
Dutiable Commodities (Amendment) Bill 2017

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A BILL

To

Amend the Dutiable Commodities Ordinance and the Dutiable Commodities (Liquor) Regulations to prohibit the sale of intoxicating liquor from vending machines; 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; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Dutiable Commodities (Amendment) Ordinance 2017.

- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Food and Health by notice published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

Part 2

Amendment to Dutiable Commodities Ordinance (Cap. 109)

3. Section 6 amended (regulations)

After section 6(1)(o)—

Add

“(oa) regulating or restricting the sale or supply of liquor;”.

Part 3

Amendments to Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. leg. B)

4. Part 4 heading amended (offences and supplemental)

Part 4, heading—

Repeal

“Offences and Supplemental”

Substitute

“Supplementary Provisions for Part 3”.

5. Regulation 28 amended (offence to permit persons under 18 years to drink on licensed premises)

(1) Regulation 28, heading—

Repeal

“persons under 18 years”

Substitute

“minors”.

(2) Regulation 28—

Repeal

everything before “to drink”

Substitute

“A licensee must not permit a minor”.

6. **Regulation 29 amended (restrictions on employment of young persons on licensed premises)**

Regulation 29(1)(b) and (c)—

Repeal

“person under the age of 18 years”

Substitute

“minor”.

7. **Part 5 and Schedule added**

After Part 4—

Add

“Part 5

**Restrictions on Sale of Intoxicating Liquor from
Vending Machines and on Sale and Supply of
such Liquor to Minors**

35. **Interpretation of Part 5**

In this Part—

agent (代理人), in relation to a sale or supply of intoxicating liquor, does not include a person who delivers the liquor in the course of business but is not otherwise involved in the sale or supply;

face-to-face distribution (當面分發) means a sale or supply of intoxicating liquor to a person where—

- (a) the person comes into face-to-face contact with the seller or supplier, or an employee or agent of the seller or supplier who has the authority to conduct the sale or supply, at a place; and

- (b) the person—
- (i) takes possession of the liquor at the place; or
 - (ii) requests, at the place, the delivery of the liquor to another place;

function (職能) includes a power and a duty;

inspector (督察) means a person appointed under regulation 43(1);

place (地方) includes a licensed premises, but does not include an aircraft or a train;

prescribed notice (訂明通知) means the notice prescribed in the Schedule;

proof of identity (身分證明文件) has the meaning given by section 17B(1) of the Immigration Ordinance (Cap. 115);

remote distribution (遙距分發) means a sale or supply of intoxicating liquor otherwise than in a face-to-face distribution.

36. Selling intoxicating liquor from vending machines prohibited

- (1) A person must not sell intoxicating liquor from a vending machine.
- (2) A person who contravenes paragraph (1) commits an offence and is liable on summary conviction to a fine at level 5.

37. Selling or supplying intoxicating liquor to minors prohibited

- (1) A person must not, in the course of business, sell or supply intoxicating liquor to a minor.

- (2) A person who contravenes paragraph (1) commits an offence and is liable on summary conviction to a fine at level 5.
- (3) To avoid doubt, if a person sells a product that is not intoxicating liquor but that is accompanied by intoxicating liquor as a gift, the person supplies the liquor.

38. Defences for face-to-face distribution

- (1) This regulation applies if a person is charged with an offence under regulation 37 in relation to a face-to-face distribution.
- (2) 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—
 - (a) inspected a proof of identity purporting to be the proof of identity of the purchaser or recipient of the liquor; and
 - (b) reasonably satisfied himself or herself, because of the inspection, that the purchaser or recipient was not a minor.
- (3) If a person (*defendant*) is charged because of another person's act, it is a defence for the defendant to establish that, before the intoxicating liquor was sold or supplied, the defendant had taken reasonable measures to prevent intoxicating liquor from being sold or supplied by that other person in the course of business to a minor in a face-to-face distribution.

39. Defences for remote distribution

- (1) This regulation applies if a person is charged with an offence under regulation 37 in relation to a remote distribution.
- (2) 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—
 - (a) the person received a declaration to the effect that the purchaser or recipient of the liquor had reached the age of 18 years; and
 - (b) there was no circumstance that caused the person to reasonably suspect that the declaration was false.
- (3) If a person (*defendant*) is charged because of another person's act, it is a defence for the defendant to establish that, before the intoxicating liquor was sold or supplied, the defendant had taken reasonable measures to prevent intoxicating liquor from being sold or supplied by that other person in the course of business to a minor in a remote distribution.

40. Burden of proof for defences

A person charged with an offence under regulation 37 is taken to have established a fact that needs to be established for a defence under regulation 38 or 39 if—

- (a) there is sufficient evidence to raise an issue with respect to the fact; and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt.

41. Notice requirement for face-to-face distribution

- (1) Subject to paragraphs (2) and (3), a person who, in the course of business—
 - (a) sells or supplies intoxicating liquor in a face-to-face distribution at a place; or
 - (b) offers to do so,
must ensure a sign containing both the Chinese version and English version of the prescribed notice is displayed in a prominent position at the place.
- (2) The sign must be rectangular in shape with sides of at least 38 cm in length and 20 cm in width.
- (3) The prescribed notice contained in the sign must—
 - (a) be in plain and readily legible characters and letters; and
 - (b) be set out in characters and letters of a colour that contrasts with the background on which they appear.
- (4) A person who contravenes paragraph (1) commits an offence and is liable on summary conviction to a fine at level 4.

42. Notice and declaration requirements for remote distribution

- (1) Subject to paragraphs (2) and (3), a person who, in the course of business, offers to sell or to supply intoxicating liquor by way of a remote distribution must ensure the offer—
 - (a) if published in the form of a visual image (including text) or a series of moving visual images—contains both the Chinese version and English version of the prescribed notice;

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- (b) if published in the form of a sound recording, or an oral communication, expressed in Chinese—includes the contents of the Chinese version of the prescribed notice; or
 - (c) if published in the form of a sound recording, or an oral communication, expressed in a language other than Chinese—includes the contents of the English version of the prescribed notice.
- (2) The prescribed notice referred to in paragraph (1)(a) must be reasonably legible.
 - (3) Paragraph (1)(a) does not apply to an offer by a person in the form of a visual image (including text) or a series of moving visual images if—
 - (a) the visual image or images were prepared before the commencement of this regulation; and
 - (b) it is not reasonably practicable for the person to—
 - (i) retract the image or images; or
 - (ii) amend the image or images to contain both the Chinese version and English version of the prescribed notice.
 - (4) 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—
 - (a) the person receives a declaration to the effect that the other person has reached the age of 18 years; and

- (b) there is no circumstance that causes the person to reasonably suspect that the declaration is false.
- (5) A person must not, in the course of business, by another person's act, sell or supply intoxicating liquor, to a third person in a remote distribution unless the person has taken reasonable measures to ensure that the other person only sells or supplies the liquor after receiving a declaration to the effect that the third person has reached the age of 18 years.
- (6) A person who contravenes paragraph (1), (4) or (5) commits an offence and is liable on summary conviction to a fine at level 4.

43. Appointment of inspectors

- (1) The Secretary for Food and Health may, in writing, appoint a public officer to be an inspector to perform any function under this Part.
- (2) An inspector must, if so required, produce written proof of his or her appointment before performing a function under this Part.

44. Powers of inspectors

- (1) An inspector may do all or any of the following—
 - (a) at any reasonable time enter and inspect an area in a public place as the inspector considers necessary to ascertain whether this Part is complied with;
 - (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;

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- (c) require any person to give his or her name and address and to produce proof of identity if the inspector reasonably suspects that—
 - (i) the person is a minor; and
 - (ii) intoxicating liquor has been sold or supplied to the person in the course of business;
 - (d) seize, remove or detain anything that appears to the inspector to be evidence of an offence under this Part;
 - (e) take samples of intoxicating liquor or anything that the inspector may reasonably require for analysis;
 - (f) take photographs or make sound or video recordings for obtaining evidence in connection with an offence under this Part;
 - (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;
 - (h) make copies of all or any part of the documents or records;
 - (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.
- (2) In this regulation—
- documents or records*** (文件或紀錄) includes any information which is recorded in a non-legible form but is capable of being reproduced in a legible form.

45. Obstruction of inspectors etc. prohibited

- (1) A person must not—
 - (a) delay, obstruct, hinder or molest—
 - (i) an inspector who is performing a function under this Part; or
 - (ii) any person who aids the inspector;
 - (b) refuse the request of an inspector made in the performance of a function under this Part;
 - (c) refuse to give his or her name and address or to produce proof of identity when required to do so by an inspector; or
 - (d) give a false or misleading name or address when required to give his or her name and address by an inspector.
- (2) A person who contravenes paragraph (1) commits an offence and is liable on summary conviction to a fine at level 3.

46. Disposal of property seized by inspectors

If an inspector seizes any property while performing a function under this Part, section 102 of the Criminal Procedure Ordinance (Cap. 221) applies as if—

- (a) a reference to police in that section includes the inspector; and
- (b) the property were property that had come into possession of the police in connection with an offence.

47. Protection of inspectors

- (1) An inspector is not personally liable for any act done or omitted to be done by the inspector if the inspector did or omitted to do an act in the honest belief that the act or omission was required or authorized by or under this Part.
- (2) Paragraph (1) does not affect any liability of the Government for the act or omission of the inspector.

Schedule

[reg. 35]

Prescribed Notice

Chinese version:

根據香港法律，不得在業務過程中，向未成年人售賣或供應令人醺醉的酒類。

English version:

Under the law of Hong Kong, intoxicating liquor must not be sold or supplied to a minor in the course of business.”

Explanatory Memorandum

The main purpose of this Bill is to prohibit the sale or supply of intoxicating liquor to minors in the course of business. It also introduces a prohibition on the sale of intoxicating liquor from vending machines and several requirements for the sale or supply of intoxicating liquor.

2. The Bill contains 3 Parts.

Part 1—Preliminary

3. Clause 1 sets out the short title and provides for commencement.

Part 2—Amendment to Dutiable Commodities Ordinance (Cap. 109) (Ordinance)

4. Clause 3 amends section 6 of the Ordinance to provide the legal basis for the proposal under the Bill.

Part 3—Amendments to Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. leg. B) (Liquor Regulations)

5. Clause 4 amends the heading to Part 4 of the Liquor Regulations as the Part relates to Part 3 only.
6. According to the Interpretation and General Clauses Ordinance (Cap. 1) (*Cap. 1*), *minor* is defined to mean a person who has not attained the age of 18 years. This word is used in the Ordinance by relying on the meaning in Cap. 1. Clauses 5 and 6 are amendments made to achieve consistency with the use of *minor* in the Ordinance.

7. Clause 7 adds a new Part 5 and a Schedule to the Liquor Regulations.
8. New Part 5 consists of new regulations 35 to 47.
9. New regulation 35 contains the definitions for interpreting new Part 5, including the definitions of *face-to-face distribution* and *remote distribution*. *Face-to-face distribution* includes the sale or supply of intoxicating liquor at supermarkets, convenience stores and licensed premises. *Remote distribution* includes the sale or supply of intoxicating liquor through electronic means, telephone calls and mail.
10. New regulation 36 prohibits the sale of intoxicating liquor from a vending machine.
11. New regulation 37 prohibits the sale or supply of intoxicating liquor to a minor in the course of business.
12. New regulation 38 provides for defences in a face-to-face distribution.
13. New regulation 39 provides for defences in a remote distribution.
14. New regulation 40 provides for the burden of proof in relation to the defences to the offence created under new regulation 37.
15. New regulation 41 requires a sign containing the prescribed notice to be displayed for a face-to-face distribution.
16. New regulation 42 deals with the requirements for the prescribed notice and age declaration for a remote distribution.

17. New regulation 43 provides that the Secretary for Food and Health may appoint inspectors for the enforcement of new Part 5.
18. New regulation 44 sets out the powers of inspectors.
19. New regulation 45 provides for the acts that amount to an obstruction to inspectors.
20. New regulation 46 deals with the disposal of property seized by inspectors.
21. New regulation 47 gives protection to inspectors who did or omitted to do an act in the honest belief that the act or omission was required or authorized by new Part 5.
22. The Schedule provides for the contents of the prescribed notice in both the Chinese version and English version as required under new regulations 41 and 42.