



中華人民共和國香港特別行政區政府總部衛生福利及食物局
Health, Welfare and Food Bureau
Government Secretariat, Government of the Hong Kong Special Administrative Region
The People's Republic of China

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Dear Mr LI,

Thank you for your letter dated 15 June 2005. Our response to the questions raised in your letter on the Smoking (Public Health) (Amendment) Bill ("the Amendment Bill"), based on legal advice, is set out as below -

Premises to which Subsection 3(1AA) does not apply

Upon further consideration, we intend to amend Clause 5 to specify that the exemption only applies to buildings under construction or demolition. We would raise this proposed amendment to the Bills Committee.

Criminal Liability of the Government or any person in the service of the Government

Clause 8 proposes to amend Section 7 of the revised Smoking (Public Health) (Amendment) Bill (Amendment Bill) by adding an exemption provision, 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 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."

As the proposed addition of Subsection (5) under Section 7 stipulates that the provision only applies to "Subsection (3)" (i.e. the offences under

Section 7(3) of the Smoking Ordinance), 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 a prominent position in each no smoking area pursuant to Section 5 of the Smoking Ordinance or keep in place such signs in compliance with the requirements. The amendment does not permit any Government officer or any person carrying out his duties in the service of the Government to smoke in the no smoking areas.

Personal Liability of Inspectors

The Bill proposes to add Clause 15H to specify that “An Inspector is not personally liable for any act done 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.”

The expression “in the honest belief” refers to the subjective condition of the inspector at the material time. When this provision is invoked in civil proceedings, the inspector concerned is required to provide, of his own motion, evidence to prove that the judgment was made on an honest belief. In criminal proceedings when this provision is applied, the judge would consider if there are reasonable grounds to support the claimed honest belief on the merits of the case.

Restaurant premises

In the Bill, “restaurant premises” is defined as –

- (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 license under the Hawker Regulation (Cap. 132 sub. leg. AI).*

Government officers’ mess, private clubs and private kitchens not regulated by the licensing system under Section 31 of the Food Business Regulations do not fall within the definition of restaurant premises in paragraph (a) above. Officers’ mess, private clubs or private kitchens concerned which fall within the definition in paragraph (b) would become

restaurant premises, the indoor areas of which are regulated by the proposed extension of the designated smoking areas in the Bill. On the other hand, Clause 5 proposes to amend Section 3 of the Smoking Ordinance by adding Subsection (1AA) to designate an indoor area in a workplace or public place as a no smoking area. Thus, upon enactment of the Bill, officers' mess, private clubs or private kitchens which fall within this definition of indoor workplace or public place will also become designated no smoking areas.

Yours sincerely,



(Miss Christine Au)

for Secretary for Health, Welfare and Food