## Contents

### Part 1

#### Preliminary

<table>
<thead>
<tr>
<th>Clause</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>C163</td>
</tr>
<tr>
<td>2.</td>
<td>C165</td>
</tr>
</tbody>
</table>

### Part 2

#### Amendments to Smoking (Public Health) Ordinance (Cap. 371)

<table>
<thead>
<tr>
<th>Clause</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.</td>
<td>C166</td>
</tr>
<tr>
<td>4.</td>
<td>C166</td>
</tr>
<tr>
<td>5.</td>
<td>C174</td>
</tr>
<tr>
<td>6.</td>
<td>C176</td>
</tr>
<tr>
<td>7.</td>
<td>C178</td>
</tr>
<tr>
<td>8.</td>
<td>C178</td>
</tr>
<tr>
<td>9.</td>
<td>C180</td>
</tr>
<tr>
<td>10.</td>
<td>C180</td>
</tr>
<tr>
<td>11.</td>
<td>C182</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Clause</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>C167</td>
</tr>
<tr>
<td>2.</td>
<td>C167</td>
</tr>
<tr>
<td>3.</td>
<td>C175</td>
</tr>
<tr>
<td>4.</td>
<td>C175</td>
</tr>
<tr>
<td>5.</td>
<td>C177</td>
</tr>
<tr>
<td>6.</td>
<td>C179</td>
</tr>
<tr>
<td>7.</td>
<td>C179</td>
</tr>
<tr>
<td>8.</td>
<td>C179</td>
</tr>
<tr>
<td>9.</td>
<td>C181</td>
</tr>
<tr>
<td>10.</td>
<td>C181</td>
</tr>
<tr>
<td>11.</td>
<td>C183</td>
</tr>
<tr>
<td>Clause</td>
<td>Page</td>
</tr>
<tr>
<td>--------</td>
<td>------</td>
</tr>
<tr>
<td>12.</td>
<td>Part 4 heading amended (tobacco advertising) .......... C183</td>
</tr>
<tr>
<td>13.</td>
<td>Section 11 amended (tobacco advertisements in printed publications) .......... C183</td>
</tr>
<tr>
<td>14.</td>
<td>Section 12 amended (no display of tobacco advertisement) .......... C185</td>
</tr>
<tr>
<td>15.</td>
<td>Section 13 amended (prohibition on broadcast of tobacco advertisement by radio or visual images) .......... C187</td>
</tr>
<tr>
<td>16.</td>
<td>Section 13A amended (prohibition on exhibition of tobacco advertisement by film) .......... C189</td>
</tr>
<tr>
<td>17.</td>
<td>Section 13B amended (prohibition on placing of tobacco advertisement on the Internet) .......... C189</td>
</tr>
<tr>
<td>18.</td>
<td>Section 14 amended (meaning of tobacco advertisement) ...... C191</td>
</tr>
<tr>
<td>19.</td>
<td>Section 14A amended (removal and disposal of tobacco advertisement) .......... C201</td>
</tr>
<tr>
<td>20.</td>
<td>Part 4A heading amended (prohibition on selling or giving of tobacco products) .......... C203</td>
</tr>
<tr>
<td>21.</td>
<td>Section 15A amended (prohibition on selling or giving of tobacco products, etc.) .......... C203</td>
</tr>
<tr>
<td>22.</td>
<td>Section 15B heading amended (display of sign when offering tobacco products for sale, etc.) .......... C207</td>
</tr>
<tr>
<td>23.</td>
<td>Part 4AB added .......... C207</td>
</tr>
</tbody>
</table>
### Part 4AB

**Prohibition of Alternative Smoking Products**

<table>
<thead>
<tr>
<th>Clause</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>15DA.</td>
<td>C209</td>
</tr>
<tr>
<td>15DB.</td>
<td>C210</td>
</tr>
<tr>
<td>15DC.</td>
<td>C212</td>
</tr>
<tr>
<td>15DD.</td>
<td>C212</td>
</tr>
<tr>
<td>15DE.</td>
<td>C218</td>
</tr>
<tr>
<td>15DF.</td>
<td>C218</td>
</tr>
<tr>
<td>15DG.</td>
<td>C219</td>
</tr>
<tr>
<td>15DH.</td>
<td>C220</td>
</tr>
<tr>
<td>24.</td>
<td>C224</td>
</tr>
<tr>
<td>25.</td>
<td>C224</td>
</tr>
<tr>
<td>26.</td>
<td>C224</td>
</tr>
<tr>
<td>27.</td>
<td>C228</td>
</tr>
</tbody>
</table>

---

<table>
<thead>
<tr>
<th>Clause</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>24.</td>
<td>C225</td>
</tr>
<tr>
<td>25.</td>
<td>C225</td>
</tr>
<tr>
<td>26.</td>
<td>C225</td>
</tr>
<tr>
<td>27.</td>
<td>C229</td>
</tr>
</tbody>
</table>
### 第3部

#### 第1分部——修訂《應課稅品條例》(第109章)

<table>
<thead>
<tr>
<th>條次</th>
<th>頁次</th>
</tr>
</thead>
<tbody>
<tr>
<td>29.</td>
<td>Schedules 7 and 8 added .......................................................... C237</td>
</tr>
<tr>
<td></td>
<td>Schedule 7 Alternative Smoking Products..................................... C239</td>
</tr>
<tr>
<td></td>
<td>Schedule 8 Words or Phrases for Section 14(4A)(c) ...... C245</td>
</tr>
</tbody>
</table>

#### 第2分部——修訂《吸煙 (公眾衛生) 規例》(第371章，附屬法例 A)

<table>
<thead>
<tr>
<th>條次</th>
<th>頁次</th>
</tr>
</thead>
<tbody>
<tr>
<td>30.</td>
<td>Section 3 amended (application) ............................................ C251</td>
</tr>
<tr>
<td></td>
<td>Regulation 3 amended (determination by the Government Chemist) .................................................................. C251</td>
</tr>
<tr>
<td>31.</td>
<td>Regulation 7 amended (exemption of certain advertisements from Part 4 of the Ordinance) ..................... C253</td>
</tr>
</tbody>
</table>

#### 第3分部——修訂《吸煙 (公眾衛生) (訂明資訊) 令》(第371章，附屬法例 B)

<table>
<thead>
<tr>
<th>條次</th>
<th>頁次</th>
</tr>
</thead>
<tbody>
<tr>
<td>32.</td>
<td>Regulation 8 heading amended (sign when offering tobacco products for sale, etc.) .................................. C255</td>
</tr>
<tr>
<td>33.</td>
<td>Paragraph 5A amended (health warning on price board of tobacco products) ........................................ C253</td>
</tr>
<tr>
<td>34.</td>
<td>Paragraph 8 heading amended (sign when offering tobacco products for sale, etc.) .................................. C255</td>
</tr>
<tr>
<td>35.</td>
<td>Schedule amended ................................................................. C255</td>
</tr>
</tbody>
</table>
本條例草案

旨在

修訂《吸煙（公眾衛生）條例》，以禁止進口、製造、售賣或在某些地方使用訂明的另類吸煙產品；限制給予、管有、宣傳或推廣該等產品；並對該條例及相關法例，作出相關及雜項修訂。

由立法會制定。

第 1 部

導言

1. 簡稱及生效日期
   (1) 本條例可引稱為《2019年吸煙（公眾衛生）（修訂）條例》。
   (2) 本條例自其於憲報刊登當日後的6個月屆滿時起實施。

A BILL

To

Amend the Smoking (Public Health) Ordinance to prohibit the import, manufacture or sale, or use in certain places, of prescribed alternative smoking products; to restrict the giving, possession, advertising or promotion of the products; and to make related and miscellaneous amendments to the Ordinance and related legislation.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement
   (1) This Ordinance may be cited as the Smoking (Public Health) (Amendment) Ordinance 2019.
   (2) This Ordinance comes into operation on the expiry of 6 months after the day on which this Ordinance is 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

Amendments to Smoking (Public Health) Ordinance (Cap. 371)

3. Long title amended

The long title—

Repeal everything after “in certain” and before “to provide for the appointment”

Substitute “places; to provide for the display of a health warning and other information on packets or retail containers of conventional smoking products; to restrict the advertising of smoking products; to restrict the sale, giving or promotion of conventional smoking products; to prohibit the import, manufacture or sale, and to restrict the giving, possession or promotion, of alternative smoking products;”.

4. Section 2 amended (interpretation)

(1) Section 2—

Renumber the section as section 2(1).

(2) Section 2(1), definition of cigar—

Repeal “smoking;”

Substitute “smoking, but does not include any alternative smoking product;”.

Part 2

Amendments to Smoking (Public Health) (Amendment) Bill 2019

3. Long title amended

The long title—

Repeal everything after “in certain” and before “to provide for the appointment”

Substitute “places; to provide for the display of a health warning and other information on packets or retail containers of conventional smoking products; to restrict the advertising of smoking products; to restrict the sale, giving or promotion of conventional smoking products; to prohibit the import, manufacture or sale, and to restrict the giving, possession or promotion, of alternative smoking products;”.

4. Section 2 amended (interpretation)

(1) Section 2—

Renumber the section as section 2(1).

(2) Section 2(1), definition of cigar—

Repeal “smoking;”

Substitute “smoking, but does not include any alternative smoking product;”.

Part 2

Amendments to Smoking (Public Health) (Amendment) Bill 2019

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The long title—

Repeal everything after “in certain” and before “to provide for the appointment”

Substitute “places; to provide for the display of a health warning and other information on packets or retail containers of conventional smoking products; to restrict the advertising of smoking products; to restrict the sale, giving or promotion of conventional smoking products; to prohibit the import, manufacture or sale, and to restrict the giving, possession or promotion, of alternative smoking products;”.

4. Section 2 amended (interpretation)

(1) Section 2—

Renumber the section as section 2(1).

(2) Section 2(1), definition of cigar—

Repeal “smoking;”

Substitute “smoking, but does not include any alternative smoking product;”.

Part 2

Amendments to Smoking (Public Health) (Amendment) Bill 2019

3. Long title amended

The long title—

Repeal everything after “in certain” and before “to provide for the appointment”

Substitute “places; to provide for the display of a health warning and other information on packets or retail containers of conventional smoking products; to restrict the advertising of smoking products; to restrict the sale, giving or promotion of conventional smoking products; to prohibit the import, manufacture or sale, and to restrict the giving, possession or promotion, of alternative smoking products;”.

4. Section 2 amended (interpretation)

(1) Section 2—

Renumber the section as section 2(1).

(2) Section 2(1), definition of cigar—

Repeal “smoking;”

Substitute “smoking, but does not include any alternative smoking product;”.

Part 2

Amendments to Smoking (Public Health) (Amendment) Bill 2019

3. Long title amended

The long title—

Repeal everything after “in certain” and before “to provide for the appointment”

Substitute “places; to provide for the display of a health warning and other information on packets or retail containers of conventional smoking products; to restrict the advertising of smoking products; to restrict the sale, giving or promotion of conventional smoking products; to prohibit the import, manufacture or sale, and to restrict the giving, possession or promotion, of alternative smoking products;”.

4. Section 2 amended (interpretation)

(1) Section 2—

Renumber the section as section 2(1).

(2) Section 2(1), definition of cigar—

Repeal “smoking;”

Substitute “smoking, but does not include any alternative smoking product;”.
Clause 4

(3) Section 2(1), definition of *cigarette*—
Repeal
“smoking;”
Substitute
“smoking, but does not include any alternative smoking product;”.

(4) Section 2(1), definition of *cigarette tobacco*—
Repeal
“his own use;”
Substitute
“the purchaser’s own use, but does not include any alternative smoking product;”.

(5) Section 2(1), definition of *pipe*—
Repeal
“cigar;”
Substitute
“cigar, but does not include any alternative smoking product;”.

(6) Section 2(1), definition of *pipe tobacco*—
Repeal
“pipe;”
Substitute
“pipe, but does not include any alternative smoking product;”.

(7) Section 2(1), Chinese text, definition of *牌子*—
Repeal
“品質”
Part 2
Clause 4

Substitute
“特質”。

(8) Section 2(1)—
(a) definition of smoke;
(b) definition of tobacco advertisement;
(c) definition of tobacco product—
Repeal the definitions.

(9) Section 2(1)—
Add in alphabetical order
“activated (已啟動)—see subsection (2);
aerosol (氣霧) means—
   (a) any gas;
   (b) any solid particles, or liquid, suspended in air;
       or
   (c) any mixture of the substances mentioned in
       paragraphs (a) and (b);

Note—
Smoke is a form of aerosol as defined above.

alternative smoking product (另類吸煙產品) means a
product set out in Part 2 of Schedule 7;

cease (停止), in relation to a smoking act—see subsection
(3);

c conventional smoking product (傳統吸煙產品) means any
cigarette, cigarette tobacco, cigar or pipe tobacco;
deactivate (熄掉)—see subsection (4);

Government Chemist (政府化驗師) has the meaning given
by section 2 of the Evidence Ordinance (Cap. 8);

smoking (吸煙、吸用) means inhaling and expelling—
Smoking (Public Health) (Amendment) Bill 2019

Part 2
Clause 4

(a) in relation to a conventional smoking product—the smoke of tobacco generated from the product; or
(b) in relation to an alternative smoking product—the aerosol generated by or from the product;

**smoking act** (吸煙行為) means smoking or carrying—
(a) a lighted cigarette, cigar or pipe; or
(b) an activated alternative smoking product;

**smoking product advertisement** (吸煙產品廣告)—see section 14;”.

(10) After section 2(1)—

Add

“(2) An alternative smoking product is **activated** if any process, such as combustion or heating, is taking place for generating an aerosol by or from the product.

(3) A person **ceases** a smoking act—
(a) in relation to a lighted cigarette, cigar or pipe, if the person extinguishes it; or
(b) in relation to an activated alternative smoking product, if the person deactivates it.

(4) A person **deactivates** an activated alternative smoking product if the person stops the process mentioned in subsection (2) in relation to the product.
Part 2
Clause 5

(5) A reference in this Ordinance to marketing in relation to a smoking product includes marketing outside Hong Kong.

(6) A note in the text of this Ordinance is for information only and has no legislative effect.”.

5. Section 3 amended (prohibition on smoking in certain designated areas)

(1) Section 3(2)—

Repeal
“shall smoke or carry a lighted cigarette, cigar or pipe”

Substitute
“may do a smoking act”.

(2) Section 3(3), after “contravening subsection (2)”—

Add
“in the no smoking area”.

(3) Section 3(3)—

Repeal paragraph (a)

Substitute
“(a) after indicating to the person that the person is doing a smoking act in the no smoking area in contravention of subsection (2), require the person to cease the act;”.

(4) Section 3(3)(b)—

Repeal
“extinguish the lighted cigarette, cigar or pipe;”
6. Section 4 amended (prohibition on smoking in public transport carriers)

(1) Section 4(1)—

Repeal
“shall smoke or carry a lighted cigarette, cigar or pipe”

Substitute
“may do a smoking act”.

(2) Section 4(2)—

Repeal everything before paragraph (a)

Substitute
“(2) The driver, conductor, ticket inspector, ticket collector or manager of any public transport carrier or any person authorized in that behalf by the manager may, in respect of any person who appears to be contravening subsection (1) in the public transport carrier—”.

(3) Section 4(2)—

Repeal paragraph (a)

Substitute

Substitute
“cease the smoking act,”.

(5) Section 3(3)(b)(ii) and (c), Chinese text, before “禁止” (wherever appearing)—

Add
“該”.

6. 修訂第 4 條 (禁止在公共交通工具內吸煙)

(1) 第 4(1) 條——

廢除
在“工具內”之後的所有字句
代以
“，作出吸煙行為。”。

(2) 第 4(2) 條——

廢除
在“正在”之後而在“或任何”之前的所有字句
代以
“於任何公共交通工具內，違反第(1)款，則該公共交通工具的司機、指導員、檢票員、收票員、管理人，”。

(3) 第 4(2) 條——

廢除(a)段
代以
((a) after indicating to the person that the person is doing a smoking act in the public transport carrier in contravention of subsection (1), require the person to cease the act;”.

7. Part 3 heading amended (sales of tobacco products)
Part 3, heading—
Repeal
“Tobacco”
Substitute
“Conventional Smoking”.

8. Section 8 amended (sales of cigarettes and tobacco products)
(1) Section 8, heading—
Repeal
“cigarettes and tobacco”
Substitute
“conventional smoking”.
(2) Section 8(2)(b)—
Repeal
“tobacco”
Substitute
“conventional smoking”.

“(a) 可要求該人停止有關吸煙行為，但在作出要求前，
須先行向該人表示，該人是在違反第(1)款的情況下，於該公共交通工具內作出吸煙行為;”。

(4) 第 4(2)(b) 條——
廢除在第 (i) 節之前的所有字句
代以
“(b) 如該人沒有停止有關吸煙行為——可要求該
人——”。

7. 修訂第 3 部標題 (煙草产品的售賣)
第 3 部，標題——
廢除
“煙草”
代以
“傳統吸煙”。

8. 修訂第 8 條 (香煙及煙草产品的售賣)
(1) 第 8 條，標題——
廢除
“香煙及煙草”
代以
“傳統吸煙”。
(2) 第 8(2)(b) 條——
廢除
“煙草”
代以
“傳統吸煙”。

“(4) Section 4(2)(b)—
Repeal
“extinguish the lighted cigarette, cigar or pipe,”
Substitute
“cease the smoking act,”.

7. Part 3 heading amended (sales of tobacco products)
Part 3, heading—
Repeal
“Tobacco”
Substitute
“Conventional Smoking”.

8. Section 8 amended (sales of cigarettes and tobacco products)
(1) Section 8, heading—
Repeal
“cigarettes and tobacco”
Substitute
“conventional smoking”.
(2) Section 8(2)(b)—
Repeal
“tobacco”
Substitute
“conventional smoking”.
9. 修訂第 8B 條 (禁止以銷售機售賣煙草產品)
   (1) 第 8B 條，標題——
       廢除
       “銷售機售賣煙草”
       代以
       “售賣機售賣傳統吸煙”。
   (2) 第 8B 條——
       廢除
       在“不得”之後的所有字句
       代以
       “以售賣機售賣傳統吸煙產品，或要約以售賣機售賣傳統吸煙產品”。

10. 修訂第 10 條 (第 3 部所訂罪行)
    (1) 第 10(3) 條——
        (a) 廢除
            在“，即”之前的所有字句
            代以
            “(3) 任何傳統吸煙產品製造商或其代理人，或任何
            傳統吸煙產品批發經銷商，如售賣、要約出售
            或為售賣而管有第 8 或 9 條適用的，符合以下
            說明的傳統吸煙產品”；
        (b) 廢除
            在“健康的危害”之後而在“；或”之前的字句
            代以
            “，小於包裝上沒有作相同展示的其他傳統吸煙產
            品”。
    (2) 第 10(3)(a) 條，英文文本——
Part 2
Clause 11

11. **Section 10A amended (seizure and forfeiture)**
    Section 10A(1)(ca)—
    Repeal
    “tobacco”
    Substitute
    “conventional smoking”.

12. **Part 4 heading amended (tobacco advertising)**
    Part 4, heading—
    Repeal
    “Tobacco Advertising”
    Substitute
    “Advertising of Smoking Products”.

13. **Section 11 amended (tobacco advertisements in printed publications)**
    (1) Section 11, heading—
    Repeal
    “Tobacco”
    Substitute
    “Smoking product”.
    (2) Section 11(1)—
    Repeal
14. **Section 12 amended (no display of tobacco advertisement)**

(1) **Section 12, heading**—

Repeal

“tobacco”

Substitute

“smoking product”.

(2) **Section 12(1)—**

Repeal

“tobacco advertisement”

Substitute

“smoking product advertisement”.

(3) **Section 12(4)—**

Repeal

“tobacco advertisement”

Substitute

“smoking product advertisement”.

Section 11—

Repeal subsection (3)

Substitute

“(3) Nothing in this section or section 12 applies in relation to a smoking product advertisement in a printed publication that is published—

(a) for the smoking products trade; or

(b) as the in-house publication of any company engaged in that trade.”.

(3) **Section 14—**

Repeal subsection (3)

Substitute

“(3) 沒有本條及第 12 條不適用——

(a) 為吸煙產品業界印行的印刷刊物；或

(b) 作為從事吸煙產品業的公司的內部刊物而印行的印刷刊物。”。
15. Section 13 amended (prohibition on broadcast of tobacco advertisement by radio or visual images)

(1) Section 13, heading—
16. Section 13A amended (prohibition on exhibition of tobacco advertisement by film)

(1) Section 13A, heading—
Repeal “tobacco”
Substitute “smoking product”.

(2) Section 13A(1)—
Repeal “tobacco”
Substitute “smoking product”.

17. Section 13B amended (prohibition on placing of tobacco advertisement on the Internet)

(1) Section 13B, heading—
Repeal “tobacco”
Substitute “smoking product”.

(2) Section 13B(1)—
Repeal “tobacco”
Substitute “smoking product”.

(3) Section 13B(2)(a), Chinese text—
Repeal “電腦”.

(4) Section 13B(3)—
Repeal “tobacco”
Substitute “smoking product”.

18. Section 14 amended (meaning of tobacco advertisement)
(1) Section 14, heading—
Repeal “tobacco”
Substitute “smoking product”.

(2) Section 14(1)—
Repeal “tobacco advertisement”
Substitute
“smoking product advertisement”.

(3) Section 14(1)(a)—
Repeal
“cigarettes, cigarette tobacco, cigars or pipe tobacco”
Substitute
“any smoking product”.

(4) Section 14(1)(b)—
Repeal
“cigarettes, cigarette tobacco, cigars or pipe tobacco”
Substitute
“any smoking product”.

(5) Section 14(1)(c)—
Repeal
“cigarettes, cigarette tobacco, cigars or pipe tobacco”
Substitute
“any smoking products”.

(6) Section 14(1A)—
Repeal
“tobacco”
Substitute
“smoking product”.

(7) Section 14(2)(b)—
Repeal
“tobacco”
Substitute
Clause 18

Smoking (Public Health) (Amendment) Bill 2019

“(b) 在進行任何業務或提供任何服務的過程中，不論是否供出售，而向公眾展示的任何物體 ( 吸煙產品除外 )”。

(8) Section 14(2)—

Repeal
“tobacco product, or any trade mark or brand name of a tobacco”

Substitute
“smoking product, or any trade mark or brand name of a smoking”.

(9) Section 14(2)—

Repeal
“tobacco advertisement”

Substitute
“smoking product advertisement”.

(10) Section 14(3)(a)(i)—

Repeal
“non-tobacco”

Substitute
“product or service that is not a smoking”.

(11) Section 14(4)(a)—

Repeal
“tobacco”

Substitute
“smoking”.

(12) Section 14(4)—
Part 2
Clause 18

Repeal paragraph (b)
Substitute
“(b) any name identical to the trade name or brand name of any smoking product, in association with any product that is not a smoking product.”.

(13) Section 14(4A)(c)—
Repeal
everything after “mention”
Substitute
“any word or phrase set out in Schedule 8 (including any word or phrase that means the same as, or closely resembles, the word or phrase).”.

(14) Section 14(5)—
Repeal
“tobacco product” (wherever appearing)
Substitute
“smoking product”.

(15) Section 14(5)—
Repeal
“tobacco advertisement”
Substitute
“smoking product advertisement”.

(16) Section 14(6)—
Repeal
“tobacco products are offered for sale is not a tobacco”
代以
“在某處所內，有傳統吸煙產品被要約出售，則在該處所內展示以下物件，並不屬吸煙產品”。

(17) 第 14(6)(a) 條——
廢除
所有 “類別煙草”
代以
“類別傳統吸煙”。

(18) 第 14(6)(a)(ii)(A) 條——
廢除
在 “不大於” 之後的所有字句
代以
“以下產品的價格標記的面積：在該處所內被要約出售的，並非吸煙產品的產品；及”。

(19) 第 14(6)(b)(i) 條——
廢除
“煙草”
代以
“傳統吸煙”。

(20) 第 14(6)(b)(iii) 條——
廢除
在 “牌上” 之後的所有字句
代以
“，每個載有某一類別傳統吸煙產品的名稱及價格的項目的面積，均不大於 50 平方厘米；及”。

Substitute
“conventional smoking products are offered for sale is not a smoking product”.

(17) Section 14(6)(a)—
Repeal
“tobacco” (wherever appearing)
Substitute
“conventional smoking”.

(18) Section 14(6)(a)(ii)(A)—
Repeal
“non-tobacco”
Substitute
“products that are not smoking”.

(19) Section 14(6)(b)(i)—
Repeal
“tobacco”
Substitute
“conventional smoking”.

(20) Section 14(6)(b)(iii)—
Repeal
“tobacco”
Substitute
“conventional smoking”.
19. Section 14A amended (removal and disposal of tobacco advertisement)

(1) Section 14A, heading—
Repeal "tobacco"
Substitute "smoking product".

(2) Section 14A(1)—
Repeal "tobacco"
Substitute "smoking product".

(3) Section 14A(2)—
Repeal everything after “disposal of any”
Substitute “advertisement or structure removed under subsection (1), whether or not any person is convicted of any offence under this Ordinance, on the grounds that an offence under this Ordinance has been or is being committed in relation to the advertisement or structure.”.

(4) Section 14A(4)—
Repeal everything after “brand of”
Substitute “smoking product which is mentioned in the removed advertisement or structure or from the owner of the advertisement or structure.”.
20. Part 4A heading amended (prohibition on selling or giving of tobacco products)

Part 4A, heading—

Repeal “tobacco”

Substitute “Conventional Smoking”.

21. Section 15A amended (prohibition on selling or giving of tobacco products, etc.)

(1) Section 15A, heading—

Repeal “tobacco”

Substitute “conventional smoking”.

(2) Section 15A(3)(a)—

Repeal “tobacco”

Substitute “conventional smoking”.

(3) Section 15A(3)(b)—

Repeal “tobacco”

Substitute “conventional smoking”.

(4) Section 15A(3)—
Repeal paragraph (c)
Substitute
“(c) give valuable consideration to any person in order to induce the person to buy a particular conventional smoking product or otherwise to promote the product to the person;”.

(5) Section 15A(3)(d)—
Repeal
“tobacco”
Substitute
“conventional smoking”.

(6) Section 15A(3)(e)—
Repeal
“tobacco”
Substitute
“conventional smoking”.

(7) Section 15A(3)(f)—
Repeal
everything after “sale a”
Substitute
“product—
(i) that is not a smoking product; and
(ii) that includes or is accompanied by a conventional smoking product as a gift;”.

(5) 第15A(3)(d)條——
廢除
在 “使任何” 之後而在 “而” 之前的所有字句
代以
“使任何人在任何地方以任何方式向該人推廣該產品，”。

(6) 第15A(3)(e)條——
廢除
在 “凡任何” 之後的所有字句
代以
“任何人在任何地方以任何方式向該人推廣該產品，及
(i) 並非吸煙產品；及
(ii) 包含屬贈品的傳統吸煙產品，或連同屬贈品的傳統吸煙產品；”。

(7) 第15A(3)(f)條——
廢除
在 “使任何” 之後的所有字句
代以
“使任何人在任何地方以任何方式向該人推廣該產品，”。
(i) 包含屬贈品的傳統吸煙產品，或連同屬贈品的傳統吸煙產品；”。

Repeal paragraph (c)
Substitute
“(c) give valuable consideration to any person in order to induce the person to buy a particular conventional smoking product or otherwise to promote the product to the person;”.

(5) Section 15A(3)(d)—
Repeal
“tobacco”
Substitute
“conventional smoking”.

(6) Section 15A(3)(e)—
Repeal
“tobacco”
Substitute
“conventional smoking”.

(7) Section 15A(3)(f)—
Repeal
everything after “sale a”
Substitute
“product—
(i) that is not a smoking product; and
(ii) that includes or is accompanied by a conventional smoking product as a gift;”.
(8) Section 15A(3)(fa)—
Repeal
“tobacco product and a non-tobacco”
Substitute
“conventional smoking product and a product that is not a smoking”.

(9) Section 15A(3)(g)—
Repeal
“tobacco product”
Substitute
“conventional smoking product”.

22. Section 15B heading amended (display of sign when offering tobacco products for sale, etc.)
Section 15B, heading—
Repeal
“tobacco”
Substitute
“conventional smoking”.

23. Part 4AB added
After Part 4A—
Add
Part 2  
Clause 23  

Prohibition of Alternative Smoking Products

15DA. Prohibition on import, manufacture or sale, etc.

(1) No person may—

(a) import an alternative smoking product;

(b) manufacture an alternative smoking product;

(c) sell, or offer for sale, an alternative smoking product;

(d) give an alternative smoking product to another person—

(i) for promotion or advertisement;

(ii) in exchange for a token; or

(iii) as a prize in any event or competition;

(e) possess an alternative smoking product for—

(i) the manufacture of any other alternative smoking product;

(ii) sale; or

(iii) giving it to another person for the purpose mentioned in paragraph (d)(i), (ii) or (iii);

(f) give valuable consideration to another person in order to promote to the person an alternative smoking product; or

(g) give another person an object that is intended to be shown in public, and that contains—

(i) the name or trade name of a person associated with the marketing of alternative smoking products; or
(ii) a trade mark or brand name of an alternative smoking product, or a pictorial device, or any part of the device, commonly associated with the trade mark or brand name.

(2) A reference to the sale of an alternative smoking product in subsection (1)—

(a) includes the sale of any product that includes, or is accompanied by, an alternative smoking product as a gift; and

(b) does not include the sale of the product with a view to exporting the product.

(3) For the purposes of subsection (1), an act is a promotion or advertisement in relation to a product if the act is a promotion or advertisement intended as an inducement to smoke, or encourage the use of, the product, whether or not a particular brand is mentioned.

(4) Any person who contravenes subsection (1) commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months.

Note—

Import and export are defined in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1).

15DB. Liability of officers of bodies corporate

(1) If a body corporate commits an offence under section 15DA(4), and it is proved that the offence—

(a) was committed with the consent or connivance of an officer of the body corporate; or

(b) is attributable to any neglect on the part of an officer of the body corporate,
(2) In subsection (1)—

*officer* (高級人員) means—

(a) a director, manager, secretary or other similar officer of the body corporate; or

(b) a person purporting to act in the capacity of a person referred to in paragraph (a).

### 15DC. Exemption for persons in transit at Hong Kong International Airport

Section 15DA(1)(a) does not apply to a person who—

(a) arrives at the Hong Kong International Airport from a place outside Hong Kong; and

(b) while in Hong Kong, does not pass through any immigration control.

### 15DD. Exemption for articles in transit or air transhipment cargos

(1) Section 15DA(1)(a) does not apply in relation to an alternative smoking product that is an article in transit or air transhipment cargo.

(2) However, section 15DA(1)(a) does apply in relation to an alternative smoking product if, at any time between its being brought into and taken out of Hong Kong—

(a) for an article in transit on an aircraft—the product is removed from the aircraft other than in the specified cargo transhipment area; or

(b) for an article in transit in a vessel—the product is removed from the vessel; or
(c) for an air transhipment cargo—the product is removed from the specified cargo transhipment area.

(3) If section 15DA(1)(a) applies in relation to a product because of subsection (2), for the purposes of the application—

(a) the product is deemed to be imported at the time of the removal mentioned in subsection (2); and

(b) the person who brought the product, or caused it to be brought, into Hong Kong as an article in transit or air transhipment cargo is deemed to be the person who imported the product.

(4) It is a defence for a person mentioned in subsection (3)(b) who is charged under section 15DA(4) in relation to importing a product to show that the person took all reasonable steps and exercised reasonable diligence to avoid the removal mentioned in subsection (2).

(5) Subsection (6) applies if a defence under subsection (4) involves an allegation that the offence was committed because of—

(a) another person’s act or default; or

(b) the defendant’s reliance on information given by another person.

(6) Without the leave of the court, the defendant may not rely on the defence unless, at least 10 days before the hearing of the proceedings, the defendant has served a written notice on the prosecutor giving particulars of—

(a) the person who allegedly committed the act or default, or allegedly gave the information; and
(b) the act, default or information concerned, of which the defendant is aware at the time the notice is served.

(7) The defendant may not rely on a defence under subsection (4) claiming that the offence was committed because of the defendant’s reliance on information given by another person unless the defendant shows that the reliance was reasonable in all the circumstances, having regard in particular to—

(a) the steps that the defendant took, and those which might reasonably have been taken, for verifying the information; and

(b) whether the defendant had any reason to disbelieve the information.

(8) In this section—

air transhipment cargo (航空轉運貨物) has the meaning given by section 2 of the Import and Export Ordinance (Cap. 60);

article in transit (過境物品) has the meaning given by section 2 of the Import and Export Ordinance (Cap. 60);

specified cargo transhipment area (指明貨物轉運區) means—

(a) any part of the Hong Kong International Airport that is designated under section 35 of the Aviation Security Ordinance (Cap. 494) as a restricted area; or

(b) an area approved by the Commissioner of Customs and Excise under section 2AA of the Import and Export Ordinance (Cap. 60).
15DE. Exception for Government Chemists

Despite section 15DA, a Government Chemist may import an alternative smoking product so far as it is necessary for the performance of the Government Chemist’s functions.

15DF. Relationship with Pharmacy and Poisons Ordinance

1. This Part does not limit the Pharmacy and Poisons Ordinance (Cap. 138).
2. If an alternative smoking product is registered as a pharmaceutical product under regulation 36 of the Pharmacy and Poisons Regulations (Cap. 138 sub. leg. A), other provisions of this Part do not apply in relation to the product.

15DG. Enforcement powers of inspectors

1. An inspector may seize, remove or detain any article if the inspector reasonably suspects that—
   (a) the article is an alternative smoking product; and
   (b) an offence under section 15DA(4) has been committed, is being committed or is about to be committed in respect of the article.
2. If an inspector reasonably suspects that a person has committed or is committing an offence under section 15DA(4), the inspector may detain the person to facilitate the enforcement of section 15DA.
3. A magistrate may issue a warrant empowering an inspector named in the warrant to at any time enter any place that is neither a public place nor a domestic premises if it appears to the magistrate from information on oath that there is reasonable cause for suspecting that an offence under section

15DE. 政府化驗師屬例外

儘管有第 15DA 條的規定，在為執政府化驗師的職能所需要之範圍內，政府化驗師可導入另類吸煙產品。

15DF. 與《藥劑業及毒藥條例》的關係

(1) 本部並不局限《藥劑業及毒藥條例》(第 138 章)。
(2) 如某另類吸煙產品根據《藥劑業及毒藥規例》(第 138 章，附屬法例 A) 第 36 條，註冊為藥劑製品，就該產品而言，本部其他條文不適用。

15DG. 督察的執法權

(1) 督察如合理地懷疑，任何物品有以下情況，可檢取、移走或扣留該物品——
   (a) 該物品是另類吸煙產品；及
   (b) 有人曾經、正在或即將就該物品，犯第 15DA(4) 條所訂罪行。
(2) 督察如合理地懷疑，某人曾經或正在犯第 15DA(4) 條所訂罪行，即可為利便執行第 15DA 條，扣留該人。
(3) 如裁判官因經宣誓作出的告發，覺得有合理理由懷疑，有人曾經、正在或即將在並非公眾地方或住宅的某地方，犯第 15DA(4) 條所訂罪行，該裁判官可
Part 2
Clause 23

15DA(4) has been committed, is being committed or is about to be committed in that place.

(4) In exercising a power under subsection (1) or (2), or under a warrant mentioned in subsection (3), an inspector must, if requested, produce proof of his or her authority as an inspector.

(5) This section does not limit section 15G(1)(c), (d), (e), (f), (g) or (h).

15DH. Enforcement powers of Customs and Excise officers

(1) For the enforcement of section 15DA in relation to an import offence, a Customs and Excise officer—

(a) may stop and search a person arriving in Hong Kong, and search anything in the person's possession;

(b) may stop, board and search any transport carrier arriving in Hong Kong;

(c) may, at any point of entry to Hong Kong, examine any article (including cargo, unaccompanied baggage or unaccompanied personal belongings) that is not contained in a postal packet; and

(d) may, in the presence of, and under the directions of, an officer of the Post Office, open and examine any postal packet.

(2) A person searched under subsection (1)(a)—

(a) may only be searched by a person of the same sex; and

(b) may not be searched in a public place if the person objects to being so searched.
(3) A Customs and Excise officer may seize, remove or detain any article if the officer reasonably suspects that—
(a) the article is an alternative smoking product; and
(b) an import offence has been committed or is being committed in respect of the article.

(4) Any article seized under subsection (3) may be retained in the custody of a Customs and Excise officer until it is transferred to an inspector for the enforcement of section 15DA.

(5) If a Customs and Excise officer reasonably suspects that a person has committed or is committing an import offence, the officer—
(a) to facilitate the enforcement of section 15DA in relation to the offence, may detain the person; and
(b) may arrest the person without warrant.

(6) A Customs and Excise officer may use any force reasonably necessary for exercising a power under this section.

(7) In this section—

Customs and Excise officer (海關人員) means a person holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap. 342);

import offence (進口罪行) means an offence under section 15DA(4) for the contravention of section 15DA(1)(a);

officer of the Post Office (郵政署人員) has the meaning given by section 2(1) of the Post Office Ordinance (Cap. 98);
Part 2
Clause 24

24. **Section 15H amended (disposal of property seized by inspectors)**

(1) **Section 15H**—

Renumber the section as section 15H(1).

(2) After section 15H(1)—

Add

“(2) For the purposes of subsection (1), an article transferred to an inspector as mentioned in section 15DH(4) is regarded as an article seized by the inspector.”.

25. **Section 19 repealed (transitional provisions relating to Smoking (Public Health) (Amendment) Ordinance 2006)**

Section 19—

Repeal the section.

26. **Schedule 2 amended (designated no smoking areas and exempt areas)**

(1) **Schedule 2, Part 2, item 10**—

Repeal everythning after “designated for” and before “if”

Substitute

“tasting or testing of smoking products in the manufacturing or business premises of a business engaged in the smoking products trade”.

郵包 (postal packet) 具有《郵政署條例》(第 98 章) 第 2(1) 條所給予的涵義；
郵政署人員 (officer of the Post Office) 具有《郵政署條例》(第 98 章) 第 2(1) 條所給予的涵義。”。
(2) 附表 2，第 2 部，第 10 項，(a) 段——
廢除
“煙草”
代以
“吸煙”。

(3) 附表 2，第 2 部，第 10 項——
廢除 (b) 段
代以
“(b) 進行品嚐或測試，是為了在該企業的正常業務過程中，研究開發吸煙產品或控制吸煙產品的品質;”。

(4) 附表 2，第 2 部，第 10 項，(c) 段——
廢除
“作進行品嚐煙草”
代以
“於進行上述品嚐或測試”。

(5) 附表 2，第 2 部，第 10 項，(e) 段——
廢除
在 “用以” 之後而在 “而被” 之前的所有字句
代以
“進行上述品嚐或測試時，除進行品嚐或測試的人外，任何自然人均無須進入該房間（無論該自然人是否本可基於合約或其他理由，”。

(6) 附表 2，第 2 部，在第 11 項之後——
加入
“12. 政府化驗所。”。

(2) Schedule 2, Part 2, item 10, paragraph (a)—
Repeal
“tobacco”
Substitute
“smoking”.

(3) Schedule 2, Part 2, item 10—
Repeal paragraph (b)
Substitute
“(b) the tasting or testing is carried out for conducting research and development or quality control of smoking products in the normal course of the business;”.

(4) Schedule 2, Part 2, item 10, paragraph (c)—
Repeal
“tobacco tasting”
Substitute
“tasting or testing”.

(5) Schedule 2, Part 2, item 10, paragraph (e)—
Repeal
“tobacco tasting, is required to enter the room while it is being occupied for the tobacco tasting”
Substitute
“tasting or testing, is required to enter the room while it is being occupied for the tasting or testing”.

(6) Schedule 2, Part 2, after item 11—
Add
“12. A Government laboratory.”.
27. Schedule 5 amended (exemption from section 3(2) of this Ordinance)

(1) Schedule 5, section 1(1)—
Repeal the definition of smoking act.

(2) Schedule 5, section 1(1)—
Add in alphabetical order
“conventional smoking act (傳統吸煙行為) means smoking or carrying a lighted cigarette, cigar or pipe;”.

(3) Schedule 5, section 2—
Repeal “a smoking act”
Substitute “a conventional smoking act”.

(4) Schedule 5, section 2(a) and (c), before “smoking act”—
Add “conventional”.

(5) Schedule 5, section 2(e), before “smoking act”—
Add “conventional”.

(6) Schedule 5, Chinese text, section 2(e)—
Repeal “該等動作”
Substitute
(7) Schedule 5, section 3—
Repeal
“a smoking act”
Substitute
“a conventional smoking act”.
(8) Schedule 5, section 3(a), before “smoking act”—
Add
“conventional”.
(9) Schedule 5, section 3(c)—
Repeal
“tobacco”
Substitute
“smoking product”.
(10) Schedule 5, section 3(d), before “smoking act”—
Add
“conventional”.
(11) Schedule 5, section 3(f), before “smoking act”—
Add
“conventional”.

“傳統吸煙行為”。

(7) 附表 5，第 3 條——
廢除
“作出吸煙動作”
代以
“作出傳統吸煙行為”。

(8) 附表 5，第 3(a) 條——
廢除
“吸煙動作”
代以
“傳統吸煙行為”。

(9) 附表 5，第 3(c) 條——
廢除
所有 “煙草”
代以
“吸煙產品”。

(10) 附表 5，第 3(d) 條——
廢除
“吸煙動作”
代以
“傳統吸煙行為”。

(11) 附表 5，第 3(f) 條——
廢除
“吸煙動作”
代以
“傳統吸煙行為”。

“傳統吸煙行為”。
(12) Schedule 5, Chinese text, section 3(f)—
Repeal
“該等動作”
Substitute
“傳統吸煙行為”.

(13) Schedule 5, section 4, heading, before “smoking”—
Add
“conventional”.

(14) Schedule 5, section 4, before “smoking act”—
Add
“conventional”.

(15) Schedule 5, section 4(a)—
Repeal
“tobacco”
Substitute
“conventional smoking”.

(16) Schedule 5, Chinese text, section 4(a)—
Repeal
“動作”
Substitute
“行為”.

(17) Schedule 5, section 4(b)—
Part 2
Clause 27

Repeal
“tobacco”
Substitute
“conventional smoking”.

(18) Schedule 5, Chinese text, section 4(b)—
Repeal
“動作”
Substitute
“行為”.

(19) Schedule 5, Chinese text, section 4(b)—
Repeal
“推廣”
Substitute
“提倡”.

(20) Schedule 5, section 4(c)—
Repeal
“tobacco”
Substitute
“conventional smoking”.

(21) Schedule 5, Chinese text, section 4(c)—
Repeal
“動作”
Substitute
“行為”.

(22) Schedule 5, section 4(d)—
Repeal
“煙草”
代以
“傳統吸煙”。

(23) 附表 5，中文文本，第 4(d) 條——
廢除
“動作”
代以
“行為”。

(24) 附表 5，中文文本，第 4(d) 條——
廢除
“品質”
代以
“特質”。

28. 廢除附表 6（關於《2006 年吸煙 (公眾衛生) (修訂) 條例》的過渡性條文）
附表 6——
廢除該附表。

29. 加入附表 7 及 8
條例——
加入

28. Schedule 6 repealed (transitional provisions relating to Smoking (Public Health) (Amendment) Ordinance 2006)
Schedule 6—
Repeal the Schedule.

29. Schedules 7 and 8 added
The Ordinance—
Add
Part 2
Clause 29

Schedule 7

Alternative Smoking Products

Part 1

Interpretation Provisions

1. In this Schedule—

conventional smoking (傳統吸煙) means the smoking of a cigarette, cigar or pipe;

dangerous drug (危險藥物) has the meaning given by section 2(1) of the Dangerous Drugs Ordinance (Cap. 134);

specified plant material (指明植物材料) means any material—

(a) that was any part of a plant, such as leaves, roots, flowers, fruit and seeds; and

(b) that is not tobacco or a dangerous drug;

waterpipe (水煙壺) means a receptacle or other device designed for use for smoking tobacco in a form other than as a cigarette or cigar where the receptacle or device—

(a) allows smoke to be generated other than by means of electricity; and

(b) consists of or includes a jar or similar receptacle for containing a liquid through which the smoke of tobacco would pass before being inhaled by the user of the receptacle or device.
2. For the purposes of this Schedule, it is irrelevant whether the aerosol generated is visible.

3. For the purposes of this Schedule, a thing is capable of use for imitating conventional smoking if it is capable of use for smoking in the same way as conventional smoking in respect of—
   (a) the bringing of the thing to the mouth; and
   (b) the inhaling and expelling of aerosol.

4. For the purposes of this Schedule, it is irrelevant whether the component or accessory is sold separately from the device.

Part 2

Products for Definition of *Alternative Smoking Product*

Category 1

1.1. A device (other than a waterpipe) that is capable of—
   (a) generating an aerosol from any substance that is not tobacco or a dangerous drug, other than by means of lighting the substance directly; and
   (b) use for imitating conventional smoking.

1.2. A thing that is designed for use as a component of, or accessory to, a device described in item 1.1 (such as a mouthpiece, heating element, battery or container of a substance mentioned in that item).
1.3. Any substance (other than tobacco or a dangerous drug)—
   (a) that is packaged as being suitable for use with a device described in item 1.1; and
   (b) from which an aerosol is capable of being generated in the way described in that item.

Category 2

2.1. A device (other than a waterpipe) that is capable of—
   (a) generating an aerosol from tobacco, other than by means of lighting the tobacco directly; and
   (b) use for smoking.

2.2. A thing that is designed for use as a component of, or accessory to, a device described in item 2.1 (such as a mouthpiece, heating element, battery or container of the tobacco mentioned in that item).

2.3. Tobacco—
   (a) that is packaged as being suitable for use with a device described in item 2.1; and
   (b) from which an aerosol is capable of being generated in the way described in that item.
Part 2

Clause 29

Category 3

3. Specified plant material rolled up in any material, in a form that is capable of immediate use for imitating conventional smoking.

Schedule 8

[§ 14(4A)(c)]

Words or Phrases for Section 14(4A)(c)

- cigarette
- smoking
- tobacco
- cigar
- pipe
- waterpipe
- hookah
- shisha
- vaping
- vaporizer
- e-cigarette
- e-cig
- electronic nicotine delivery system
- ENDS
- electronic non-nicotine delivery system
<table>
<thead>
<tr>
<th>Chinese</th>
<th>English</th>
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<tr>
<td>草本煙</td>
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<tr>
<td>草藥煙</td>
<td>e-liquid</td>
</tr>
<tr>
<td>藥草煙</td>
<td>e-juice</td>
</tr>
<tr>
<td>茶煙</td>
<td>heat-not-burn</td>
</tr>
<tr>
<td>水果煙</td>
<td>HNB</td>
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<tr>
<td>果味煙</td>
<td>heatstick</td>
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<tr>
<td>有味煙</td>
<td>HTP</td>
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<tr>
<td>cigarette</td>
<td>香煙</td>
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<td>smoking</td>
<td>捲煙</td>
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<td>吸煙</td>
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<td>煙絲</td>
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<td>hookah</td>
<td>煙斗</td>
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<tr>
<td>shisha</td>
<td>水煙</td>
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<td>vaping</td>
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<td>茶煙</td>
</tr>
</tbody>
</table>
HNB
heatstick
HTP”。“
Part 3

Related and Consequential Amendments

Division 1—Amendment to Dutiable Commodities Ordinance (Cap. 109)

30. Section 3 amended (application)

Section 3(1)—

Repeal paragraph (b)
Substitute

“(b) tobacco other than—

(i) any smokeless tobacco product as defined by section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132); or

(ii) any alternative smoking product as defined by section 2(1) of the Smoking (Public Health) Ordinance (Cap. 371);”.

Division 2—Amendments to Smoking (Public Health) Regulations (Cap. 371 sub. leg. A)

31. Regulation 3 amended (determination by the Government Chemist)

(1) Regulation 3—

Renumber paragraph (i) as paragraph (c).

(2) Regulation 3(c)—

Repeal

“tobacco”
Substitute “smoking product”.

(3) Regulation 3—
Renumber paragraph (ii) as paragraph (d).

32. Regulation 7 amended (exemption of certain advertisements from Part 4 of the Ordinance)
Regulation 7—
Repeal “tobacco”
Substitute “smoking product”.

Division 3—Amendments to Smoking (Public Health) (Prescribed Information) Order (Cap. 371 sub. leg. B)

33. Paragraph 5A amended (health warning on price board of tobacco products)
(1) Paragraph 5A, heading—
Repeal “tobacco”
Substitute “conventional smoking”.
(2) Paragraph 5A(1)—
Repeal “tobacco”
Substitute...
第 3 部——第 3 分部
第 34 條

“凡某價格牌列出在任何處所內被要約出售的傳統吸煙產品的名稱及價格，本條即適用於該價格牌。”。

34. 修訂第 8 條標題（煙草產品要約出售等時的標誌）
第 8 條，標題——
廢除
“煙草”
代以
“傳統吸煙”。

35. 修訂附表
(1) 附表，第 2 部，標題——
廢除
“煙草”
代以
“傳統吸煙”。
(2) 附表，第 2A 部，標題——
廢除
“煙草”
代以
“傳統吸煙”。
(3) 附表，第 3A 部，標題——
廢除
“煙草產品價格牌上的健康忠告的式樣”
代以

Part 3—Division 3
Clause 34

“conventional smoking”.

34. Paragraph 8 heading amended (sign when offering tobacco products for sale, etc.)
Paragraph 8, heading—
Repeal
“tobacco”
Substitute
“conventional smoking”.

35. Schedule amended
(1) Schedule, Part 2, heading—
Repeal
“Tobacco”
Substitute
“Conventional Smoking”.
(2) Schedule, Part 2A, heading—
Repeal
“Tobacco”
Substitute
“Conventional Smoking”.
(3) Schedule, Part 3A, heading—
Repeal
“FORM OF HEALTH WARNING ON PRICE BOARD OF TOBACCO PRODUCTS”
Substitute
Part 3—Division 3
Clause 35

“Form of Health Warning on Price Board of Conventional Smoking Products”.

(4) Schedule, Part 6, heading—

Repeal

“SIGN WHEN OFFERING TOBACCO PRODUCTS FOR SALE, ETC.”

Substitute

“Sign When Offering Conventional Smoking Products for Sale, etc.”.
Explanatory Memorandum

The object of this Bill is to amend the Smoking (Public Health) Ordinance (Cap. 371) (Ordinance) to prohibit the import, manufacture or sale, or use in certain places, of prescribed alternative smoking products, and to restrict the giving, possession, advertising or promotion of the products. The Bill also makes related and miscellaneous amendments to the Ordinance and related legislation.

2. The Bill contains 3 Parts.

Part 1—Preliminary

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

Part 2—Amendments to Ordinance

4. Clause 3 expands the long title of the Ordinance to cover the prohibitions and restrictions in relation to the prescribed alternative smoking products.

5. Clause 4 amends section 2 of the Ordinance (interpretation) to amend and add terms used in the Ordinance. Under the amended section 2, alternative smoking product means a product set out in the new Schedule 7 to the Ordinance.

6. Clauses 5 and 6 amend sections 3 and 4 of the Ordinance respectively to extend the prohibitions on the use of cigarettes, etc. in designated no smoking areas and public transport carriers to the use of alternative smoking products.
7. Clauses 7, 8, 9, 10 and 11 make consequential amendments to Part 3 of the Ordinance (sales of tobacco products).

8. Clauses 12, 13, 14, 15, 16, 17, 18 and 19 amend Part 4 of the Ordinance (tobacco advertising) to extend the restrictions on tobacco advertising to the advertising of alternative smoking products.

9. Clauses 20, 21 and 22 make consequential amendments to Part 4A of the Ordinance (prohibition on selling or giving of tobacco products).

10. Clause 23 adds a new Part 4AB to the Ordinance, which contains the following new provisions—

(a) the new section 15DA prohibits the import, manufacture or sale of, and restricts the giving, possession or promotion of, alternative smoking products;

(b) the new section 15DB provides for the liability of officers of bodies corporate for an offence under the new section 15DA;

(c) the new sections 15DC, 15DD and 15DE provide for exemptions from the prohibition on importing alternative smoking products in the case of persons in transit, articles in transit, air transhipment cargos, and the performance of relevant functions by Government Chemists;

(d) the new section 15DF exempts alternative smoking products that are registered pharmaceutical products from the other provisions of the new Part 4AB; and
(e) the new sections 15DG and 15DH provide for the enforcement powers of Tobacco Control Inspectors and officers of the Customs and Excise Service in relation to offences under section 15DA.

11. Clause 24 makes consequential amendments to section 15H (disposal of property seized by inspectors).

12. Clauses 25 and 28 repeal section 19 of and Schedule 6 to the Ordinance respectively because the transitional provisions contained in that Schedule no longer have any effect.

13. Clause 26 amends Schedule 2 to the Ordinance (designated no smoking areas and exempt areas) to make consequential amendments and to exclude Government laboratories from being designated no smoking areas.

14. Clause 27 makes consequential amendments to Schedule 5 to the Ordinance (exemption from section 3(2) of this Ordinance).

15. Clause 29 adds the new Schedule 7 to the Ordinance to set out certain alternative smoking products for the purposes of the Ordinance. Alternative smoking products include the products commonly known as “e-cigarettes”, “heat-not-burn products” and “herbal cigarettes”.

16. Clause 29 also adds the new Schedule 8 to the Ordinance. Under the amended section 14 of the Ordinance, an advertisement or object that includes a company name, etc. associated with smoking products is subject to the restrictions on the advertising of smoking products. However, if the advertisement or object does not mention certain words or phrases, and meets certain other conditions, it is exempted from the restrictions. The new Schedule 8 sets out those words or
phrases, which include words or phrases related to alternative smoking products.

Part 3—Related and Consequential Amendments

17. Clause 30 amends section 3 (application) of the Dutiable Commodities Ordinance (Cap. 109) to exclude alternative smoking products from being dutiable commodities.

18. Clauses 31 to 35 make consequential amendments to the following enactments—
   (a) the Smoking (Public Health) Regulations (Cap. 371 sub. leg. A); and
   (b) the Smoking (Public Health) (Prescribed Information) Order (Cap. 371 sub. leg. B).