

立法會
Legislative Council

LC Paper No. LS63/04-05

**Paper for the House Committee Meeting
on 13 May 2005**

**Legal Service Division Report on
Smoking (Public Health) (Amendment) Bill 2005**

I. SUMMARY

1. **Object of the Bill** To tighten the control on smoking.
2. **Comments** The Bill proposes to:
 - (a) extend the statutory smoking ban to restaurants (in addition to the present limited ban), bars and other hospitality premises, educational and welfare institutions, indoor work places and public places;
 - (b) increase the controls on packaging and labelling of tobacco products;
 - (c) strengthen restrictions on advertisement and promotion of tobacco products; and
 - (d) confer enforcement powers on Tobacco Control Officers and extending the existing enforcement powers of the managers of existing statutory smokefree areas.
3. **Public Consultation** According to the LegCo Brief, the Administration launched a public consultation exercise on tightening of smoking control in June 2001, which reflected broad-based community support, albeit the catering and tobacco trades were against some proposals on the grounds that they would adversely affect business prospects. The Administration also held over ten consultative sessions with tobacco control advocates and representatives from the catering, entertainment and tobacco industries from January to February 2005. Visits were made to eight hospitality premises on 4 and 5 February 2005.
4. **Consultation with LegCo Panel** The Panel on Health Services was briefed on the legislative proposals to amend the Ordinance at its meetings on 10 January, 25 February and 18 April 2005 respectively. Some members raised questions about the proposed exceptional arrangements and transitional provisions. Concern was also expressed about enforcement. Over 10 submissions were received by the Panel from various organizations.
5. **Conclusion** The Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill. In view of the concerns raised by Members, the public and the industry, Members may wish to form a Bills Committee to study the Bill in detail.

II. REPORT

Object of the Bill

To amend the Smoking (Public Health) Ordinance (Cap. 371) (“the Ordinance”) and its subsidiary legislation to tighten the control on smoking.

LegCo Brief Reference

2. Members may refer to the LegCo Brief issued by the Health, Welfare and Food Bureau in April 2005 (File Ref.: HWF CR 52/581/89 Pt. 56) for background information.

Date of First Reading

3. 11 May 2005.

Comments

4. The Bill proposes to amend the Ordinance and its subsidiary legislation as follows:

(a) Extension of areas covered by the statutory smoking ban

- (i) the areas designated as no smoking areas under the Ordinance are extended to cover child care centres, schools, approved institutions, places of detention, places of refuge, reformatory schools and indoor areas in workplaces, public places, shops, department stores, shopping malls, public markets, supermarkets, banks, bars, karaoke establishments, mahjong-tin kau premises, bathhouses, hospitals, maternity homes, residential care homes, treatment centres, post secondary schools and specified educational establishments. The ban is also extended to cover the indoor areas of all restaurants, replacing the present ban which applies only to one third of the seating area of a restaurant with a seating capacity exceeding 200 persons;
- (ii) domestic premises, premises used for the provision of sleeping accommodation by an employer to his employees and their families; bedspace apartments, rooms or suites of rooms in hotels or guesthouses, smoking areas designated by the Airport Authority, areas in a correctional facility set aside for smoking by

prisoners who are allowed to do so and building without an occupation permit are excluded from the statutory smoking ban;

(b) Packaging and labelling of tobacco products

- (i) the words “light”, “mild”, “low tar”, “醇” or “焦油含量低”, or other words which imply or suggest that the cigarettes are less harmful than others are prohibited on packets or retail containers of cigarettes;
- (ii) the Smoking (Public Health) (Notices) Order (Cap. 371 sub. leg. B) (“the Order”) is amended to require packets or retail containers of tobacco products to bear prescribed health warnings that cover at least 50% of the surface areas of the packets or containers;

(c) Advertisement and promotion of tobacco products

- (i) tobacco advertisements in printed publications are restricted to publications that are published for the tobacco trade or as the “in house” magazine of any company engaged in that trade;
- (ii) the current exemption on display of tobacco advertisements at licensed hawker stalls and retail outlets employing not more than two employees is revoked; and
- (iii) the size for price boards and price markers lawfully displayed inside premises selling tobacco products is reduced.

5. The provisions relating to the revocation of exemption on display of tobacco advertisements at licensed hawker stalls and small retail outlets and the repeal of the related regulations on tobacco advertisements and health warnings shall come into operation on the first anniversary of the day on which the Bill is enacted and published in the Gazette. Other provisions shall come into operation on the ninetieth day after the day on which the Bill is enacted and published in the Gazette.

Public consultation

6. According to the LegCo Brief, the following public consultations were carried out: -

- (a) the Administration launched a consultation exercise in June 2001 to gauge public opinions on a package of legislative initiatives similar to the proposals on the extension of areas covered by the statutory smoking ban, packaging and labelling of tobacco products and advertisement and

promotion of tobacco products as set out in the Bill. The public consultation reflected broad-based community support for most of the initiatives, albeit the catering and tobacco trades were against some proposals on the grounds that they would adversely affect business prospects; and

- (b) the Administration held over ten consultative sessions with tobacco control advocates and representatives from the catering, entertainment and tobacco industries from January to February 2005. Visits were made to eight hospitality premises including bars, karaoke establishments, discos and nightclubs on 4 and 5 February 2005 to explain the rationale behind the legislative initiatives and to collect feedback from the operators.

Consultation with LegCo Panel

7. The Panel on Health Services (“the Panel”) was briefed on the legislative proposals to amend the Ordinance at its meetings on 10 January, 25 February and 18 April 2005 respectively.

8. At the Panel meeting on 10 January 2005, the Administration briefed members on its plan to introduce legislative amendments to protect the public against second-hand smoking in indoor workplaces/public places; to tighten control over the advertisement and promotion of tobacco products; and to bring about more effective law enforcement. While welcoming the proposed legislative amendments, some members raised questions about the proposed exceptional arrangements and transitional provisions. These members considered that the proposal to exclude some places, such as mahjong places and commercial bathhouses, from the proposed definition of indoor workplaces went against the intent to fully protect the public and the employees concerned from second-hand smoke in indoor workplaces/public places, and would give rise to complaints of unfairness.

9. Members also expressed concern about enforcement of the legislation. Some members were sceptical whether the Tobacco Control Office would have enough resources to enforce the legislation effectively and suggested that staff of other Government departments, such as the Labour Department and the Food and Environmental Hygiene Department, should also be involved in the enforcement of the smoking ban during their inspection of the relevant premises.

10. As requested by members, the Administration briefed the Panel at its meeting on 25 February 2005 on the findings of its study on the smoke-free workplace laws of five overseas jurisdictions, and the economic impact of smoking ban on the catering industry in overseas places. The Administration pointed out that the smoking ban should have no material distorting effect on competitive forces driving the catering industry so long as there was a level playing field and differential

treatments were kept to a minimum.

11. At the Panel meeting on 18 April 2005, the Administration informed members that taking into account the need to protect employees from passive smoking in the workplace, the Administration was inclined to withdraw the original proposal to exclude mahjong places and commercial bathhouses from the proposed definition of indoor workplace.

12. The Panel has received over 10 submissions on the subject from various organisations.

13. Members may wish to refer to the minutes of the meetings of the Panel on 10 January (LC Paper No. CB(2)838/04-05), 25 February (LC Paper No. CB(2)1243/04-05) and 18 April 2005 (LC Paper No. CB(2)1532/04-05) for details of the discussions.

Conclusion

14. The Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill. In view of the concerns raised by Members, the public and the industry, Members may wish to form a bills committee to study the Bill in detail.

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11 May 2005