

Bills Committee on Dutiable Commodities (Amendment) Bill 2017

**Follow-up actions arising from the discussion
at the Bills Committee meeting on 1 November 2017**

The Government's response to the items raised by Members is set out as follows.

Remote distribution

2. Under regulation 42(4) of the Bill, a person must not, in the course of business, by the person's own act, sell or supply intoxicating liquor to another person in a remote distribution unless, before the sale or supply the person receives a declaration to the effect that the other person has reached the age of 18 years and there is no circumstance that causes the person to reasonably suspect that the declaration is false. The further requirement of collection of proof of identity for remote distribution would have significant implications on issues of privacy concerning the collection and subsequent handling of personal data. As to requiring the settlement of payment using only primary/principal credit cards, we should point out that holders of supplementary credit cards are not necessarily under 18.

3. The main objective of this legislative exercise is to remove a current inconsistency whereby regulation 28 of the Dutiable Commodities (Liquor) Regulations (Cap. 109, Sub. Leg. B) provides that no licensee shall permit any person under the age of 18 years to drink any intoxicating liquor on any licensed premises, but the sale or supply of intoxicating liquor to minors is not prohibited, in particular at non-licensed premises such as retail outlets with convenient access to intoxicating liquor. More stringent control on remote distribution will involve elaborate requirements and significant implications in implementation and is not the priority in this legislative exercise. We will nevertheless closely monitor future developments, and keep in view the need to further strengthen the regulation of remote distribution of intoxicating liquor.

Delivery under remote distribution

4. Under regulation 39(2) of the Bill, if a person is charged because of the person's act, it is a defence for the person to establish that, before the intoxicating liquor was

sold or supplied, the person received a declaration to the effect that the purchaser or recipient of the liquor had reached the age of 18 years and there was no circumstance that caused the person to reasonably suspect that the declaration was false. We have explained at previous meetings that an employee responsible for delivering intoxicating liquor sold by his/her employer should confirm with the purchaser by phone if the intoxicating liquor is being sold to someone over 18 years of age. If and when the purchaser declares his/her age over the phone, the delivery staff would be able to invoke the defence under regulation 39(2). Amendments to the Bill would not be necessary and we will set out the relevant details in the guidelines for the trade.

Public place

5. The present version of the Bill has not defined “public place” and as such the definition under the Interpretation and General Clauses Ordinance (Cap. 1)¹ would apply. As that definition may restrict how the requirements under the Bill are to be enforced, we propose to make an amendment to regulation 44 (1)(a) to replace the term “public place” with a defined term “distribution point”. We also propose, if satisfied by information on oath that there are reasonable grounds for suspecting that there is in the premises anything that is or is likely to be evidence of an offence under Part 5 of the Regulations, a magistrate may issue a search warrant in respect of the domestic premises. Inspectors may then enter and search the domestic premises and exercise their powers as set out under regulation 44(1)(b) to (i) in the Bill within the domestic premises. The draft amendment is at Annex.

Food and Health Bureau
Department of Health
Department of Justice
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¹ Under Cap. 1, public place means—(a) any public street or pier, or any public garden; and (b) any theatre, place of public entertainment of any kind, or other place of general resort, admission to which is obtained by payment or to which the public have or are permitted to have access.

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Committee Stage

Amendments to be moved by the Secretary for Food and Health

<u>Clause</u>	<u>Amendment Proposed</u>
7	In the proposed regulation 35, by deleting the definition of <i>agent</i> .
7	In the proposed regulation 35, by adding in alphabetical order— “ <i>domestic premises</i> (住宅) means any premises that have been constructed to be used, and are used, as a private dwelling;”.
7	In the proposed regulation 37, by adding— “(1A) For the purpose of paragraph (1), a person is not regarded as selling or supplying intoxicating liquor only by delivering the liquor if the person— (a) delivers the liquor in the course of business for another person who— (i) sells or supplies the liquor; and (ii) is not the employer of the first-mentioned person; and (b) is not otherwise involved in the sale or supply of the liquor.”.
7	In the proposed regulation 44(1)(a), by deleting “public place” and substituting “distribution point”.
7	In the proposed regulation 44(2), in the Chinese text, in the definition of 文件或紀錄, by deleting “ ° ” and substituting “ ; ”.
7	In the proposed regulation 44(2), by adding— “ <i>distribution point</i> (分發地點) means a place where intoxicating liquor is or has been sold or supplied in the course of business, but does not include any domestic premises;”.
7	By adding after the proposed regulation 44—

“44A. Warrant to search domestic premises, etc.

- (1) A magistrate may issue a search warrant in respect of any domestic premises if the magistrate is satisfied by information on oath by an inspector that there are reasonable grounds for suspecting that there is in the premises anything that is or is likely to be evidence of an offence under this Part.
- (2) The search warrant may authorize the inspector to—
 - (a) enter and search the premises at reasonable time; and
 - (b) exercise all or any of the powers under regulation 44(1)(b) to (i).
- (3) If the inspector seizes anything as authorized by the search warrant, the inspector must—
 - (a) if there is in the premises an adult who appears to the inspector to be a resident of the premises—leave a notice of the seizure with the adult; or
 - (b) if there is no such adult in the premises—leave in a prominent position at the premises a notice of the seizure.
- (4) A notice mentioned in paragraph (3) must contain sufficient particulars so as to identify the thing seized.”.