufficient numbers. With the introduction of the Bill, a big step forward has been taken in tobacco control. Under the current proposal, all indoor areas of workplaces and public places, with very few exceptions, are designated no smoking areas. Smokers will accept and the society will gradually build up a culture that smoking is basically prohibited in all indoor premises. Thus, the continued need to require venue managers to display "no smoking" signs

extensively in indoor areas, especially publicly accessible areas, has become questionable.

183. The Administration holds the view that given that members of the public are expected to be clear about the requirement of the law and cannot rely on the presence of “no smoking” signs as an absolute indication of whether smoking is prohibited in the premises in which they are present, “no smoking” signs should be regarded as one of the tools that managers may deploy to manage their premises as statutory no smoking areas.

184. The Administration considers that other than the display of signs, managers should be allowed or encouraged to adopt measures which in their view are most effective to achieve the no smoking objective in statutory no smoking areas. Where managers prefer to put up signs, they may wish to have signs designed in such a way that the message is clear but the outlook of the sign blend in well with the interior design or style of the premises. Employers and employees of statutory no smoking areas should be encouraged to work together to devise effective measures to manage their premises to safeguard customers and themselves against second-hand smoke, but they should be given more flexibility to achieve the aim.

185. Nevertheless, the Administration understands that most managers may still prefer to display “no smoking” signs in their premises as a reminder to their customers and employees and to facilitate their management of the smoking area. TCO will continue to make available advice and guidance on the message that the signs should convey and supply display signs to managers free of charge on request. To assist managers of statutory no smoking areas in carrying out their duties, TCO will also launch workshops and issue publicity materials.

186. Some members, including Hon Howard YOUNG and Hon Tommy CHEUNG, support the Administration’s proposal. Other members have voiced grave reservations about the proposal. Both Hon Emily LAU and Hon Audrey EU are concerned that some managers may choose not to display any signs at all as there is no requirement or sanction as a result of the repeal of the two sections in question. They share the view that the two sections should be retained with amendments made to section 5 to improve its wording and clarity, and that the enforcement authority could exercise flexibility in enforcing the provision. Hon LEE Cheuk-yan also considers that the requirement should remain but the wording of the section could be improved. Mr LEE has pointed out that tourists and visitors may not be aware of the smoking ban and “no smoking” signs in both Chinese and English are necessary. Hon WONG Ting-kwong and the Chairman of the Bills Committee share the view that the basic requirement of display of “no smoking” sign should remain and that repeal of the requirement will cause enforcement difficulties. Hon WONG Ting-kwong suggests that the example

of the Hong Kong Convention and Exhibition Centre which displays a clear sign at the entrance stating that smoking is not allowed in the entire premises could be followed.

The Bills Committee's proposed amendment

187. As the majority view of the Bills Committee is that the requirement for managers to display "no smoking" sign should be retained, the Chairman has asked the Administration to review its proposal. The Administration has advised the Bills Committee that its position on the issue is unchanged. The Chairman will move an amendment on behalf the Bills Committee to repeal section 5 and substitute it with the following –

“5. Display of signs where smoking is prohibited –

The manager shall place and keep in place in each no smoking area or public transport carrier, as the case may be, a sign in English and Chinese to indicate clearly that smoking is prohibited in the no smoking area or the public transport carrier and such signs shall be maintained by the manager in good condition.”

188. Under the Bills committee's proposal, the requirement for specified form of no smoking signs under paragraph 2 of the Smoking (Public Health) (Notices) Order will be repealed to allow managers flexibility in the design of such signs.

Criminal liability of the Government

189. Clause 8 proposes to amend section 7 of the Ordinance by adding an exemption provision, i.e. subsection (5), to specify that subsection (3) does not permit proceedings to be taken against, or impose any criminal liability on, the Government or any other person who does any act or omits any act in the course of carrying out his duties in the service of the Government.

190. Some members have queried the need for such a provision. The Administration has explained that as the provision only applies to subsection (3), the amendment in fact only exempts from criminal liability Government officers who in the course of carrying out their duties fail to place signs in prominent position in each no smoking area pursuant to section 5 of the Ordinance or keep in place such signs in compliance with the requirements. Under the proposed amendments to section 5 to be moved by the Chairman on behalf of the Bills Committee, the exemption provision in subsection (5) will be repealed.

General powers and duties of inspectors

191. Members have raised a number of questions relating to the general powers and duties of inspectors set out in the proposed section 15G.

192. The new section 15G(1)(a) proposes to empower an inspector to enter a place in which he reasonably suspects that an offence “has been, is being or is likely to be committed”. Some members have expressed concern about “likely to be committed” and have asked the Administration whether there are similar provisions in other legislation. The Administration has pointed out that similar provisions conferring on a Police officer or other authorised officer to stop, search or detain if he has reasonable grounds to suspect that a person “has committed, is about to commit or intends to commit” an offence can be found in other existing Ordinances and there are also similar provisions in a number of tunnel regulations.

193. The Administration has explained that for best utilisation of resources, TCO would need to conduct spot checks on certain premises where offences are frequently reported to ensure compliance with the new legislative requirements. The new section 15G(1) as presently worded is to enable TCO to pay surprise visits to such black spots.

194. On review, the Administration has agreed to delete “or is likely to be committed” from the new section 15G(1)(a). In response to the Bills Committee’s comments on other provisions in the new section 15G, the Administration will also move a number of other amendments to the section to set out more clearly the general powers and duties of inspectors.

195. In response to a member’s question as to whether the powers of inspectors conferred under the new section 15G will be extended to the Police, the Administration has clarified that a Police officer, not being an inspector appointed under the new section, 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 Police Force Ordinance (Cap. 232) if there is a need). Neither could a Police officer exercise the power of seizure of evidence under section 15G(1)(c) which is conferred only on an inspector.

196. Some members have asked whether the inspectors will wear uniforms when carrying out their duties. The Administration has explained that while the inspectors will normally wear distinctive clothing such as a wind jacket in carrying out their duties, for some covert operations such as conducting surprise inspections on black spots, distinctive clothing will not be worn.

Inspectors not personally liable for certain acts and omissions

197. The new section 15H(1) provides that an inspector is not personally liable for any act done or omitted to be done by the inspector while exercising a power or performing a duty conferred or imposed by this Ordinance if the inspector did the act or omitted to do that act in the honest belief that the act or omission was required or authorised by or under this Ordinance.

198. Hon Tommy CHEUNG considers that the inspector should act in “honest and reasonable belief” and has asked the Administration to consider such an amendment.

199. The Administration has pointed out that there are many similar provisions in existing legislation to protect public officers from incurring personal liability so long as they are acting in “good faith” or “honest belief”. None of them imposes a further requirement that the officer in question must act reasonably. While ensuring that individual law enforcement officers not acting maliciously or dishonestly would not need to worry about being held personally liable for any act done or omission made in the course of performing their statutory duties, such provision also preserve the general position in respect of the Government’s liability in that the Government may be held vicariously liable in respect of torts committed by its servants or agents. The Administration has assured members that the Government’s civil liability will not be affected by the statutory exemption afforded to individual public officers under the new section 15H(1). This is reflected by the new section 15H(2) of the Bill, which stipulates that “subsection (1) does not affect any liability that the Government may have because an inspector has done any act or omitted to do an act to which that subsection applies”.

200. The Administration has further explained that because of the employer-employee relationship between the Government and public officers, the Government as a whole would be held ultimately responsible for any wrongdoing done on the part of the individual public officers in the course of performing statutory duties. The Administration therefore does not think it desirable to add the concept of reasonableness to the new section 15H(1).

201. Hon Tommy CHEUNG has proposed an amendment to the new section 15H(1) to provide that the inspector should act in “honest and reasonable belief”.

Prohibition of sale of tobacco products to persons in school uniform

202. Hon Andrew CHENG has proposed an amendment to section 15A to provide that no person shall sell any cigarette, cigarette tobacco, cigar or pipe tobacco to any person in school uniform. Members have asked the Administration to consider taking over the proposed amendment which

provides a clear message to young people and the community as a whole.

203. The Administration has pointed out that in some cases where the uniforms are not distinctive, it might be difficult for the vendors to tell whether the young people are wearing uniforms. It considers that the existing provision of prohibiting the sale of tobacco products to any person under the age of 18 can already serve the same purpose. Some members agree with the Administration's view.

Work plan of TCO

204. In anticipation of the new enforcement powers to be conferred on TCO inspectors, and in the lead up to the enactment of the Bill and thereafter, TCO will be taking a more proactive role in monitoring compliance, enforcement, public education, and publicity. The major activities of TCO will include –

- (a) educating and assisting manager/staff of establishments and workplaces to comply with the requirements of the Ordinance;
- (b) inspecting premises to ensure compliance with the law;
- (c) screening printed publications for illegal tobacco advertisement;
- (d) law enforcement, such as instigating prosecutions;
- (e) handling enquiries and complaints;
- (f) counselling on smoking cessation; and
- (g) conducting anti-smoking activities to educate the public about the harmful effects of smoking and second-hand smoke.

TCO staffing

205. To tie in with the enactment of the Amendment Bill, TCO will recruit about 30 additional staff this year to cope with the additional enforcement, publicity and educational work arising from the new regulatory requirements.

206. To enable TCO inspectors to carry out compliance monitoring, investigation and enforcement effectively, training in law enforcement will be provided to these inspectors with assistance from the Hong Kong Police Force, the Customs and Excise Department and the Judiciary.

207. Members have expressed grave concern about the manpower of TCO in carrying out its work, particularly in the second phase of the implementation of the smoking ban which will take place on 1 January 2007 when the statutory no

smoking areas will include 10 000 food and catering premises, bars (for all age group), karaokes and billiard rooms, 2 100 educational institutions and 500 000 workplaces.

208. The Administration has explained that whilst it is not practicable for TCO under limited resources to cover every single statutory no smoking area in its enforcement plan, it believes that a strategy mix of publicity, capacity building, smoking cessation and enforcement training can help effectively enforce the new legislative requirements.

209. In order to assist managers of new statutory no smoking areas in enforcing the smoking ban, TCO is preparing implementation guidelines and capacity building workshops for them. Guidelines for schools, and workplaces were issued in late 2005 and early 2006. Guidelines for food premises would be made available shortly after the enactment of the Amendment Ordinance. TCO intends to distribute the guidelines through workshops, health talks, inspection visits and exhibitions. Assistance from other departments, such as the Food and Environmental Hygiene Department and the Labour Department will also be solicited for distribution of guidelines to food premises and workplaces respectively.

210. TCO will also prepare handy information packages to be sent out to major organisations including employee associations, trade unions, chambers of commerce and estate management companies in the last quarter of 2006 to raise general awareness and help those concerned be prepared for the implementation of the new measures. From 2007 onwards, further publicity and education work will be carried out by TCO to raise public awareness on the implementation of the second phase of the smoking ban as well as prepare the community for the third phase of the smoking ban on 1 July 2009 when bars open to those aged 18 and above, mahjong parlours, commercial bathhouses, mahjong clubs and night clubs will be required to become smoke-free.

Handling of complaints

211. In view of the nature of smoking offences, which takes place within a very short time within indoor areas where patrolling cannot take place, and the increase in statutory no smoking areas, the Administration has pointed out that it may not be practicable or reasonable to expect TCO inspectors to be at the scene instantly when someone is reported to be breaching/have been breaching the law. For effective handling of smoking-related complaints and expeditious removal of the nuisances concerned, managers of statutory no smoking areas are encouraged to take immediate and necessary enforcement action to stop smoking in the statutory no smoking area. TCO will provide follow-up response to all complaints as well as conduct unannounced inspections of statutory no smoking premises.

212. Members of the public can report violations of the Ordinance such as sighting of smoking acts in statutory no smoking areas to TCO. To facilitate reporting, TCO will launch a computerised telephone hotline which will operate 24 hours. On the basis of the complaints received and other relevant information, TCO may conduct spot checks on certain premises where offences are frequently reported to take appropriate follow-up actions to ensure compliance with the new legislative requirements. In addition, TCO intends to pay surprise visits to individual eating/entertainment premises to conduct checks on compliance with the law.

Smoking cessation service

213. Given the overseas experience, the Administration recognises that there would be an increased need for smoking cessation service after the enactment of the Bill. In view of this, TCO upgraded its smoking cessation hotline in October 2005 to enhance its capacity and services.

214. Training material for healthcare workers such as “smoking cessation information kits” were produced in mid-2005 to promote the provision of smoking cessation services. Smoking cessation workshops for healthcare workers have been conducted since 2005. TCO will continue its efforts in this regard to meet demands.

The penalty system

215. Under section 7 of the Ordinance, it is specified that any person who contravenes the relevant provision, i.e., smokes or carries a lighted cigarette, pipe or cigar in a statutory no smoking area, commits an offence and is liable on summary conviction to a fine of \$5,000. 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 –

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

216. In view of the anticipated substantial increase in statutory no smoking areas after the enactment of the Bill, members have asked the Administration to introduce a fixed penalty system for persons found smoking in a statutory no smoking area.

Proposed fixed penalty system (FPS) for smoking offence

217. Members share the view that a FPS is worth considering because the process is effective and efficient, as clearly shown in the case of littering offences. It sends a clear message to the public and averts the need to go through the judicial process which is time consuming and costly for minor offences of this nature.

218. Following initial discussion by the Bills Committee in March 2006, the Administration has conducted some preliminary studies on the proposed FPS for smoking offence in consultation with the relevant Government departments. After exploring operational issues such as resource requirements and interfacing arrangements, the Administration has come to the view that a FPS similar to that being used for other minor offences, such as littering, is feasible for smoking offence. The FPS would help reinforce the Administration's effort to protect the public from passive smoking and also have an effect of relieving the courts' workload of handling smoking offence. However, as lead time is required for the setting up of the system, the proposed system would be introduced some time after the enactment of the Bill when the public have become more used to the indoor no smoking culture.

219. As requested by the Bills Committee, the Administration has provided an information paper on the proposed FPS for the offence of smoking or carrying a lighted cigarette, pipe or cigar in a statutory no smoking area. The Administration proposes to fix the penalty level at \$1,500, on a par with the offence for littering, both of which have an impact on public health. All operational officers of DH holding the post of Tobacco Control Inspectors and Police officers of the Hong Kong Police Force will be appointed under the legislation to issue fixed penalty notice. The Administration may review at a later stage whether it is necessary to involve other departments in the enforcement taking into account the community's overall compliance with the smoking ban after the enactment of the Bill.

220. As a new legislation is necessary, the Administration initially estimated that the whole process will take 18 to 24 months to complete. Members consider the period too long and have asked for a more compressed timetable. According to the tentative schedule provided by the Administration, pre-development preparation and tendering process/contract award, which could take place before the passage of the new FPS legislation for smoking offence, would take six months and two months respectively. Processes which could only take place after the finalisation of the said legislation, including programme development, software and hardware installation, would require seven months, while system testing and training would take a total of three months. Based on the tentative schedule, system roll-out could be ready 10 months after the passage of the new legislation.

Commencement dates and adaptation periods

221. An updated summary of the commencement dates and adaptation periods for the various amendments to the Ordinance as proposed by the Administration are set out in **Appendix III**.

Committee Stage amendments

222. Apart from the Committee Stage amendments discussed in the above paragraphs, the Administration has agreed to move other amendments to the Bill for the purpose of clarity or refinement.

Follow-up actions by the Administration

223. The Administration has undertaken to include in the speech to be given by the Secretary for Health, Welfare and Food when the Second Reading debate on the Bill is resumed that the Administration will –

- (a) introduce a FPS for smoking offence within a period of 18 months after the enactment of the Bill (paragraph 220 refers);
- (b) implement the proposal to designate transport exchanges as no smoking areas as soon as practicable and provide in the speech an outline of its plan and time-table for such implementation (paragraph 73 refers);
- (c) conduct studies exploring into the expansion of the smoking ban to cover country parks, theme parks, queues and queuing areas such as bus stops and start the next phase of its legislative exercise on tobacco control as soon as possible (paragraph 49 refers);
- (d) examine the viability of prohibiting the use of tobacco brand name and logo on non-tobacco products (paragraph 117 refers); and
- (e) review the provision of smoking rooms in the Hong Kong International Airport in line with international developments in that regard (paragraph 98 refers).

Resumption of the Second Reading debate

224. The Bills Committee supports the resumption of the Second Reading

debate on the Bill at the Council meeting on 18 October 2006.

Consultation with the House Committee

225. The Bills Committee consulted the House Committee on 6 October 2006 and obtained its support for the Second Reading debate on the Bill to be resumed at the Council meeting on 18 October 2006.

Council Business Division 2
Legislative Council Secretariat
13 October 2006

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

Membership List

Chairman	Hon Andrew CHENG Kar-foo
Deputy Chairman	Hon Albert CHAN Wai-yip
Members	Hon James TIEN Pei-chun, GBS, JP Hon LEE Cheuk-yan Hon Martin LEE Chu-ming, SC, JP Hon Fred LI Wah-ming, JP Hon LEUNG Yiu-chung (until 15 February 2006) Hon Howard YOUNG, SBS, JP Dr Hon YEUNG Sum Hon Emily LAU Wai-hing, JP Hon Abraham SHEK Lai-him, JP Hon LI Fung-ying, BBS, JP Hon Tommy CHEUNG Yu-yan, JP Hon Audrey EU Yuet-mee, SC, JP Hon Vincent FANG Kang, JP Hon LI Kwok-ying, MH Dr Hon Joseph LEE Kok-long Hon Alan LEONG Kah-kit, SC Hon LEUNG Kwok-hung Dr Hon KWOK Ka-ki Hon WONG Ting-kwong, BBS Hon Albert Jinghan CHENG Hon KWONG Chi-kin

(Total : 22 Members)

Clerk Ms Doris CHAN

Legal adviser Miss Monna LAI

Date 15 February 2006

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

List of organisations/individuals which/who have made representations to the
Bills Committee

Tobacco Companies

British American Tobacco (Hong Kong) Co. Ltd.

D J Tobacco Co., Ltd.

Hong Kong Federation of Tobacco Industries Limited

Japan Tobacco Inc.

Japan Tobacco (Hong Kong) Limited

JTI (China) Ltd.

Nanyang Brothers Tobacco Co., Ltd.

Philip Morris Asia Limited

The Pacific Cigar Co. Ltd. & Bluebell Hong Kong Ltd

Tobacco Association of Hong Kong

Tobacco Control Advocacy Groups

Action on Smoking or Health

Asian Consultancy on Tobacco Control

Clear the Air

Committee on Youth Smoking Prevention

Hong Kong Council on Smoking and Health

Life Education Activity Programme

Medical Sector

Department of Community Medicine, University of Hong Kong

Faculty of Medicine, University of Hong Kong

Government Doctors' Association

Hong Kong College of Physicians

School of Public Health, University of Hong Kong

The Hong Kong Medical Association

Ventilation Experts

Dr Christopher PROCTOR

Head of Science and Regulation for British American Tobacco

Mr James REPACE

Repace Associates, Inc. Secondhand Smoke Consultants

Hospitality/Catering Trades

Association of Restaurant Managers Ltd.

Birdles

BLUSH

2020 By SK

California Red

Capital Karaoke Night Club

Catering Entertainment Premises Smoking Ban Regulations Concern Group

Cenna Bar & Lounge

Census Lounge

Club Paris

Co Co Duck

Cyber Zone

Cyber 8 Disco

De Rodeo Catering Ltd/King Bakery Ltd

Easy Island Karaoke Nightclub

Entertainment Business Rights Concern Group

Estates' Restaurants (HK) Merchant Association Limited

Flying Dragon Games Limited

Garden Restaurant

Gossip Group

Hillwood Soho

Hoi Tin (Asia) Harbour Restaurant

Hong Kong Bars and Karaoke Rights Advocacy

Hong Kong Catering Industry Association

Hong Kong Chamber of Mahjong School Owners Limited

Hong Kong Entertainment Business Association

Hong Kong Federation of Restaurants and Related Trades

Hong Kong Kowloon Vermicelli & Noodle Manufacturing Industry
Merchants' General Association

Hong Kong Mahjong House

Hong Kong Pubs and Disco Association

Hong Kong SAR Licensed Massage Association

Hsin Kuang Restaurant Holdings Ltd

HUE

Jelly

Jett Consultants Ltd.

KC City (Table Tennis)

KC City (聯誼會)

King's Club

King's Club 卡拉OK

King's Hotel

King of Catering (Holdings) Ltd

King Parrot Group

L & G Karaoke Night Club

LG Plus

LG Rally

Loft 9

Lucky Star Karaoke Night Club

May Moon Association Limited

Mon T Group

New Club Paris

Neway Karaoke Box

Nice Garden Restaurant

O-Two

Piano Bar

Ruby Tuesday

S

SK

SM

Super Tycoon Karaoke Night Club

Tan Yo To

The Association for Hong Kong Catering Services Management Limited

The Federation of Hong Kong and Kowloon Ballroom and Night Club Merchants

Tsui Wah Restaurant

T6

Zenta

Zizz Bar

新華登富麗華夜總會

太子酒廊

誠興麻雀

興旺麻雀

瑞興麻雀

永旺麻雀

勝利麻雀

Newspaper Retailers

Coalition of Hong Kong Newspaper and Magazine Merchants

Hong Kong Newspaper Dealers Association

Hong Kong Newspaper Hawker Association

Hong Kong Newspapers Vendors Alliance

District Councils

Mr LEE Lap-hong, Almustafa of Sha Tin District Council Member

Mr WONG Shing-tong of Yuen Long District Council Member

Individuals

A anti-smoking member of the public

Cat

Miss YAN

Mr Allen LEE

Mr Jacky WONG

Mr KU Yin-ming

Mr YIP Ming

Mr WONG Kwok-wai

Others

A group of people working in entertainment establishments

A group of waste recyclers

Hong Kong Indoor Air Quality Association Ltd.

Hong Kong Public Health Inspectors' Association

Midland Realty (Shops) Ltd.

Ming Wide Lighter Group Company Ltd

Ocean Park Hong Kong

Society for the Prevention of Cruelty to Animals (HK)

Taxi & P.L.B. Concern Group

The Laundry Association of Hong Kong Ltd

Tourism Commission

**Proposed Adaptation Periods for Amendments
to the Smoking (Public Health) Ordinance**

* “Appointed day” refers to the publication date of the Amendment Ordinance (if passed).

Nature	Proposed Legislative Amendment	Proposed Effective Date	
Expansion of Statutory No Smoking Areas	<ul style="list-style-type: none"> To prohibit smoking in all indoor workplaces and public places; the indoor areas of all restaurants, karaoke establishments and bars open to all age groups; the indoor areas of residential care homes and treatment centres; the entirety of child care centres, schools, hospitals, approved institutions, places of detention or refuge and reformatory schools 	1 January 2007	
	<ul style="list-style-type: none"> To exempt domestic premises, living accommodation provided by employers to employees (except communal quarters), bedspace apartments, rooms in hotels or guesthouses and designated areas in the Airport Authority and correctional facilities from the smoking ban 	1 January 2007	
	<ul style="list-style-type: none"> To provide exemption for live performance or recording for film or TV program 	1 January 2007	
	<ul style="list-style-type: none"> To allow for designated tasting rooms in cigar shops and manufacturing or business premises of tobacco companies 	1 January 2007	
	<ul style="list-style-type: none"> Deadline for implementing the smoking ban in the indoor areas of bars open to those aged 18 and above only, mahjong parlors, commercial bathhouses, massage establishments, mahjong clubs and nightclubs 	1 July 2009	
	<i>Related Amendments</i>		
	<ul style="list-style-type: none"> To add in new definitions for “inspector” and new venues listed in Schedule 2 	Appointed day	
	<ul style="list-style-type: none"> To replace the definitions of “amusement game centre” and “retail container” 	Appointed day	
	<ul style="list-style-type: none"> To add in new definitions of “indoor” and “school” 	1 January 2007	
	<ul style="list-style-type: none"> To repeal the definitions of “agency” and “principal officer” 	1 January 2007	
	<ul style="list-style-type: none"> To replace the definitions of “manager” and “restaurant premises” 	1 January 2007	
	<ul style="list-style-type: none"> To amend the definitions of “no smoking area” and “public transport carrier” 	1 January 2007	

	<ul style="list-style-type: none"> To repeal the statutory requirement for managers to put up no-smoking signs , the corresponding offence and SHWF’s power to prescribe the form of no smoking signs 	1 January 2007
	<ul style="list-style-type: none"> To repeal the existing section 6A of the Ordinance, which requires the display of signs outside restaurants 	1 January 2007
	<ul style="list-style-type: none"> To repeal the existing section 3(1C) of the Ordinance, which requires managers of restaurants to designate not less than one-third of the area to be non-smoking 	1 January 2007
Advertisement and Promotion of Tobacco Products	<ul style="list-style-type: none"> To revoke the current exemption for retail outlets employing 2 employees or less to display tobacco advertisements 	1 November 2007
	<ul style="list-style-type: none"> To revoke the current exemption for licensed hawker stalls to display tobacco advertisements 	1 November 2009
	<ul style="list-style-type: none"> To impose new requirements on price boards and price markers 	1 January 2007
	<ul style="list-style-type: none"> To prohibit the package sale of a tobacco product with any other merchandise 	1 January 2007
	<ul style="list-style-type: none"> To further restrict the appearance of brand name of tobacco product in the advertisement of non-tobacco products and in sponsored events 	1 January 2007
	<ul style="list-style-type: none"> To prohibit tobacco advertisements in printed publications printed, published or distributed in Hong Kong 	1 January 2007
	<ul style="list-style-type: none"> To require health warnings on price boards of tobacco products 	1 January 2007
Packaging of Tobacco Products	<ul style="list-style-type: none"> To require the package/container of tobacco products to bear health warnings with pictorial or graphic contents 	Appointed day
	<ul style="list-style-type: none"> To increase the area containing the health warnings of any tobacco product packet/container to at least 50% of the principal display surfaces 	Appointed day
	<ul style="list-style-type: none"> Deadline for compliance with the new requirements of graphic health warnings 	First anniversary of Appointed day
	<ul style="list-style-type: none"> To replace the existing ban of specific words such as “light”, “mild” and “low tar” on packaging of cigarettes with tar yield over 9 mg by a general ban of misleading descriptors on all tobacco product packaging 	Appointed day
	<ul style="list-style-type: none"> End of the grace period for removing misleading descriptors from tobacco product packaging 	First anniversary of Appointed day

Law Enforcement	<ul style="list-style-type: none"> To enable the staff of Tobacco Control Office to take enforcement actions against the offences in the Ordinance (except offences in Part III, which are enforceable by the Customs and Excise Service) 	Appointed day
	<ul style="list-style-type: none"> To increase the penalty level for incorrect indication of tar and nicotine yield on cigarette packs 	Appointed day
	<ul style="list-style-type: none"> To increase the penalty level for offences relating to advertising tobacco products and display of tobacco advertisements 	Appointed day