

PROPOSED COMMITTEE STAGE AMENDMENTS

TO

SMOKING (PUBLIC HEALTH)(AMENDMENT) BILL 2005

[Shown in revision mode on the Gazette version of the Bill]

SMOKING (PUBLIC HEALTH)(AMENDMENT) BILL 2005

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A BILL

To

Amend the Smoking (Public Health) Ordinance and its subsidiary legislation to expand the scope of prohibition on smoking; to amend the form of health warnings to be borne on packets or retail containers of tobacco products; to amend the law relating to tobacco advertisements and the sale of tobacco products; to provide for the appointment, powers and duties of inspectors for the enforcement of certain provisions of the Ordinance; and to provide for consequential, transitional and related matters.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Smoking (Public Health) (Amendment) Ordinance 2005.

2. Commencement

(1) Subject to subsection (2), this Ordinance shall come into operation on the ninetieth day after the day on which this Ordinance is published in the Gazette.

(2) Sections 14, 35 and 36(e) shall come into operation on the first anniversary of the day on which this Ordinance is published in the Gazette.

PART 2

AMENDMENTS TO SMOKING (PUBLIC HEALTH) ORDINANCE

3. Long title amended

The long title to the Smoking (Public Health) Ordinance (Cap. 371) is amended by repealing everything after “areas” and substituting “; to provide for the display of a health warning and other information on packets or retail containers of tobacco products; to restrict tobacco advertising; to restrict the sale or giving of tobacco products; to provide for the appointment, powers and duties of inspectors for the enforcement of certain provisions of this Ordinance; and to provide for incidental and related matters.”.

4. Interpretation

Section 2 is amended –

- (a) by repealing the definition of “agency”;
- (b) by repealing the definition of “amusement game centre” and substituting –

““amusement game centre” (遊戲機中心) means –

- (a) an amusement game centre within the meaning of section 2(1) of the Amusement Game Centres Ordinance (Cap. 435);
 - (b) any place that is the subject of an order under section 3(1)(a) of that Ordinance; or
 - (c) any area that is specified in an order under section 3(1)(b) of that Ordinance;”;
- (e) ~~in the definition of “manager”~~
- (i) ~~by repealing paragraph (a) and substituting~~

- ~~“(a) — a no smoking area (other than a lift) or a public transport carrier, includes an assistant manager, any person holding an appointment analogous to that of manager or assistant manager and any person who is responsible for the management, or is in charge or control of the no smoking area or public transport carrier;”;~~
- (ii) — by repealing paragraph (e);
- (c) by repealing the definition of “manager” and substituting –
““manager” (管理人), in relation to a no smoking area or a public transport carrier, means 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;”;
- (d) in the definition of “no smoking area”, by repealing “section 3(1), (1A) or (1C) or the premises or part thereof designated under section 3(1B)” and substituting “section 3”;
- (e) by repealing the definition of “principal officer”;
- (f) by repealing the definition of “restaurant” and substituting –
 ““restaurant premises” (食肆處所) means any premises on or from which there is carried on –
- (a) a factory canteen or restaurant within the meaning of section 31(2) of the Food Business

Regulation (Cap. 132 sub. leg. X);
or

- (b) any other trade or business for the purpose of which meals or unbottled non-alcoholic drinks (including Chinese herb tea) are sold or intended to be sold for human consumption on the premises (whether or not it is carried on by a person who is the holder of a licence under the Hawker Regulation (Cap. 132 sub. leg. AI));”;

- (g) by repealing the definition of “retail container” and substituting –

““retail container” (零售盛器) –

- (a) in relation to any cigarette, means a container suitable for the retail marketing of cigarette packets; or
- (b) in relation to any cigar, pipe tobacco or cigarette tobacco, means a container suitable for the retail marketing of cigar, pipe tobacco or cigarette tobacco;”;

- (h) by adding –

““approved institution” (核准院舍) means an approved institution within the meaning of section 2(1) of the Probation of Offenders Ordinance (Cap. 298);

“bar” (酒吧) means any place that is exclusively or mainly used for the sale and consumption of intoxicating liquors as defined in section 53(1) of the Dutiable Commodities Ordinance (Cap. 109);

“bathhouse” (浴室) means a bathhouse within the meaning of section 3(1) of the Commercial Bathhouses Regulation (Cap. 132 sub. leg. I);

“child care centre” (幼兒中心) means a child care centre within the meaning of section 2(1) of the Child Care Services Ordinance (Cap. 243);

“correctional facility” (懲教機構) means –

- (a) any of the sites and buildings specified in the Schedule to the Prisons Order (Cap. 234 sub. leg. B);
- (b) any of the buildings specified in the Schedule to the Prisons (Hostel) Order (Cap. 234 sub. leg. C); or
- (c) an addiction treatment centre within the meaning of section 2 of the Drug Addiction Treatment Centres Ordinance (Cap. 244);

~~“domestic premises” (住宅) means any premises which are constructed or intended to be used for habitation;~~

“domestic premises” (住宅) means any premises constructed or intended to be used for habitation and constituting a separate unit of private dwelling;

“hospital” (醫院) means any establishment for the care of the sick, injured or infirm or those who require medical treatment, including a nursing home –

- (a) whether or not it is a hospital to which the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) applies; or
- (b) whether or not it is a public hospital within the meaning of section 2(1) of the Hospital Authority Ordinance (Cap. 113);

“indoor” (室內) means –

- (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;

“inspector” (督察) means an inspector appointed under section 15F;

“karaoke establishment” (卡拉 OK 場所) means –

- (a) a karaoke establishment within the meaning of section 2(1) of the

Karaoke Establishments Ordinance (Cap. 573); or

- (b) a karaoke establishment referred to in section 3(1) of that Ordinance;

“mahjong-tin kau premises” (麻將天九耍樂處所) means any premises that are licensed under section 22 of the Gambling Ordinance (Cap. 148) for –

- (a) the playing therein of games in which mahjong tiles are used; or
- (b) the playing therein of games in which tin kau tiles are used;

“maternity home” (留產院) means any premises used or intended to be used for the reception of pregnant women or of women immediately after childbirth –

- (a) whether or not it is a maternity home to which the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) applies; or
- (b) whether or not it is a maternity home that is run as part of a public hospital within the meaning of section 2(1) of the Hospital Authority Ordinance (Cap. 113), or managed or controlled by the Hospital

Authority established under that Ordinance;

“place of detention” (拘留地方) means –

- (a) a place of detention specified in Schedule 2 to the Immigration (Places of Detention) Order (Cap. 115 sub. leg. B); or
- (b) a place of detention within the meaning of section 2(1) of the Juvenile Offenders Ordinance (Cap. 226);

“place of refuge” (收容所) means a place of refuge within the meaning of section 2 of the Protection of Children and Juveniles Ordinance (Cap. 213);

“post secondary school” (專上學校) means a school within the meaning of section 3 of the Education Ordinance (Cap. 279) at which post secondary education is provided without contravention of section 18A of that Ordinance (not being a College within the meaning of section 2 of the Post Secondary Colleges Ordinance (Cap. 320));

~~“public market” (公眾街市) means a market specified in the Tenth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132);~~

“public place” (公眾地方) means –

- (a) any place to which for the time being the public are entitled or permitted to have access, whether on payment or otherwise; or

- (b) a common part of any premises notwithstanding that the public are not entitled or permitted to have access to that common part or those premises;

“reformatory school” (感化院) means a reformatory school within the meaning of section 2 of the Reformatory Schools Ordinance (Cap. 225);

“residential care home” (安老院) means a residential care home within the meaning of section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459);

“school” (學校) means a school within the meaning of section 3 of the Education Ordinance (Cap. 279), but excludes a post secondary school;

“specified educational establishment” (指明教育機構) means any establishment specified in section 2 of the Education Ordinance (Cap. 279);

“treatment centre” (治療中心) means a treatment centre within the meaning of section 2 of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566);

“workplace” (工作地方) means a place –

- (a) that is occupied for conducting a business (whether for profit or not); and
- (b) in which natural persons work in the course of any self-employment, employment or

engagement (whether for income or not),

including any part of the place that is set aside for use by those persons during any interval for taking a meal or rest.”.

5. Prohibition on smoking in certain designated areas

Section 3 is amended –

(a) by adding immediately after subsection (1) –

“(1AA) An indoor area in a workplace or public place is, to the extent that it is not an area to which subsection (1) applies, designated as a no smoking area.”;

(b) by repealing subsections (1A), (1B) and (1C);

(c) by adding –

“(5) Subsection (1AA) does not apply to –

(a) domestic premises;

(b) any premises used exclusively for the provision of ~~sleeping living~~ accommodation by any employer to his employees and their families, whether or not any monetary consideration is received by the employer for so providing the ~~sleeping living~~ accommodation;

(c) a bedspace apartment in respect of which a licence or certificate of exemption issued under the Bedspace Apartments Ordinance (Cap. 447) is in force;

- (d) a room or suite of rooms in a hotel or guesthouse if –
 - (i) in respect of the hotel or guesthouse there is in force a licence or certificate of exemption issued under the Hotel and Guesthouse Accommodation Ordinance (Cap. 349); and
 - (ii) the room or suite of rooms is being hired for use as sleeping accommodation;
- (e) an area designated by the Airport Authority as a smoking area as referred to in section 16 of the Airport Authority Bylaw (Cap. 483 sub. leg. A);
- (f) an area in a correctional facility that is set aside for smoking by prisoners who are allowed to do so in accordance with orders under rule 25 of the Prison Rules (Cap. 234 sub. leg. A);
- ~~(g) a building if –~~
 - ~~(i) the building is not the subject of a valid occupation permit or~~

~~temporary—occupation
permit—issued—under
section—21(2)—of—the
Buildings—Ordinance
(Cap. 123); and~~

~~(ii)—no part of the building is
the subject of a valid
temporary—occupation
permit issued under that
section.~~

(g) a building if –

(i) it is under construction or
demolition; and

(ii) no part of it is occupied
except for purposes
relating to the
construction or
demolition works.

(6) For the avoidance of doubt, it is declared that subsections (1) and (1AA) apply to any premises that are owned or occupied by, or under the management and control of, the Government.”

6. Display of signs where smoking prohibited

Section 5 is amended by adding “and keep in place” after “place”.

7. Display of signs outside restaurants

Section 6A is repealed.

8. Offences under Part II

Section 7 is amended –

- (a) in subsection (3), by repealing “Any manager who fails to place” and substituting “Subject to subsection (5), any manager who fails to place or keep in place”;
- (b) by repealing subsection (4);
- (c) by adding –
 - “(5) Subsection (3) does not permit proceedings to be taken against, or impose any criminal liability on, the Government or any person who does any act or omits to do any act in the course of carrying out his duties in the service of the Government.”.

9. Sales of cigarettes and tobacco products

Section 8(1)(b) is amended by repealing “格式及方式載有” and substituting “式樣及方式展示”.

10. Sale of cigar, pipe tobacco or cigarette tobacco

Section 9 is amended by repealing “the container thereof” and substituting “it is in a retail container that”.

11. Offences under Part III

Section 10 is amended –

- (a) in subsection (2), –
 - (i) _____ by repealing “載有” and substituting “展示”;
 - (ii) _____ by repealing “level 4” and substituting “level 5”;
- (b) in subsection (3), by repealing everything after “retail container” and substituting “the words “light”, “lights”, “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, commits an offence and is liable on summary conviction to a fine at ~~level 4~~ level 5.”.

12. Seizure and forfeiture

Section 10A(1)(a)(i) is amended by repealing “格式和方式載有” and substituting “式樣及方式展示”.

13. Tobacco advertisements in printed publications

Section 11(3) is amended –

- (a) in subsection (2)(b), by adding “printed,” after “document”;
- (b) in subsection (3), by repealing everything after “publication” and substituting “that is published for the tobacco trade or as the “in house” magazine of any company engaged in that trade.”.

14. No display of tobacco advertisement

Section 12 is amended –

- (a) by repealing subsection (2);
- (b) by repealing subsection (3);
- (c) in subsection (5), by repealing “載有” and substituting “展示”.

15. Meaning of tobacco advertisement

Section 14 is amended –

- (a) in subsection (3), by repealing everything after “if” and substituting –
 - “the name, trade name, trade mark, brand name or pictorial device or part thereof mentioned in that subsection –
 - (a) is included exclusively for –
 - (i) a non-tobacco product or service; or
 - (ii) job recruitment purposes; and

- (b) does not form the most prominent part of the advertisement or object.”;
- (b) in subsection (4) –
 - (i) by repealing “Subsection” and substituting “If the conditions set out in subsection (4A) are satisfied, subsection”;
 - (ii) by repealing everything after “being tobacco” and substituting a full stop;
- (c) by adding –
 - “(4A) The conditions mentioned in subsection (4) are –
 - (a) that the name mentioned in that subsection is included as the sponsor of an event or for congratulating another person or thing on an achievement of, or event relating to, such person or thing;
 - (b) that the name does not form the most prominent part of the advertisement or object; and
 - (c) that the advertisement or object does not mention the words “cigarette”, “cigarettes”, “smoking”, “tobacco”, “cigar”, “cigars”, “pipe” or “pipes” or “香煙”, “吸煙”, “煙草”, “雪茄” or “煙斗”.”;

- (d) by repealing subsection (6) and substituting –
- “(6) The display of the following at any premises where tobacco products are offered for sale is not a tobacco advertisement –
- (a) one price marker for one type of tobacco product offered for sale in the premises that –
 - (i) contains only the name and price of that type of tobacco product; and
 - (ii) is of a size –
 - (A) not greater than the size of the price marker of any of the non-tobacco products offered for sale in the premises; and
 - (B) not greater than 50 square centimetres; or
 - (b) one price board not exceeding 1 500 square centimetres listing only the names and prices of the tobacco products offered for sale.”.

16. Removal and disposal of tobacco advertisement

Section 14A is amended –

- (a) in subsection (1), by repealing “Any public officer authorized in writing by the Secretary” and substituting “An inspector”;
- (b) in subsection (2), by repealing “any public officer authorized in writing by the Secretary” and substituting “an inspector”.

16A. Offences under Part IV

Section 15(1) is amended by repealing “level 4” and substituting “level 5”.

17. Prohibition on selling or giving of tobacco products, etc.

Section 15A(3) is amended –

- (a) in paragraph (f), by repealing “or” at the end;
- (b) by adding –
 - “(fa) sell, offer for sale or possess for the purposes of sale a tobacco product and a non-tobacco product as a single item; or”.

18. Part IVB added

The following is added immediately after section 15D –

“PART IVB

PROVISIONS RELATING TO INSPECTORS

15E. Meaning of “relevant offence” in Part IVB

In this Part, “relevant offence” (有關罪行) means any offence under this Ordinance other than an offence under Part III.

15F. Appointment of inspectors

The Secretary may appoint in writing any public officer to be an inspector to exercise any of the powers and perform any of the duties conferred or imposed on an inspector by this Ordinance.

15G. General powers and duties of inspectors

(1) Without limiting any other provisions of this Ordinance, an inspector may, subject to subsections (2) and (3) –

(a) at any time enter any place in which the inspector reasonably suspects that a relevant offence has been, is being or is likely to be committed; and

(b) in any place entered under paragraph (a) –

(i) seize any thing that appears to the inspector to be evidence of any relevant offence;

(ii) require any person found in that place to give his name and address and to produce proof of identity; and

(iii) take any necessary action for the purpose of obtaining evidence in connection with any relevant offence.

(2) If so requested by any person in any place entered under subsection (1), an inspector shall produce his authority as an inspector.

(3) An inspector shall not enter under subsection (1)(a) –

(a) any domestic premises; or

(b) any correctional facility without the approval of the Commissioner of Correctional Services.

(4) A person who wilfully obstructs an inspector who is in the exercise of a power or the performance of a duty conferred or imposed by

this Ordinance commits an offence and is liable on summary conviction to a fine at level 3.

(5) A person who fails to give his name and address or to produce proof of identity when required to do so under subsection (1)(b)(ii), or who then gives a false or misleading name or address commits an offence and is liable on summary conviction to a fine at level 3.

15H. Inspectors not personally liable for certain acts and omissions

(1) 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 the act in the honest belief that the act or omission was required or authorized by or under this Ordinance.

(2) Subsection (1) does not affect any liability that the Government may have because an inspector has done an act or omitted to do an act to which that subsection applies.”.

19. Regulations and Orders

Section 18(2)(a) is amended by repealing “the form of” and substituting “the form (including specifications) of”.

20. Designated no smoking areas

Schedule 2 is amended –

(a) by repealing item 4;

(b) by adding –

“5. Any child care centre.

6. Any school.

7. Any approved institution.

8. Any place of detention.

9. Any place of refuge.
10. Any reformatory school.
11. An indoor area in any –
 - (a) shop, department store or shopping mall;
 - (b) ~~public market;~~ market (whether publicly or privately operated or managed);
 - (c) supermarket;
 - (d) bank;
 - (e) restaurant premises;
 - (f) bar;
 - (g) karaoke establishment;
 - (h) mahjong-tin kau premises;
 - (i) bathhouse;
 - (j) hospital;
 - (k) maternity home;
 - (l) residential care home;
 - (m) treatment centre;
 - (n) post secondary school; or
 - (o) specified educational establishment.”.

21. Schedule 3 repealed

Schedule 3 is repealed.

22. Premises specified under section 3(1B) that may be designated as no smoking areas

Schedule 4 is repealed.