



中華人民共和國香港特別行政區政府總部食物及衛生局
Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

本函檔號： FH CR 1/4050/17 Pt. 1

電話號碼： 3509 8946

來函檔號： LS/B/22/16-17

傳真號碼： 2840 0467

By Email (jyschan@legco.gov.hk)

17 July 2017

Ms Joyce CHAN
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central

Dear Ms CHAN,

Dutiable Commodities (Amendment) Bill 2017

I refer to your letter dated 11 July 2017. I set out below our response to the issues raised in the said letter.

Clause 7 – new regulation 44 (powers of inspectors)

Entry into and inspection of an area in a public place

2. Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) contains definitions for the interpretation of words and expressions used in all legislation. If a term in a piece of legislation is intended to have the same meaning as in Cap. 1, the term will not be defined in that legislation

again. On this principle, the definition of “public place” contained in section 3 of Cap. 1 applies to the Dutiable Commodities (Amendment) Bill 2017 (“Amendment Bill”). Under the Amendment Bill, inspectors are not empowered to enter any premises (including the common part of the premises) to which the public are not entitled or permitted to have access.

Detention of things that appear to be evidence of an offence

3. Under the new regulation 46, if an inspector seizes any property while performing a function under the new Part 5, section 102 (including section 102(2) concerning application for the return of a thing detained by the inspector) of the Criminal Procedure Ordinance (Cap. 221) applies as if such things were property that had come into possession of the police in connection with an offence. As different situations may arise in the evidence gathering process, it is not desirable to provide a time limit in legislation. In the enforcement protocol on prohibiting the sale and supply of intoxicating liquor to minors, the Department of Health will set a time limit for the detention of a thing seized by the inspector.

Taking of photographs or making of sound/video recordings

4. Regarding the new regulation 44(1)(f), for photographs, sound or video recordings containing person data, the Department of Health, as the enforcement department, will be legally obliged to comply with the Personal Data (Privacy) Ordinance (Cap. 486).

Inspection of documents or records

5. Regarding the new regulation 44(1)(g), a person who is the sole owner and is in physical possession of a document or a record should be considered as being in control of it. Examples of such a document or a record are sale records and closed-circuit television recorded footages.

6. Young people are more sensitive to the social and rewarding effects of alcohol consumption. These reactions make young people more easily intoxicated by alcohol, placing them and the community at greater risk of physical, sexual and emotional harm. While the local retail industry has been refraining from selling intoxicating liquor to minors on a voluntary

basis for a number of years, there have been concerns over the effectiveness of this voluntary measure. Some test-purchasing operations conducted by stakeholders in the community in the past showed that teenagers managed to purchase alcohol products in different retail stores without much difficulty. The prevalence of underage drinking in Hong Kong is alarming.

7. For the overall well-being of minors and to plug the loophole in the sale or supply of intoxicating liquor to minors, it is necessary to provide the enforcement authority with sufficient powers to ascertain compliance and to enforce those powers against any person who is in contravention of the law. Under the new regulation 44(1)(g), an inspector is provided with the power to require a person to produce a document or record “under the person’s control” and “for inspection”, and the purpose of the inspection must be to enable the inspector to obtain “information in connection with an offence” under the new Part 5. These powers are rationally connected to our aim of protecting the health and well-being of minors which are permissible under Article 14 of the Hong Kong Bill of Rights Ordinance (Cap. 383).

8. We are of the view that the power in the new regulation 44(1)(g) is no more than necessary to achieve the important legitimate aim of regulating the sale or supply of intoxicating liquor to minors with a view to protecting the health and well-being of minors. It strikes a reasonable balance between the need for sufficient powers for the inspectors to effectively enforce the statutory requirements under the legislation and the inroads made into the right to privacy in the exercise of such powers.

9. The common law has long recognised the right to legal professional privilege (“LPP”), and this common law right has been entrenched by Article 35 of the Basic Law. The power of an inspector to require production of relevant documents or records pursuant to the new regulation 44(1)(g) is subject to the common law right LPP. Under the Amendment Bill, a person would not be required to produce any documents or records that are protected by this common law right.

10. The term “property” is defined by section 2 of the Criminal Procedure Ordinance (Cap. 221) to include “goods, chattels, money, valuable securities, and every other matter or thing, whether real or personal,

upon or with reference to which any offence may be committed". The defined meaning is wide enough to cover "documents or records".

Yours sincerely,

A handwritten signature in black ink, appearing to be 'R. Lai', written in a cursive style.

(Miss Renie LAI)
for Secretary for Food and Health