

Smoking (Public Health) (Amendment) Bill 2019

Contents

Clause	Page
Part 1	
Preliminary	
1.	Short title and commencement C163
2.	Enactments amended C165
Part 2	
Amendments to Smoking (Public Health) Ordinance (Cap. 371)	
3.	Long title amended C167
4.	Section 2 amended (interpretation) C167
5.	Section 3 amended (prohibition on smoking in certain designated areas) C175
6.	Section 4 amended (prohibition on smoking in public transport carriers) C177
7.	Part 3 heading amended (sales of tobacco products) C179
8.	Section 8 amended (sales of cigarettes and tobacco products) C179
9.	Section 8B amended (prohibition on sale of tobacco products from a vending machine) C181
10.	Section 10 amended (offences under Part 3) C181
11.	Section 10A amended (seizure and forfeiture) C183

Clause	Page
12. Part 4 heading amended (tobacco advertising).....	C183
13. Section 11 amended (tobacco advertisements in printed publications)	C183
14. Section 12 amended (no display of tobacco advertisement).....	C185
15. Section 13 amended (prohibition on broadcast of tobacco advertisement by radio or visual images)	C187
16. Section 13A amended (prohibition on exhibition of tobacco advertisement by film).....	C189
17. Section 13B amended (prohibition on placing of tobacco advertisement on the Internet).....	C189
18. Section 14 amended (meaning of tobacco advertisement).....	C191
19. Section 14A amended (removal and disposal of tobacco advertisement).....	C201
20. Part 4A heading amended (prohibition on selling or giving of tobacco products).....	C203
21. Section 15A amended (prohibition on selling or giving of tobacco products, etc.).....	C203
22. Section 15B heading amended (display of sign when offering tobacco products for sale, etc.).....	C207
23. Part 4AB added	C207

Clause	Page
--------	------

Part 4AB

Prohibition of Alternative Smoking Products

15DA.	Prohibition on import, manufacture or sale, etc.	C209
15DB.	Liability of officers of bodies corporate	C211
15DC.	Exemption for persons in transit at Hong Kong International Airport.....	C213
15DD.	Exemption for articles in transit or air transshipment cargos.....	C213
15DE.	Exception for Government Chemists	C219
15DF.	Relationship with Pharmacy and Poisons Ordinance.....	C219
15DG.	Enforcement powers of inspectors	C219
15DH.	Enforcement powers of Customs and Excise officers.....	C221
24.	Section 15H amended (disposal of property seized by inspectors).....	C225
25.	Section 19 repealed (transitional provisions relating to Smoking (Public Health) (Amendment) Ordinance 2006)	C225
26.	Schedule 2 amended (designated no smoking areas and exempt areas)	C225
27.	Schedule 5 amended (exemption from section 3(2) of this Ordinance)	C229

Clause	Page
28.	Schedule 6 repealed (transitional provisions relating to Smoking (Public Health) (Amendment) Ordinance 2006) C237
29.	Schedules 7 and 8 added..... C237
	Schedule 7 Alternative Smoking Products..... C239
	Schedule 8 Words or Phrases for Section 14(4A)(c) C245

Part 3

Related and Consequential Amendments

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

30.	Section 3 amended (application)..... C251
-----	---

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

31.	Regulation 3 amended (determination by the Government Chemist)..... C251
32.	Regulation 7 amended (exemption of certain advertisements from Part 4 of the Ordinance)..... C253

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)..... C253
34.	Paragraph 8 heading amended (sign when offering tobacco products for sale, etc.) C255
35.	Schedule amended C255

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;”.

- (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”

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);

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—

- (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;

Note—

See also subsections (2), (3) and (4).

smoking product (吸煙產品) means—

- (a) a conventional smoking product; or
- (b) an 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.

- (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,”

Substitute

“cease the smoking act”.

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

Add

“該”.

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**

“(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;”.

(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. Section 8B amended (prohibition on sale of tobacco products from a vending machine)

(1) Section 8B, heading—

Repeal

“tobacco”

Substitute

“conventional smoking”.

(2) Section 8B—

Repeal

“tobacco”

Substitute

“conventional smoking”.

10. Section 10 amended (offences under Part 3)

(1) Section 10(3)—

Repeal

“tobacco” (wherever appearing)

Substitute

“conventional smoking”.

(2) Section 10(3)(a), English text—

Repeal

“trademark” (wherever appearing)

Substitute

“trade mark”.

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

“tobacco”

Substitute

“smoking product”.

- (3) 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.”.

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”.

- (4) Section 12(4)(a)—

Repeal subparagraph (i)

Substitute

“(i) of any manufacturer of conventional smoking products or any wholesale dealer dealing in conventional smoking products; and”.

- (5) Section 12(4)(a)(ii)—

Repeal

everything after “manufacturing of”

Substitute

“conventional smoking products or for the purpose of dealing by wholesale in conventional smoking products; and”.

- (6) Section 12(4)(b), Chinese text—

Repeal

“該等煙草”

Substitute

“該”.

- (7) Section 12(5)—

Repeal

“tobacco”.

15. Section 13 amended (prohibition on broadcast of tobacco advertisement by radio or visual images)

- (1) Section 13, heading—

Repeal

“tobacco”

Substitute

“smoking product”.

- (2) Section 13—

Repeal

“tobacco”

Substitute

“smoking product”.

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

“smoking”.

- (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)—

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”

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;”.

(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 4AB**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,

the officer also commits the offence.

(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 transshipment cargoes

- (1) Section 15DA(1)(a) does not apply in relation to an alternative smoking product that is an article in transit or air transshipment 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 transshipment area;
 - (b) for an article in transit in a vessel—the product is removed from the vessel; or

- (c) for an air transshipment cargo—the product is removed from the specified cargo transshipment 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 transshipment 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 transshipment 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 transshipment 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

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);

postal packet (郵包) has the meaning given by section 2(1) of the Post Office Ordinance (Cap. 98);

transport carrier (交通工具) includes an aircraft, vehicle, vessel or train, and any other means of travel or transport.”.

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

everything 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”.

- (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

“傳統吸煙行為”.

- (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”.

- (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)—

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

“tobacco”

Substitute

“conventional smoking”.

(23) Schedule 5, Chinese text, section 4(d)—

Repeal

“動作”

Substitute

“行為”.

(24) Schedule 5, Chinese text, section 4(d)—

Repeal

“品質”

Substitute

“特質”.

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

“Schedule 7

[s. 2(1)]

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.

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

[s. 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

ENNDS

e-liquid

e-juice

heat-not-burn

HNB

heatstick

HTP

香煙

捲煙

吸煙

煙草

煙絲

雪茄

煙斗

水煙

電子煙

電子尼古丁傳送系統

電子非尼古丁傳送系統

煙油

煙液

加熱煙

加熱非燃燒

草本煙

草藥煙

藥草煙

茶煙

水果煙
果味煙
有味煙”。

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

“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

“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 transshipment 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).