

Bills Committee on Dutiable Commodities (Amendment) Bill 2017

**Follow-up actions arising from the discussion
at the Bills Committee meeting on 21 November 2017**

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

Regulation 44 : Powers of inspectors

2. The objective of the Bill is to prohibit the sale or supply of intoxicating liquor to minors in the course of business in order to protect their health and well-being. The Bill proposes to add a new Part 5 to the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. leg. B) ("Part 5"). In order to ensure effective enforcement, it is necessary to provide the inspectors with sufficient powers to ascertain compliance with the statutory requirements, whether or not there is reasonable suspicion that an offence under Part 5 has been committed.

3. The proposed regulation 44 sets out the powers of an inspector. An inspector may exercise the powers as set out in regulations 44(1)(a) to (i), including the power to enter and inspect a distribution point when the inspector considers necessary to ascertain whether Part 5 (including the requirement to display the prescribed notice, other than the prohibition of sale or supply of intoxicating liquor to minors) is complied with. The inspector needs to carry out routine regulatory inspections and to have the power, as set out in regulation 44(1)(a), to enter and inspect a distribution point for the said purpose. In the course of such inspection, the inspector may come across evidence of an offence under Part 5. Once the inspector has lawfully entered a distribution point, it follows that the inspector should be empowered to collect what appears to be evidence of an offence under Part 5, and to exercise other ancillary powers, such as taking samples, making copies of documents and requesting for assistance.

4. Regulation 44 does not give the inspectors unrestricted powers. As currently drafted, those powers can only be exercised subject to various safeguards as follows

- (a) the power of entry to, and inspection of, a distribution point can only be exercised at a reasonable time;
- (b) the power to require a person to give the person's name and address and proof of identity can only be exercised if the inspector reasonably suspects that the person is involved in an offence under Part 5;
- (c) the power to seize anything can only be exercised if it appears to the inspector to be the evidence of an offence under Part 5;
- (d) the power to obtain evidence or information can only be exercised if the evidence or information is in connection with an offence under Part 5; and
- (e) the power to require assistance or information can only be exercised if the assistance or information enables the inspector to perform his or her function under Part 5.

5. We consider the powers as set out in the proposed regulation 44(1) are no more than necessary to facilitate the inspectors to ascertain compliance with Part 5. Similar powers can be found under the Smoking (Public Health) Ordinance (Cap. 371). A table comparing the powers of inspectors and officers to enter public/non-domestic premises under Cap. 371, the Lifts and Escalators Ordinance (Cap. 618) and the Bill is at Annex A.

Regulation 44A: Warrant to search domestic premises, etc.

6. The new regulation 44A provides that, if satisfied by information on oath that there are reasonable grounds for suspecting that there is in domestic premises anything that is or is likely to be evidence of an offence under Part 5, a magistrate may issue a search warrant in respect of the domestic premises. A search warrant issued by the magistrate may authorise an inspector to enter and search the domestic premises and exercise the powers under the proposed regulation 44(1)(b) to (i) under Part 5 within the domestic premises.

7. Since a person may commit an offence under Part 5 (specifically the prohibition of sale or supply of intoxicating liquor to minors) in domestic premises and the premises may contain evidence of an offence under Part 5, for effective enforcement of the new regulatory regime, we consider the powers in the proposed regulation 44A necessary. In contrast to the regulatory inspection power as set out in regulation 44(1)(a), regulation 44A provides a power to enter, search and collect evidence of an offence under Part 5 in domestic premises. This power can only be

exercised upon the inspectors obtaining prior judicial authorisation by a magistrate, who will only issue a search warrant upon being satisfied that there are reasonable grounds for suspecting that there is or likely to be evidence of an offence under Part 5 in the domestic premises. As such, we consider that empowering an inspector to enter and search domestic premises with the authority of a warrant issued by a magistrate is reasonable and proportionate because it strikes a fair balance between the detection and investigation of an offence under Part 5 and the protection of individual privacy in domestic premises.

Inspections of domestic/private premises conducted by the Tobacco Control Office

8. Since November 2015 to October 2017, the Tobacco Control Office of the Department of Health received about 41 200 complaints related to smoking offence at statutory no smoking areas, of which about 1 600 were related to private premises, such as offices. During the same period, around 1 400 out of 62 500 inspections of statutory no smoking area were conducted at private premises. Venue managers of the private premises were usually cooperative and inspections had been generally smooth.

Dr Hon Kwok Ka-ki's proposed CSAs to the prescribed notice

9. Dr Hon Kwok proposed to amend the Bill to add “Alcohol causes lifelong harm to people” in the prescribed notice in the new Schedule to the proposed Part 5. In his letter dated 13 November 2017 to the Chairman of the Bills Committee, Dr Hon Kwok explained that the purpose of the proposed CSA was to serve as a warning to consumers about the lifelong harm of alcohol.

10. As stated in the long title, the objective of the Bill is to “... prohibit the sale or supply of intoxicating liquor to minors in the course of business; to impose requirements for a prescribed notice and age declaration for the sale or supply of intoxicating liquor;...”. To facilitate the prohibition, for both face-to-face distribution and remote distribution, the prescribed notice serves to remind the salespersons and the purchasers of the legal requirement about the age of the purchasers and recipients of intoxicating liquor. The purpose of the prescribed notice is not related to a warning to the consumers about the lifelong harm of alcohol

to people. As such, we consider Dr Hon Kwok's proposed amendment to the prescribed notice would not be relevant to the subject matter of the Bill.

CSAs proposed by the Administration

11. As mentioned during the meeting, we have reviewed the amendments previously proposed and the finalised version of our proposed CSAs is at Annex B.

Food and Health Bureau
Department of Health
Department of Justice
December 2017

**Examples of Similar Ordinances which Empowered Public Officers to Enter
Public Places/Non-Domestic Premises for Routine Checking**

Dutiable Commodities (Amendment) Bill 2017	Smoking (Public Health) Ordinance (Cap. 371)	Lifts and Escalators Ordinance (Cap. 618)
<p>44. Powers of inspectors</p> <p>(1) An inspector may do all or any of the following—</p> <p>(a) at any reasonable time enter and inspect an area in a distribution point¹ as the inspector considers necessary to ascertain whether this Part is complied with;</p> <p>(b) require any person to give his or her name and address and to produce proof of identity if the inspector reasonably suspects that the person has committed an offence under this Part;</p> <p>(c) require any person to give his or her name and address and to produce proof of identity if the inspector reasonably suspects that—</p> <p>(i) the person is a minor; and</p> <p>(ii) intoxicating liquor has been sold or</p>	<p>15G. General powers and duties of inspectors</p> <p>(1) Without limiting any other provisions of this Ordinance, an inspector may, subject to subsections (2) and (3) and on production of his authority as an inspector if requested, do all or any of the following—</p> <p>(a) at any time enter any place in which the inspector reasonably suspects that a relevant offence has been or is being committed;</p> <p>(b) at any reasonable time enter and inspect a no smoking area in a public place for the purpose of ascertaining whether the relevant provisions are complied with;</p> <p>(c) seize any thing that appears to the inspector to be evidence of any relevant offence;</p> <p>(d) require any person to give his name</p>	<p>131. Power to enter non-domestic premises etc. for routine checking</p> <p>(1) For the purposes of ascertaining whether Part 2 or 3² is or is being complied with, an enforcement officer may, without a warrant enter at any reasonable time any premises, other than domestic premises, at or in which a lift or escalator is situated or is installed or being installed, or at which any lift works or escalator works have been or are being carried out.</p> <p>(2) After entering any premises under subsection (1), an enforcement officer may, in addition to any other power of the officer under any other provision of this Ordinance, exercise any or all of the following powers at the premises—</p>

¹ Under the Bill, “distribution point” means “a place (other than domestic premises) where intoxicating liquor is or has been sold or supplied in the course of business”.

² Under Cap. 618, Part 2: Safety of Lifts and Part 3: Safety of Escalators.

<p>supplied to the person in the course of business;</p> <p>(d) seize, remove or detain anything that appears to the inspector to be evidence of an offence under this Part;</p> <p>(e) take samples of intoxicating liquor or anything that the inspector may reasonably require for analysis;</p> <p>(f) take photographs or make sound or video recordings for obtaining evidence in connection with an offence under this Part;</p> <p>(g) require any person to produce for inspection documents or records under the person's control to enable the inspector to obtain information in connection with an offence under this Part;</p> <p>(h) make copies of all or any part of the documents or records;</p> <p>(i) require any person to provide the inspector with the assistance or information the inspector considers necessary to enable the inspector to perform his or her function under this Part.</p> <p>(2) In this regulation— documents or records (文件或紀錄) includes any information which is recorded in a non-legible form but</p>	<p>and address and to produce proof of identity if the inspector reasonably suspects that the person has committed a relevant offence;</p> <p>(e) take photographs or make sound or video recording for the purpose of obtaining evidence in connection with any relevant offence;</p> <p>(f) require any person to produce for inspection documents or records under the control of the person for the purpose of enabling the inspector to ascertain whether the relevant provisions are complied with;</p> <p>(g) make copies of all or any part of any such documents or records;</p> <p>(h) require any person to provide the inspector with such assistance or information as is reasonably necessary to enable the inspector to exercise any power or perform any duty conferred or imposed by this Ordinance.</p> <p>(2) An inspector shall not enter under subsection (1)(a)—</p> <p>(a) any domestic premises; or</p> <p>(b) any correctional facility without the approval of the Commissioner of Correctional Services.</p> <p>(3) An inspector shall not enter under subsection (1)(b) any public place that is a</p>	<p>(a) to require access to and the examination of the lift or escalator;</p> <p>(b) to require access to the place at which any lift works or escalator works have been or are being carried out and the inspection of any lift works or escalator works that are being carried out at the premises;</p> <p>(c) to require the production or provision of and examine any permit, certificate or other document relating to the lift, escalator, lift works or escalator works mentioned in paragraph (a) or (b);</p> <p>(d) to require the production or provision of and examine any other document or thing or any information that the officer has reasonable grounds to believe to be relevant to an offence under Part 2 or 3;</p> <p>(e) to take and make copies of any permit, certificate, document or information referred to in paragraph (c) or(d);</p> <p>(f) to seize, remove and detain anything that the officer has reasonable grounds to believe to be relevant to an offence under Part 2 or 3;</p>
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<p>is capable of being reproduced in a legible form.</p>	<p>common part of any premises to which the public are not entitled or permitted to have access.</p> <p>(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.</p> <p>(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)(d), 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.</p>	<p>(g) to take any photograph of anything referred to in paragraph (a), (b), (c), (d), (e) or (f).</p> <p>(3) In this section, a reference to a lift or escalator includes any part of the lift or escalator and any associated equipment or machinery of the lift or escalator.</p>
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Dutiable Commodities (Amendment) Bill 2017

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), by adding in alphabetical order— “ <i>distribution point</i> (分發地點) means a place (other than domestic premises) where intoxicating liquor is or has been sold or supplied in the course of business;”.
7	By adding— “ 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 any 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.”.