

Publicity and Enforcement Plan Smoking (Public Health) (Amendment) Bill 2005

Purpose

This paper sets out the overall publicity and enforcement plan for the implementation of tobacco control measures set out in the Smoking (Public Health) (Amendment) Bill 2005 (the Amendment Bill) which is expected to be enacted in mid-2006.

Background

2. The Government's established policy on tobacco control is to seek, through a step-by-step approach, to discourage smoking, contain the proliferation of tobacco use and protect the public from passive smoking to maximum possible. In this regard, the Smoking (Public Health) Ordinance (the Ordinance) (Cap. 371) was first enacted in 1982 and later amended in 1997 to restrict the use, sale, and promotion of tobacco products.

Establishment of the Tobacco Control Office

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

Tobacco control activities by TCO

4. Under the existing legislation, smoking is prohibited in certain indoor public places such as cinemas, shopping malls, supermarkets, banks and department stores. Since its establishment, TCO has been organizing smoke-free workshops for managers of shopping malls and workplaces, and producing publicity and health education materials to promote smoke-free culture in Hong Kong. To date, TCO has reached out to about 2 300 establishments and over 12 000 people have attended its workshops. More than 4.7 million items of health education materials were distributed to the public.

5. At present, several government departments are involved in enforcing the Smoking (Public Health) 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, the lack of such provisions has proved to be an operational constraint for TCO.

Powers and duties under the Amendment Bill

Role of public officers authorized as Inspectors

6. To further strengthen tobacco control in Hong Kong, the Amendment Bill was introduced in May 2005. The Amendment Bill proposes, among others, to extend the statutory no smoking areas and to empower tobacco control inspectors to take enforcement actions. Under the new Part IVB of the law, an inspector is empowered to enter any premise, other than a domestic premise or a correctional facility with the relevant approval, 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

7. For expeditious handling of smoking-related complaints and removal of nuisance caused by secondhand smoke, under the existing Ordinance, managers of statutory no smoking areas are empowered to take immediate remedial actions and to mitigate the situation on the spot. These included requiring the person to extinguish a lighted cigarette, cigar or pipe, or where the person fails to do so, require him to give his name and address and to produce proof of identity or to leave the no smoking area, etc.

8. The manager is also required to place and keep in 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 that the signs shall be maintained by the manager in legible condition and good order. Under the Amendment Bill, it is proposed 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

9. The Police have general enforcement powers under the Ordinance. In addition, under section 3(c)(ii) of the Ordinance, a manager is empowered to remove a person – if the person fails to cooperate such as by extinguishing the lighted cigarette and fails to give his name and address and to produce proof of identity or leave the no smoking area on request - from a no smoking area and detain him and call for the assistance of a police officer to assist in the enforcement of the relevant section of the Ordinance. The Customs and Excise Department (C&ED) 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.

Work plan of TCO

10. In anticipation of the new enforcement powers to be conferred on TCO as inspectors, and in the lead up to the enactment of the Amendment 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:

- ✧ Educating and assisting manager/staff of establishments and workplaces to comply with the requirements of the Ordinance;
- ✧ Inspecting premises to ensure compliance with the law;
- ✧ Screening printed publications for illegal tobacco advertisement;
- ✧ Law enforcement, such as instigating prosecutions;
- ✧ Handling enquiries and complaints;
- ✧ Counseling on smoking cessation; and
- ✧ Conducting anti-smoking activities to educate the public about the harmful effects of smoking and secondhand smoke.

11. Under the Administration's proposal, the first phase of the implementation of the smoking ban would start 90 days after the Amendment Ordinance is published in the Gazette. All the areas of child care centres, schools and approved institutions will go smokefree.

The second phase will take place on 1 January 2007 and the statutory no smoking area will then include 10 000 food and catering premises, bars (for all age groups), karaokes and billiard rooms, 2 100 education institutions and 500 000 workplaces. In the third phase commencing 1 July 2009, the smoking ban will be extended to other hospitality establishments which include: 70 licenced mahjong parlours, 100 licenced commercial bathhouses, around 300 night clubs, 200 – 300 mahjong clubs and those bars which are opened to those aged 18 and above.

12. Whilst it is not practicable for TCO under limited resources to cover every single statutory no smoking area in its enforcement plan, a strategy mix of publicity, capacity building, smoking cessation and enforcement training is planned so as to effectively enforce the new legislative requirements.

Publicity and capacity building campaign

13. We consider that the most effective means to implement the new measures is to raise public awareness through education. According to TCO's plans, publicity to the general public and education to managers of statutory no smoking area will be conducted in two phases:

Phase I (now - 1 Jan 2007)

14. TCO will be producing a series of Announcement in the Public Interests (API) through TV, radio and outdoor multimedia platforms, so as to publicize the harmful effect of second hand smoke, the extension of statutory no smoking area starting on 1 January 2007 (i.e. indoor workplaces, food premises, billiard rooms, karaokes and bars open to all age groups) and to enhance compliance from the public. Other outdoor advertising channels (e.g. billboard in public premises, panels of public transport carriers, etc) will also be used to increase publicity.

15. In order to assist managers of new statutory no smoking areas to enforce smoke-free requirement, TCO is preparing implementation guidelines and capacity building workshops for them. Guidelines for schools were issued in November 2005. Guidelines for workplaces and

food premises are currently under preparation and are expected to be ready for distribution by the third quarter of 2006. 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 (FEHD) and Labour Department (LD) will also be solicited for distribution of guidelines to food premises and workplaces respectively.

16. Since January 2006, capacity building workshops for staff of food premises, in addition to current workshops for security guards, have been organized by TCO. Content of these workshops include the provisions of the current Ordinance and the proposed amendments, the power conferred upon the manager of statutory no smoking area and practical skills. By 1 January 2007, TCO intends to have reached out to more food premises and other workplaces through its workshops. TCO will also prepare handy information packages to be sent out to major organizations 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. These publicity efforts will continue after 1 January 2007.

17. In addition, TCO will continue to supply no smoking signs that conform to the law's requirement for statutory no smoking areas in premises and workplaces. Health education materials such as posters, wallet card, menu stand (for eateries), etc. will be provided to managers of statutory no smoking areas to remind the public about the indoor smoke-free requirement.

Phase II (Jan 2007 - July 2009)

18. From 2007 onwards, further publicity and education work by TCO will be carried out to raise public awareness on the implementation of the second phase of smoking ban as well as preparing the community for the third phase of smoking ban in 1 July 2009 (i.e. bars open to aged 18 and above only, mahjong parlors, commercial bathhouses, mahjong clubs and night clubs).

19. Media campaign will be continued to publicize the smoke-free requirement in indoor public premises. Training and capacity building workshops for staff of indoor public premises (including those under the third phase of smoking ban) will also be continued.

Handling of complaints

20. 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 anticipated increase in statutory no-smoking areas, it may not be practicable or reasonable to expect TCO inspectors to be at the scene instantly when someone is reported to be breaching / to have breached the law. As mentioned in paragraph 7 above, 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 actions such as asking the smokers 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.

21. The general public can report violations of the Ordinance such as the sighting of smoking acts in statutory smoke-free areas to TCO. To facilitate reporting, TCO will launch a computerized 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 of the law.

Smoking cessation

22. Given the overseas experience, we recognized that there would be an increased need in smoking cessation service after the enactment of smoking ban in indoor public premises. In view of this, TCO upgraded their smoking cessation hotline in October 2005 so that the capacity and services provided by the hotline were enhanced.

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

Venues managed by Government

Public housing estates

24. Under the Ordinance, the Housing Department (HD) and its agents are the managers of the indoor public areas in public housing estates, which cover lifts and lift lobbies, staircases, corridors, shopping malls and carparks. Ever since the enactment of the Smoking (Public Health) (Amendment) Ordinance 1992, the HD has authorized departmental officers to enforce the prohibition of smoking in public lifts. In addition, estate management staff have also been reminded to advise tenants/licensees in writing to display the ‘no smoking’ signs within their leased premises which are designated under the law as ‘no smoking areas’. Starting from 1 January 2006, ‘Smoke or carry a lighted cigarette in public lift’ becomes a misdeed item under the Marking Scheme for Tenancy Enforcement in Public Rental and Interim Housing Estates. Tenants/licensees committing such misdeed will be allotted 5 penalty points. The points will be purged upon expiry of a 2-year validity period. For tenants/licensees who have been allotted with 16 or more valid points within the said validity period, the HD will take actions to terminate their tenancies/licences and recover their flats.

Leisure and cultural facilities

25. Most indoor areas of public leisure and cultural facilities of the Leisure and Cultural Services Department (LCSD) have been made statutory no smoking areas under the subsidiary legislation of the Public Health and Municipal Services Ordinance (Cap. 132). These include, for example, public libraries, indoor swimming pools, museums and civic centres. LCSD will continue to take actions to discharge their responsibilities as the venue manager in these premises, including the enforcement of these subsidiary legislation where necessary.

26. Administrative arrangements have also been put in place to prohibit smokers from smoking at some outdoor leisure venues. These include children's playgrounds and play areas, tennis courts, turf pitches, bowling greens, golf facilities, climbing wall facilities, water sports centres, holiday village, athletic grounds, swimming pool complexes, avaries and green house. The department will continue to ensure that users of these venues abide by their administrative rules.

Public Markets

27. Concerning public markets, FEHD will take appropriate steps to post notices at conspicuous places to remind stall operators and patrons of the new statutory no-smoking requirements. FEHD will also assist TCO in organising a series of publicity campaigns to raise public awareness of the new tobacco control measures in such premises. When infringement of the law arises, FEHD, as the venue manager, will exercise the power conferred on managers to mitigate the situation.

Government offices to which public has access

28. At present, the Government has adopted a smoke-free policy in all indoor areas of Government offices, including those which the public has access, such as Post Office, Immigration counters and Public Enquiries Service Centres. The Government will continue to manage these venues in accordance with the new statutory requirements.

TCO staffing and internal enforcement training

29. To tie in with enactment of the Amendment Bill, the 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.

30. To enable TCO inspectors to carry out compliance monitoring, investigation, and enforcement effectively, training in law enforcement will be provided to these inspectors on enforcement skills with assistance from the Hong Kong Police Force, Customs and Excise Department and the Judiciary. For example, police officers have been/will be seconded to the

department to assist and train TCO inspectors to carry out their enforcement actions under the legislation.

The penalty system

31. Under section 7 of the Ordinance, it is specified that any person who contravenes the relevant provision, i.e., smoke or carry 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. At the Bills Committee meeting on 17 February 2006, Members asked the Administration to consider whether, instead of conviction by summary offence, a fixed penalty system should be introduced for persons found smoking in statutory no smoking area. The Administration undertook to consider and revert.

32. After careful consideration, we would like to inform Members that we would actively explore the feasibility of introducing such a penalty system in the longer run. We note Members' views that the fixed penalty system is worth considering because the process is effective and efficient, sends a clear message to the public and adverts the need to go through the judicial process which is time consuming and costly for minor offences of this nature. However, we wish to point out that lead time is needed to identify the resource requirements for introducing and implementing a fixed penalty system, the time for installation of the necessary back-up facilities, prepare new subsidiary legislation, sort out administrative, logistical and other interfacing arrangements with Government departments and to discuss with other Government departments on enforcement and/or other related issues. We hope to be able to revert to this Committee in a month's time.

33. That said, we would like to point out most effective means to protect the public from the hazards of secondhand smoking in indoor premises is to raise public awareness through education, especially in the initial stage of the introduction of the new measures. We believe that the community needs time to get used to the new legislative requirements. We therefore consider that the fixed penalty system, if it is to be adopted, should preferably be introduced at a later stage after there is wide understanding among the general public and in particular among smokers that smoking is prohibited in most indoor premises.

34. In conclusion, Members may wish to note the Administration's latest position on the proposed introduction of a fixed penalty system under the Smoking (Public Health) Ordinance. In view of the considerations set out in paragraphs 33 above and subject to our further discussions within Government, such a system, if it is to be introduced, will have to be taken forward after the enactment of this Amendment Bill.

Advice sought

35. The Bills Committee is invited to note the content of this paper. Views and comments from Members are most welcomed.

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