

**Bills Committee on
Smoking (Public Health) (Amendment) Bill 2005
Administration's response to a request raised
at the Bills Committee meeting on 14 February 2006**

PURPOSE

This paper outlines contents of Committee Stage Amendments (CSAs) the Administration is going to make in relation to the Smoking (Public Health) (Amendment) Bill 2005 (the Bill).

BACKGROUND

2. At the above meeting, Members requested for a list of CSAs to be made, which could help facilitate their subsequent discussions of the Bill.

ADMINISTRATION'S RESPONSE

3. Having taken into account previous discussions with the Bills Committee, the Administration would put forth CSAs as outlined in the Annex. However, since we have only just begun clause-by-clause examination, we welcome Members' consideration and views on other aspects of the Bill and would review the list from time to time.

The Smoking (Public Health) (Amendment Bill) 2005
Committee Stage Amendments envisaged by the Administration

Relevant part of the Bill	Original proposal	Revised proposal	CSA to be moved
<p>2. Commencement</p> <p>Clauses 2(1) and 2(2)</p>	<p>Subject to subsection (2), this Ordinance shall come into operation on the 90th day after day of gazettal of the Ordinance.</p> <p>Sections 14, 35 and 36(e) shall come into operation on the first anniversary of the day of gazettal of the Ordinance.</p>	<ul style="list-style-type: none"> ✧ Same, except as below. ✧ Smoking will be banned in indoor workplaces and public places, including restaurant premises, karaokes, bars open to all ages and billiard rooms from <u>1 January 2007</u>. ✧ Smoking will be banned in indoor areas of nightclubs, bars open to people of age 18 and above, licensed mahjong parlours, commercial bathhouses and mahjong clubs from <u>1 July 2009</u>. ✧ Exemption for licensed hawkers to display tobacco advertisement at stalls to be removed <u>3 years</u> from day of gazettal of 	<p>To provide for different commencement dates for different provisions.</p> <p>Consideration may be given to providing <u>exact</u> dates in the CSAs instead of using “first anniversary”, “1 year” or “3 years after gazettal” nearer the time of resumption of second reading of the Bill.</p> <p>Definitions of “mahjong club” and “night club” may appear in the new part about transitional provisions.</p>

		<p>the Ordinance.</p> <p>✧ Commencement for clauses 14(b), 35 and 36(e) remain unchanged.</p> <p>Ref: LC Paper No. CB(2)962/05-06(01)</p>	
<p>4.Interpretation</p> <p>Clause 4(c)</p>	<p>“Manager” in relation to a “no smoking area” (other than a lift) refers to anyone responsible for management or in charge of control of the no smoking area. “Manager” in relation to a lift includes the owner, occupier or lessee of the building.</p> <p>The scope of “manager” in relation to other indoor common parts of a building (other than a lift) is different from that in relation to a “lift.</p>	<p>✧ The scope of “manager” in all indoor common parts of a building should be the same. It should include the owner, occupier or lessee of the building.</p>	<p>To amend the definition of “manager” in relation to indoor common parts of a building.</p>

<p>Clause 4(h)</p>	<p>“domestic premises” means any premises which are constructed or intended to be used for habitation.</p> <p>It is unclear if “domestic premise” also covers the common parts of a building such as corridors, staircases and lift lobbies.</p>	<ul style="list-style-type: none"> ✦ The meaning of “domestic premises” in this case should refer strictly to “individual units”, but not common parts of buildings to which the smoking ban will apply. We only intend to exempt individual units from the smoking ban. 	<p>To stipulate that “domestic premises” covers only individual units in a building.</p>
<p>Clause 4(h)</p>	<p>“Indoor” means having a ceiling or roof and completely or substantially enclosed, except for any window or door, etc.</p> <p>Should more specific descriptions be given to the term “completely or substantially enclosed”?</p>	<ul style="list-style-type: none"> ✦ Consideration may be given to adopting an alternative approach. ✦ A paper will be submitted to the Bills Committee for discussion. 	<p>To be decided.</p>

<p>5. Prohibition on smoking in certain areas</p> <p>Clause 5(g)</p>	<p>Designated no smoking area does not apply to a building if “the building is not the subject of a valid occupation permit or temporary occupation permit issued under the Buildings Ordinance (Cap.123) and no part of that building is the subject of a valid temporary occupation permit”.</p> <p>Section 41 of the Buildings Ordinance provides for exemptions from the Ordinance. There are buildings in Hong Kong which do not require such occupation permit.</p>	<p>✧ The policy intent is to allow only those buildings that are either under construction or demolition to be exempted from the smoking ban. The current reference to a valid occupation permit issued under the Buildings Ordinance needs to be revised.</p>	<p>To replace the reference to a valid occupation permit issued under the Buildings Ordinance with another description to reflect the policy intent.</p>
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<p><u>To add</u> Clause 5 (h)</p>	<p>The introduction of smoking ban in all indoor workplaces will prohibit customers from tasting cigars in a cigar shop before making any purchase.</p>	<ul style="list-style-type: none"> ✧ The cigar tasting room within a cigar shop is to be exempted from being a designated no smoking area, provided that – <ul style="list-style-type: none"> - the sole business of the shop is selling of cigars; - the cigar tasting room has a separate ventilation system; and - no employee should be asked to enter the room when there is one or more customers tasting cigars. ✧ Manager of the premise concerned would have to designate an area within the premise for this particular purpose. It is also an obligation for the manager to notify the Department of Health of the location of the cigar tasting room within the premise. <p>Ref: LC Paper No. CB(2)962/05-06(01)</p>	<p>To include cigar tasting room within a cigar shop under clause 5 so that the designated no smoking area does not apply here but subject to the conditions as listed.</p>
<p><u>To add</u> Clause 5 (i)</p>	<p>The introduction of smoking ban in all indoor workplaces will prohibit cigarette manufacturing companies to</p>	<ul style="list-style-type: none"> ✧ The statutory no-smoking requirement does not apply to indoor areas in a manufacturing plant for the tasting and quality control of tobacco products by 	<p>To stipulate the relevant exemption under clause 5.</p>

	operate as employees could not carry out quality control and tasting activities.	<p>natural persons.</p> <p>❖ Manager of the premise concerned would have to designate an area within the premise for this particular purpose. It is also an obligation for the manager to notify the Department of Health of the location of such areas within the premise.</p>	
11. Offences under Part III Clause 11	Prohibition of the use of words “light”, “mild”, “low tar” or other descriptors which could be misleading.	<p>❖ In view of the complexity of the legal issues involved and the risk that litigation might follow if clause 11 is passed in its present form, we propose to amend this clause to the effect that the prohibition does not prevent the use of a trade mark containing any such words on the packet or retail container if two conditions are met –</p> <p>(a) the trade mark has as of the day on which the Amendment Ordinance is enacted, registered with the Trade Mark Registry under the Trade Marks Ordinance (Cap.559) ; or if the trade mark has not been</p>	To stipulate the conditions to be met for the continued use of the trade marks which contain misleading descriptors and to prescribe notation to be put on the cigarette packets or retail containers.

		<p>registered under the TMO, its owner is able to prove that the mark is used in Hong Kong in relation to the sale of /sale by retail of cigarettes on the day immediately before the enactment of the Ordinance; and</p> <p>(b) the packet or retail container bears a notation in the prescribed form and manner bringing to the attention of the consumer that the use of misleading words does not in any way indicate that the cigarettes contained therein are less harmful than others.</p> <p>Ref: LC Paper No. CB(2)901/05-06(03)</p>	
<p>Part IVB Provisions Relating to Inspectors A new clause relating to disposal of</p>	<p>Section 14A of the existing Ordinance deals with removal and disposal of tobacco advertisement. However, there is no other provision to cater for the disposal of property seized</p>	<p>✧ With Clause 18 of the Bill, the new section 15G(1)(b) of the amended Ordinance will authorize TCO officers to seize any thing that appears to be of evidence of any relevant offence. The absence of any statutory power to dispose of the seized property will pose</p>	<p>To add a new section authorizing the disposal of property seized by officers of the Tobacco Control Office mirroring the wordings in section 133 of the Public Health and</p>

seized property	by TCO officers, subsequent to the new Part IVB added.	problems in subsequent applications for exhibit disposal from the court upon completion of investigations or court hearings. The existing provisions under section 102 of the Criminal Procedures Ordinance (Cap.221) only applies to property seized by certain law enforcement agencies like the Police and the Customer & Excise Department.	Municipal Services Ordinance.
Transitional provisions relating to Smoking (Public Health) (Amendment) Ordinance 2005 Clause 38	N/A	<ul style="list-style-type: none"> ✧ Indoor workplaces, restaurants, billiard rooms, karaokes and bars open to all age groups would have to become smokefree by 1 January 2007. ✧ The statutory smoking ban on bars open to those aged 18 and above only, mahjong parlors, commercial bathhouses, mahjong clubs and nightclubs would commence on 1 July 2009. 	<p>The transitional provisions will provide for descriptions of the premises which will become smokefree by 1 July 2009.</p> <p>We will outline the respective commencement date of the statutory smoking ban in the different premises.</p>

Health, Welfare and Food Bureau
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