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Paper for the House Committee

**Report of the Bills Committee on Smoking
(Public Health) (Amendment) Bill 2019 (2020-2021 session)**

Purpose

This paper reports on the deliberations of the Bills Committee on Smoking (Public Health) (Amendment) Bill 2019 (2020-2021 session) ("the Bills Committee").

Background

2. The Smoking (Public Health) Ordinance (Cap. 371) ("the Ordinance") provides for, among others, the prohibition of smoking in certain areas, and the restrictions on tobacco advertising and the sale or giving of tobacco products. Pursuant to the Dutiable Commodities Ordinance (Cap. 109), tobacco is a dutiable commodity and is liable to duty payment in accordance with the relevant requirements.

3. There is an emergence of novel smoking products, including electronic cigarettes ("e-cigarettes")¹ and heated tobacco products ("HTPs")², in recent years. According to the World Health Organization ("WHO"), all forms of

¹ E-cigarettes, which are battery-powered, are the most common prototype of electronic nicotine delivery systems or electronic non-nicotine delivery systems that do not burn or use tobacco but heat e-liquid that may or may not contain nicotine to create an aerosol the user then inhales. An e-cigarette usually comprises a mouthpiece, a battery-powered heating element, a cartridge or refillable tank containing e-liquid and an atomizer that vaporizes e-liquid when heated.

² HTPs use a battery-powered heating-system to heat tobacco up to temperatures lower than conventional cigarettes (generally less than 600°C) to produce aerosol containing nicotine and other chemicals, which is inhaled by users through the mouth. The heating system, which is enclosed in a device, can be (a) an external heat source to aerosolize nicotine from specially designed cigarettes or tobacco sticks; or (b) a heated sealed chamber which aerosolizes nicotine directly from tobacco leaf.

tobacco use are harmful. As advised by the Administration, the Seventh session of the Conference of the Parties to the World Health Organization Framework Convention on Tobacco Control ("WHO FCTC")³ held in 2016 proposed to the Parties to apply regulatory measures either to restrict or prohibit, as appropriate, the manufacture, importation, distribution, presentation, sale and use of electronic nicotine delivery systems or electronic non-nicotine delivery systems, as appropriate to their national laws and public health objectives. In the eighth session held in October 2018, WHO proposed the same for HTPs.⁴

4. In the light of the rapid rise in the use of e-cigarettes in overseas countries, the potential health effects arising from their use, the concern about the gateway effect on initiation of actual tobacco use among youngsters, and the recommendation of WHO, the Administration proposed in May 2015 to legislate for the prohibition of import, manufacture, sale, distribution, and advertising of e-cigarettes. Subsequently, the Administration put forth a refined proposal in June 2018 to regulate e-cigarettes and other new smoking products in a way similar to conventional tobacco products⁵ with an aim to prevent youth and non-smokers from picking up smoking habit, and to remind smokers and ex-smokers that these new products are harmful. In October 2018, the Chief Executive announced in her 2018 Policy Address that, with the protection of public health as the prime consideration, the Administration would submit a legislative proposal in the 2018-2019 legislative session to ban the import, manufacture, sale, distribution and advertisement of e-cigarettes and other new smoking products.

The Bill

5. The Smoking (Public Health) (Amendment) Bill 2019 ("the Bill") was published in the Gazette on 15 February 2019 and received its First Reading at the Council meeting of 20 February 2019. The Bill seeks to amend the Ordinance,

³ WHO FCTC entered into force in 2005. Parties are obliged to take a number of steps to reduce demand and supply for tobacco products. China is one of the signatories to and has ratified WHO FCTC, the application of which has been extended to Hong Kong since 2006.

⁴ See paragraph 9 of the Legislative Council Brief (File Ref.: [FH CR 1/3231/19](#)) issued by the Food and Health Bureau and the Department of Health on 13 February 2019.

⁵ The proposed regulatory regime included: (a) prohibition of sale to minors; (b) prohibition of advertisement, promotion and sponsorship; (c) prohibition of sale unless in retail package bearing health warning; (d) prohibition of sale from vending machines; (e) a ban on use in no smoking areas; (f) imposition of relevant labelling requirements, including indication of the presence of tar and nicotine, and a ban on any claims or suggestions that were not backed by scientific evidence; (g) a ban on certain additives (such as vitamins) in e-cigarettes which might create an impression that such products had health benefits or presented reduced health risks, and any promotion that suggested that the products might contain any appealing flavour; and (h) taxation on any tobacco component.

two items of its subsidiary legislation, and the Dutiable Commodities Ordinance to (a) prohibit the import, manufacture or sale and restrict the giving, possession or promotion of prescribed alternative smoking products ("ASPs"); (b) extend the current prohibitions on the use of cigarettes, cigars or pipes in specified places to the use of ASPs; (c) extend the current restrictions on tobacco advertising to the advertising of ASPs; and (d) make related, textual and consequential amendments, including the exclusion of ASPs from being dutiable commodities. The key features of the Bill as explained by the Administration are set out in paragraphs 11 to 23 of the LegCo Brief (File Ref.: FH CR 1/3231/19) issued by the Food and Health Bureau and the Department of Health on 13 February 2019.

The Bills Committee

6. A bills committee was formed at the House Committee ("HC") meeting on 1 March 2019 to study the Bill ("the former Bills Committee"). Given that the former Bills Committee was still studying the general merits and principles of the Bill in May 2020 after holding eight meetings, some of its members held reservation on the feasibility of completing scrutiny of the Bill under a tight timeframe before prorogation of the Sixth Legislative Council ("LegCo") originally specified on 18 July 2020. The former Bills Committee decided by voting at its meeting on 2 June 2020 to discontinue its scrutiny work on the Bill and reported to HC its deliberations and decision. HC agreed at its meeting on 3 July 2020 to dissolve the former Bills Committee pursuant to rule 21(r) of the House Rules.

7. As the Sixth LegCo is to continue to discharge duties,⁶ Members agreed at the HC meeting on 16 October 2020 that a new Bills Committee should be formed to study the Bill. Hon WONG Ting-kwong and Hon Frankie YICK have been elected as Chairman and Deputy Chairman of the Bills Committee respectively. The membership list of the Bills Committee is in **Appendix I**.

⁶ The Sixth LegCo commenced on 1 October 2016 and the general election for the Seventh LegCo ("the 2020 LegCo General Election") was originally scheduled to be held on 6 September 2020. On 31 July 2020, the Government announced that the Chief Executive in Council had decided to postpone the 2020 LegCo General Election for one year to 5 September 2021 having regard to the severe coronavirus disease 2019 epidemic situation. On 11 August 2020, the Standing Committee of the National People's Congress decided that after 30 September 2020, the Sixth LegCo would continue to discharge duties for not less than one year until the Seventh LegCo begins. The Government announced in the Gazette on 14 August 2020 that in exercise of the powers conferred by section 46 of the Interpretation and General Clauses Ordinance (Cap. 1), the Chief Executive has revoked the decision to prorogue the sixth term of LegCo made under section 6(3) and (4) of the Legislative Council Ordinance (Cap. 542) with effect from 14 August 2020. The Government Notice which specified 18 July 2020 as the date from which the sixth term of LegCo shall stand prorogued is also revoked.

8. The Bills Committee has decided to start the scrutiny work afresh and has held seven meetings to study the Bill. It has also received 67 written submissions. A list of organizations and individuals which/who have given written submissions to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

Prohibition of ASPs

Proposals in the Bill

9. The Bill proposes to add a new definition of ASP and a new Part 4AB (i.e. proposed new sections 15DA to 15DH) to the Ordinance to provide for the new regime on the prohibition of ASPs. Under the proposed section 2 of, and Part 2 of the proposed new Schedule 7 to, the Ordinance, the following products would fall within the definition of ASP: (a) Category 1 ASP refers to a device (other than a waterpipe) that is capable of generating an aerosol from a substance not being tobacco or a dangerous drug,⁷ other than by means of lighting the substance directly and use for imitating the smoking of a cigarette, cigar or pipe ("conventional smoking"), its component or accessory, or that substance; (b) Category 2 ASP refers to a device (other than a waterpipe) that is capable of generating an aerosol from tobacco other than by means of lighting the tobacco directly and use for smoking, its component or accessory, or that tobacco; and (c) Category 3 ASP refers to specified plant material, not being tobacco or a dangerous drug, rolled up in any material in a form that is capable of immediate use for imitating conventional smoking. According to the Administration, ASPs would include products commonly known as e-cigarettes, HTPs and herbal cigarettes. The proposed new section 15DA of the Ordinance provides for the prohibition of the import,⁸ manufacture, sale or offer for sale,⁹ and restriction, under certain circumstances, of the giving, possession or promotion ("full ban") of ASPs.

⁷ According to the proposed new section 1 of the proposed new Schedule 7 to the Ordinance, dangerous drug would have the meaning given by section 2(1) of the Dangerous Drugs Ordinance (Cap. 134).

⁸ "Import" is defined in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1).

⁹ A sale of ASP with a view to exporting ASP would not be regarded as a sale of ASP under the proposed new section 15DA(2)(b) of the Ordinance.

Proposed imposition of a full ban on e-cigarettes

10. The Administration has informed the Bills Committee that e-cigarette use in Hong Kong is on an upward trend. According to the Thematic Household Survey Report Nos. 59, 64 and 70 published by the Census and Statistics Department ("C&SD"), it was estimated that there were less than 1 000, some 5 700 and some 7 200 daily smokers aged 15 or above who consumed e-cigarettes in 2015, 2017 and 2019 respectively. Findings of the school-based survey on smoking conducted by The University of Hong Kong among students in 2018-2019 reveals that 0.8% of secondary one to secondary six students in Hong Kong were e-cigarette users at the time. A study conducted by the Hong Kong Council on Smoking and Health ("COSH") shows that ever use of e-cigarettes among primary two to primary four students increased by 55% from 2016-2017 to 2017-2018. There is also ample evidence on the association of e-cigarettes with initiation of cigarette use. Noting that there is conclusive body of evidence that e-cigarettes, which have various flavours and are highly appealing to adolescents, contain and emit numerous chemical mixture and toxic substances that are hazardous to health, members have a unanimous view that a full ban should be imposed on e-cigarettes.

11. Holding the view that the growth of e-cigarette use among adolescents cannot be dismissed without the imposition of a full ban on e-cigarettes which he first proposed in 2014, Mr KWOK Wai-keung has expressed regret about the slow progress made in this regard. He has enquired about the enforcement actions being taken by the Administration against the illegal sale of nicotine-containing e-cigarettes in the local market before the passage of the Bill. Mrs Regina IP has expressed particular concern about the increasing sale of e-cigarettes with claims of slimming or beauty effect, which increase their appeal to youngsters who otherwise would not smoke.

12. The Administration has advised that nicotine is a "Part 1 poison" under the Pharmacy and Poisons Ordinance (Cap. 138). At present, nicotine-containing e-cigarettes are classified as pharmaceutical products requiring registration with the Pharmacy and Poisons Board of Hong Kong before they can be sold or distributed in Hong Kong and only licensed wholesale dealers or authorized sellers are allowed to possess or sell these products. Between 2017 and 2020, there were five convicted cases involving illegal possession or sale of unregistered pharmaceutical products or "Part 1 poisons" related to nicotine-containing e-cigarettes. Separately, it is an offence under the Trade Descriptions Ordinance (Cap. 362) for any person, in the course of the person's trade or business, to apply a false trade description to any goods; or supply or offer to supply any goods to which a false trade description is applied.

Proposed imposition of a full ban on HTPs

13. According to the Administration, the currently marketed HTPs, which were introduced relatively recently in 2015, have posed new health risk and challenges. Findings of the Thematic Household Survey conducted by C&SD in 2019 revealed that there were some 13 100 persons (i.e. 0.2% of persons aged 15 and above) who consumed HTPs daily. The proposed full ban of HTPs has received strong support from healthcare professionals, educators and parents. Some members including Mr KWOK Wai-keung, Ms Elizabeth QUAT, Dr Pierre CHAN and Mr LUK Chung-hung support the imposition of a full ban on other new classes of smoking products including HTPs to avoid undermining the achievements in tobacco control over the past some 40 years.¹⁰ Pointing out that Hong Kong currently enjoys a record-low smoking prevalence, they have expressed concern that HTPs, which are attractive to the younger generation and females in view of their design (including the features of producing no ash and unpleasant smell) and positioning, are aggressively marketed to non-smokers and especially the youth. Their entry into the local market, if allowed, would attract a new generation of adolescents and women to become smokers. This may bring about the gateway effects that youngsters and non-smokers getting used to these products would initiate nicotine use and turn to consume conventional cigarettes. In addition, smoking not only causes health problems on users and exposes bystanders to side-stream emissions but also imposes heavy burden on public healthcare expenditure. Against the above considerations, these members consider that there is a pressing need to prevent the harm of any new classes of smoking products including HTPs from taking root in the local market which may in turn result in a rebound in smoking prevalence.

14. Ms Elizabeth QUAT has further suggested that a full ban should be imposed on all tobacco products for the sake of public health. She has urged the Administration to set out the measures and timetable for achieving a smoke-free Hong Kong in the long run. The Administration has advised that it has laid down in the "Towards 2025: Strategy and Action Plan to Prevent and Control Non-communicable Diseases in Hong Kong" the target of reducing smoking prevalence from the current level of about 10% to 7.8% by 2025. The Bill would be an essential step for achieving the above target and its ultimate goal of eliminating tobacco use in Hong Kong.

15. However, many other members including Mr Tommy CHEUNG, Mr Paul TSE, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Mr Martin LIAO, Mr Jimmy NG, Mr SHIU Ka-fai, Mr LAU Kwok-fan and Dr CHENG Chung-tai are of the view that HTPs should not be fully banned but should be subject to a

¹⁰ According to the Administration, smoking prevalence among persons aged 15 and above has dropped from over 20% in the 1980s to 10.2% at present.

regulatory regime similar to that of conventional cigarettes. They have pointed out that while HTPs and conventional cigarettes are both tobacco products which are inherently unlikely to be harmless, existing evidence shows that the former are less harmful in terms of reducing users' exposure to harmful and potentially harmful chemicals.¹¹ Since conventional cigarettes and other tobacco products are not prohibited and restricted on equal footing under the Bill nor has the Administration announced any timetable to do so in the longer-term, established adult smokers should not be deprived of the right to opt for HTPs. These members have further pointed out that the sale of HTPs is allowed in more than 60 places, including the United States ("US") as well as many Member States of the European Union, the latter being Parties to WHO FCTC. Some of these members have highlighted the respective decisions made by the United States Food and Drug Administration ("FDA") in April 2019 that authorizing the marketing of the IQOS Tobacco Heating System ("IQOS System") in US is appropriate for the protection of public health under the premarket tobacco product application ("PMTA") pathway,¹² and in July 2020 that IQOS System be the first set of tobacco products to receive exposure modification orders under the modified risk tobacco product ("MRTP") pathway¹³ that they are authorized to be marketed with the following information: (a) IQOS System heats tobacco but does not burn it; (b) this significantly reduces the production of harmful and potentially harmful chemicals; and (c) scientific studies have shown that switching completely from conventional cigarettes to IQOS System significantly reduces the body's exposure

¹¹ Some of the studies cited by members are:

- (a) according to a study conducted by the General Administration of Quality Supervision, Inspection and Quarantine of People's Republic of China in early 2018 and an article published by the Vice President of Shanghai New Tobacco Product Research Institute, the levels of emission of some toxic substances by HTPs were significantly lower (over 90%) than those by conventional tobacco products;
- (b) a Japanese study published in the International Journal of Environment Research and Public Health on 4 February 2020 which revealed that the cancer-causing risk of and the concentration levels of certain volatile organic compounds emitted by HTPs are lower when compared with those of conventional cigarettes; and
- (c) the studies and the corresponding decisions of the United States Food and Drug Administration ("FDA") as detailed in the same paragraph.

¹² Any new tobacco product (i.e. any tobacco product that was not commercially marketed in US as of 15 February 2007; or any modification to a tobacco product where the modified product was commercially marketed in US after 15 February 2007) seeking an FDA marketing order under the PMTA pathway must provide scientific data that demonstrate a product is appropriate for the protection of public health.

¹³ The MRTP pathway allows companies to submit applications for FDA to evaluate whether a tobacco product may be sold or distributed for use to reduce harm or the risk of tobacco-related disease. There are two types of MRTP orders FDA may issue, namely a risk modification order and an exposure modification order. The latter permits the marketing of a product as containing a reduced level of or presenting a reduced exposure to a substance or as being free of a substance when the issuance of the order is expected to benefit the health of the population.

to harmful or potentially harmful chemicals.¹⁴ The above apart, the State Tobacco Monopoly Administration ("STMA") has conducted a public consultation exercise starting from 22 March 2021 on its proposal to regulate novel tobacco products under the Tobacco Patent Sales Law of the People's Republic of China ("STMA's proposal"). These members consider that the Administration should consider regulating HTPs instead of imposing a full ban on these products in view of STMA's proposal such that adult smokers would be free to choose their preferred tobacco products.

16. The Administration has explained to the Bills Committee that unlike conventional cigarettes that are relatively homogenous in design, HTPs are a class of highly heterogeneous products. While not having been on the market for long, HTPs differ in terms of the ingredients used in the tobacco part, the way that the tobacco is heated, the puffing regime, and the temperature reached in the devices, among other things. At present, research data on the chemical profile and toxicity of the emissions are lacking for most HTPs. While some studies have shown that the levels of emission of some toxic chemicals by HTPs are lower than those of conventional cigarettes, it should be noted that a lower emission level of toxic chemicals does not necessarily translate to reduced harm as there are no safe tolerance limits for many harmful chemicals. The above apart, information submitted by the manufacturer of IQOS System to FDA reveals that 80 chemicals, including four possible carcinogens, 19 chemicals that are identified with genotoxic and/or carcinogenic potential and 20 chemicals exhibiting potential health effects, are either present in higher concentration in aerosols of the product or not present in conventional cigarette smoke.¹⁵ There is no available evidence to conclude whether HTP use is associated with any long-term clinical outcome, positive or negative, from exposure to the mainstream and second-hand emission. The Administration has stressed that in the MRTP application process, FDA determined that evidence did not support issuing a risk modification order for IQOS System at the time as the manufacturer had not demonstrated that, as actually used by consumers, the products sold or distributed with the proposed modified risk information would significantly reduce harm and risk of tobacco-related disease to individual tobacco users. FDA has stated that its authorization does not mean that it deems the product to be safe for use by consumers, or the product is endorsed or approved by FDA.

¹⁴ The relevant press announcements of FDA referred to by these members can be accessed at <https://www.fda.gov/news-events/press-announcements/fda-permits-sale-iqos-tobacco-heating-system-through-premarket-tobacco-product-application-pathway> and <https://www.fda.gov/news-events/press-announcements/fda-authorizes-marketing-iqos-tobacco-heating-system-reduced-exposure-information>.

¹⁵ See [LC Paper No. CB\(2\)1198/20-21\(02\)](#) for the full list of the 80 chemicals provided by the Administration.

17. The Administration has pointed out that HTPs, being digital gadgets with the capability to collect data on users' preferences and use patterns, directly communicate with individual users to influence their smoking behaviours and potentially exert control of device performance,¹⁶ entail risks beyond those brought about by tobacco as known in the conventional products. In its view, the introduction of HTPs, with their unlimited technological potentials to promote use and increase addictiveness, in Hong Kong where no pre-marketing approval mechanisms are in place can bring disastrous public health consequences. The technological developments in HTPs will also easily outpace the regulatory capacities of a country or region. In view of the foregoing, there is a need to prevent the harm of HTPs before the formal introduction of these products in the local market to avoid what has happened regarding the regulation of conventional tobacco products. This would be similar to what has been achieved with the ban of smokeless tobacco products since 1987 under the Smokeless Tobacco Products (Prohibition) Regulations (Cap. 132BW). The Administration has also pointed out that the proposal to ban ASPs in Hong Kong is in the same policy direction as that of STMA's proposal, as both proposals are seeking to tighten tobacco control in accordance with the obligations under WHO FCTC. That said, given the different consideration factors (e.g. smoking prevalence) for tobacco control in the Mainland and in Hong Kong, the regulatory approaches of the Mainland may not be locally applicable. For Hong Kong, the tobacco control policy is to discourage the use of tobacco products and contain the proliferation of tobacco use. The Bill aims at preventing the emergence of a new generation of smokers.

18. Mr SHIU Ka-fai has pointed out that for the four possible carcinogens referred to by the Administration in paragraph 16 above, it is stated in the Premarket Tobacco Product Application Technical Project Lead Review released by FDA¹⁷ that the levels of exposure to them appear low and when considered with other data do not preclude a conclusion that the products concerned are appropriate for protection of public health. To his understanding, these possible carcinogens are also found in many alcohol products or additives in food and drinks. Mr YIU Si-wing has suggested the Administration to make reference to FDA's PMTA pathway to introduce a mechanism to conduct testing of each HTP applying for authorization for sale in Hong Kong. The tests could either be carried out by the Administration or by an accredited institution. Authorization for sale of HTPs should only be granted if the standards set by the Administration could be satisfied. Taking into consideration that there are not many types of HTPs and the local market is much smaller than that of US, it is expected that the level of

¹⁶ See paragraph 10 of LC Paper No. [LC Paper No. CB\(2\)917/20-21\(02\)](#) for details of the functions carried by the electronic devices of HTPs cited by the Administration.

¹⁷ The Premarket Tobacco Product Application Technical Project Lead Review referred to by Mr SHIU Ka-fai can be accessed at <https://www.fda.gov/media/124247/download>.

funding required for the implementation of the mechanism would not be comparable to that of required by FDA.

19. The Administration does not support the suggestion put forth by Mr YIU Si-wing. According to the Administration, FDA collects user fees, which amounted to US\$700 million per annum, from domestic manufacturers and importers of certain classes of tobacco products and uses the funds to support activities in relation to tobacco product regulation such as PMTAs. It is impossible for Hong Kong to follow suit. The above apart, as protecting public health is the Government's prime consideration, it is inappropriate to establish a mechanism to facilitate any new smoking products to take root in the local market which may result in an increase in smoking prevalence. The putting in place any such mechanism would result in the need for the Administration to deploy an enormous amount of manpower and other resources to constantly review the relevant regulations in an attempt to keep up with the development of HTPs. There are no known benefits to the society from these products that could justify such use of public resources.

20. Those members who are against the imposition of a full ban on HTPs in general do not subscribe to the Administration's explanations. They have criticized that the Administration should not play down the fact that HTPs, which heat tobacco but do not burn it, reduce the production of harmful and potentially harmful chemicals, albeit that the issue of risk reduction is presently unknown. Taking into consideration that no empirical studies have been suggesting that HTPs are more harmful than conventional cigarettes, it is not justifiable that established adult smokers should not be given a choice to opt for them. An observation of Mr Jimmy NG and Mr SHIU Ka-fai is that the introduction of HTPs into Japan has displaced certain, and has accelerated decline in, sale of conventional cigarettes.¹⁸ While the high prices of HTPs have already made them unaffordable to most adolescents, Mr YIU Si-wing has suggested the Administration to increase the excise duty on HTPs to further disincentivize the purchase of these products. Some members including Mr Tommy CHEUNG and Mr YIU Si-wing have pointed out that Hong Kong's smoking prevalence is already among the lowest in the world. A more appropriate way to prevent the emergence of a new generation of smokers is to step up public education on the harm of smoking to enable the public to make an informed choice. Imposing age restriction, say, 20 years or above, for the use of tobacco products (including ASPs and conventional cigarettes) would be another effective means for achieving the above purpose.

¹⁸ Members have cited an article entitled "What is accounting for the rapid decline in cigarette sales in Japan?" which was published in the International Journal of Environmental Research and Public Health in 2020.

21. The Administration has advised that WHO, in response to the exposure modification order granted by FDA to IQOS System, has issued a statement informing the public that given that health may be affected by exposure to additional toxins when using HTPs, claims that HTPs reduce exposure to harmful chemical relative to conventional cigarettes may be misleading.¹⁹ WHO has also pointed out that for places that have already achieved a low smoking prevalence and that prevalence continues to decrease steadily, use of novel tobacco products will not bring public health benefits even if the full theoretical risk reduction potential of these products are to be realized. In fact, the population data available to date show that the majority of HTP users are dual users of HTPs and conventional cigarettes. For instance, studies showed that 63% to 72% of HTP users in Japan and 96% of HTP users in South Korea continued to use cigarettes.²⁰ This smoking pattern renders the dual users being exposed to the known and unknown toxicants from both products. The Administration has assured members that public education would be strengthened to educate the public about the harm of tobacco use. Separately, COSH has carried out various publicity programmes (e.g. production of television and radio Announcements in the Public Interest) and education programmes in schools to raise the awareness of the public and students of the hazards of smoking and new smoking products.

22. Mr SHIU Ka-fai has submitted to the Bills Committee for consideration a set of amendments to the Bill to the effect that HTPs will be excluded from the definition of ASP in the proposed new Schedule 7 to the Ordinance and be subject to regulatory control on par with that of conventional tobacco products instead. The Administration does not agree to the proposed amendments. It has advised that to date, there is no evidence to support the claim made by the tobacco industry that HTPs are less harmful than conventional cigarettes. HTPs are highly addictive products and are aggressively marketed to smokers as well as non-smokers, especially young people. WHO in the latest WHO Report on the Global Tobacco Epidemic 2021 has pointed out that the tobacco industry is employing the same marketing tactics it used with conventional products to promote its new tools, such as nicotine-containing e-cigarettes and HTPs, to hook another generation on nicotine. The low smoking prevalence in Hong Kong has suggested that the territory has come closer than most places to the emergence of a tobacco-free generation. The set of amendments to be proposed by Mr SHIU Ka-fai, if carried forward, will seriously jeopardize the Administration's tobacco control efforts. It maintains that a full ban on e-cigarettes, HTPs and herbal cigarettes would be the most effective means of control to prevent these harmful

¹⁹ The statement issued by WHO referred to by the Administration can be accessed at: <https://www.who.int/news/item/27-07-2020-who-statement-on-heated-tobacco-products-and-the-us-fda-decision-regarding-iqos>.

²⁰ See paragraph 16 of [LC Paper No. CB\(2\)917/20-21\(02\)](#) and paragraph 5 of [LC Paper No. CB\(2\)477/19-20\(02\)](#) for the studies referred to by the Administration.

smoking products from taking root and creating a new generation of smokers especially among youth in Hong Kong.

Prohibition of the manufacturing and importing of ASPs

23. The proposed full ban of ASPs would involve a manufacturing ban and an import ban on ASPs. The proposed new sections 15DA(1)(b) and 15DA(1)(e)(i) of the Ordinance seek to prohibit the manufacturing of ASP and the possession of ASP for the manufacture of any other ASP. As regards the import ban, no person may import ASP under the proposed new section 15DA(1)(a) of the Ordinance, including bringing in by incoming travellers and through parcels and cargoes. The proposed new sections 15DC and 15DD of the Ordinance provide for exemption from the prohibition on importing ASPs in the case of persons in transit at the Hong Kong International Airport, and articles in transit²¹ or air transshipment cargoes²². However, the exemption would not apply in relation to ASP if, at any time between its being brought into and taken out of Hong Kong, the product is removed from, (a) in case of an article in transit on an aircraft, the aircraft other than in the specified cargo transshipment area²³; (b) in case of an article in transit in a vessel, the vessel; or (c) in case of an air transshipment cargo, the specified cargo transshipment area. The Administration has informed the Bills Committee that the reason why export of ASPs would not be prohibited under the Bill is to allow sellers to export ASPs at any time to clear out their existing stock after the passage of the Bill.

24. Mr YIU Si-wing has expressed concern that some travellers who are users of HTPs may not come to Hong Kong as they could not get access to HTPs if the import ban would be imposed. Pointing out that manufacturing of conventional cigarettes is allowed in Hong Kong, Mr SHIU Ka-fai has enquired why manufacturing of ASPs solely for export but not for sale in the local market would have to be prohibited. Mr Frankie YICK and Mr SHIU Ka-fai have also expressed concern that no exemption would be provided under the Bill for ASPs that are brought into Hong Kong and removed from the aircraft, vessel or air transshipment cargo solely for the purpose of re-exporting them after repackaging within Hong Kong, for other businesses' in-house use (such as packaging design) as well as for research and development work. In their view, such prohibition would have an

²¹ According to the proposed new section 15DD(8) of the Ordinance, article in transit would have the meaning given by section 2 of the Import and Export Ordinance (Cap. 60).

²² According to the proposed new section 15DD(8) of the Ordinance, air transshipment cargo would have the meaning given by section 2 of the Import and Export Ordinance.

²³ Under the proposed new section 15DD(8) of the Ordinance, specified cargo transshipment area would mean (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.

adverse impact on the business of the logistics and the innovation and technology sectors.

25. The Administration has advised that should the manufacturing and import of ASPs for the above purposes be exempted, an elaborate enforcement regime would be required to monitor the whole supply chain, including registration and vigorous tracking of such products to ensure that they do not enter into the local market illegally. It takes the view that such exemptions would require a complex enforcement regime with a whole new set-up involving disproportionate resources and place unnecessary pressure on enforcement. As ASPs are not daily necessities but are merely consumer goods that have prejudicial effect on the health of users and bystanders, the Administration does not consider the use of these extra resources well-justified.

26. These members do not subscribe to the Administration's view. They have pointed out that a licensing system for the manufacturing, import and export of dutiable commodities, including tobacco products, is already in place. Reference could be made to the arrangement currently adopted for pharmaceutical products whereby an electronic system has been set up for licensed wholesalers of pharmaceutical products to enlist those unregistered pharmaceutical products or substances that would be imported into Hong Kong for re-export on the one hand, and on the other hand for the Administration to monitor the movement of these products into and out of Hong Kong to ensure that they would not enter into the black market. These members have indicated that they may propose certain amendments to the relevant provisions in the Bill.

27. As a related issue, given that the Bill would not prohibit the use of ASPs otherwise than in a no smoking area or a public transport carrier, nor would it prohibit the possession of ASPs not for the purpose of sale, Mr WONG Ting-kwong has expressed grave concern that solely cutting the local market supply of ASPs but not prohibiting the use of these products would create a loophole and exacerbate the illegal trade of these products which is highly profitable. Mr SHIU Ka-fai has enquired about the Administration's assessment on the activities in relation to illicit trade of HTPs if the Bill is passed. The Administration has advised that a majority of smokers consumed duty-paid tobacco products, as reflected by the fact that the revenue collected from tobacco duty had increased by around 20% in 2020. Efforts have been and would continuously be made by the Customs and Excise Department to combat illicit tobacco trade rigorously. As a reference, the total quantity of duty-not-paid cigarettes seized by the Department was 205 million sticks in 2020, which included 6.26 million sticks (i.e. around 3%) of HTPs.

Penalty level

28. According to the proposed new section 15DA(4) of the Ordinance, any person who contravenes the proposed new section 15DA(1) of the Ordinance in relation to the full ban of ASPs would commit an offence and would be liable to a fine at level 5 and to imprisonment for six months. The Legal Adviser to the Bills Committee has enquired on the reason for setting the penalties at the above level, noting that no offence currently under the Ordinance is punishable with an imprisonment. The Administration has explained that the proposed new section 15DA(1) of the Ordinance would impose a more stringent control over ASPs than the current regulation of conventional smoking products ("CSPs") (i.e. any cigarette, cigarette tobacco, cigar or pipe tobacco) under the Ordinance. Contravention of the proposed full ban of ASPs should constitute a more serious offence. With reference to the Smokeless Tobacco Products (Prohibition) Regulations which similarly prohibits the import, manufacture, sale, possession for sale, offer or exposure for sale etc. of smokeless tobacco product, it is proposed that the penalties for the offence under the proposed new section 15DA(1) should be at a fine at level 5 and an imprisonment for six months.

Liability of officers of bodies corporate

29. The proposed new section 15DB of the Ordinance provides that if a body corporate commits an offence under the proposed new section 15DA(4) of the Ordinance (i.e. a contravention of the proposed new section 15DA(1) of the Ordinance in relation to the full ban of ASPs), an officer of the body corporate also commits the offence if the offence was committed with the officer's consent or connivance or is attributable to the officer's neglect. The Legal Adviser to the Bills Committee has enquired on the reason for not making similar provision where the offence is committed by a partner in a partnership, as in other Ordinances such as section 175 of the Competition Ordinance (Cap. 619).

30. The Administration has advised that HTPs are currently mainly developed by large tobacco companies. That said, it is possible that an ASP business is run by an unincorporated body, such as a partnership. To ensure that the same level of control would be imposed on various ASP businesses, the Administration will move an amendment to the proposed new section 15DB of the Ordinance to the effect that if a partner in a partnership or a member of any other unincorporated body commits an offence under the proposed new section 15DA(4) of the Ordinance, and the offence was committed with the consent or connivance of an officer of the partnership or unincorporated body or is attributable to any neglect on the part of such an officer, the officer also commits the offence.

Enforcement power of inspectors and Customs and Excise officers

31. The proposed new section 15DG(2) of the Ordinance provides that if an inspector appointed under section 15F of the Ordinance ("Inspector") reasonably suspects that a person has committed or is committing an offence under the proposed new section 15DA(4) of the Ordinance, the Inspector may detain the person to facilitate the enforcement of the proposed new section 15DA of the Ordinance. Separately, the proposed new section 15DH(5) of the Ordinance empowers a Customs and Excise officer ("C&E Officer") (i.e. a person holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap. 342)) to detain a person who is reasonably suspected to have committed or be committing an import offence (i.e. an offence under the proposed new section 15DA(4) of the Ordinance for the contravention of the proposed new section 15DA(1)(a) of the Ordinance) to facilitate the enforcement of the proposed new section 15DA of the Ordinance in relation to the offence. The Legal Adviser to the Bills Committee has pointed out that other Ordinances, such as section 15B(2)(f) of the Waterworks Ordinance (Cap. 102), expressly provide that the power to detain a person is only for a reasonable time for a stated purpose.

32. The Administration has advised that an Inspector would detain such person for a reasonable period as long as it is necessary to facilitate the enforcement of the proposed new section 15DA of the Ordinance. It should be noted that Article 5 of the Hong Kong Bill of Rights ("BOR") and Article 28 of the Basic Law protect everyone from arbitrary or unlawful arrest or detention. Detention which is not reasonable or necessary in all circumstances would be in breach of Article 5 of BOR which implements Article 9 of the International Covenant on Civil and Political Rights. In other words, the "reasonable time" requirement would be implied if the proposed new section 15DG(2) of the Ordinance is read together with Article 5 of BOR. In case a person is found in possession of suspected ASP at any entry point, a C&E Officer may detain the person until Inspectors arrive at the scene to take over the subject person and the ASP concerned for follow-up investigation and prosecution, as appropriate. For the sake of clarity and user-friendliness, the Administration will move amendments to the proposed new sections 15DG(2) and 15DH(5) of the Ordinance to state expressly that the detention power concerned is only for a reasonable period.

33. According to the proposed new section 15DH(3) of the Ordinance, a C&E Officer may seize, remove or detain any article if the C&E Officer reasonably suspects that the article is ASP and an import offence has been committed or is being committed in respect of the article. The proposed new section 15DH(4) of the Ordinance provides that any article seized (but not removed or detained) under the proposed new section 15DH(3) of the Ordinance may be retained in the custody of a C&E Officer until it is transferred to an Inspector for the enforcement of proposed new section 15DA of the Ordinance. In response to an enquiry by

the Legal Adviser to the Bills Committee, the Administration will move an amendment to add the "remove or detain" elements to the proposed new section 15DH(4) of the Ordinance for alignment between the above two proposed new sections of the Ordinance.

Prohibition of the display of advertisement of ASPs

34. The Bill proposes to amend Part 4 of the Ordinance to extend the existing restrictions on tobacco advertising to the advertising of ASPs. The proposed sections 11(1) and 12(1) of the Ordinance would prohibit, among others, the printing and publication of a smoking product advertisement in a printed publication and the display of a smoking product advertisement in writing. The proposed sections 13, 13A and 13B of the Ordinance would restrict a person to broadcast a smoking product advertisement by the transmission of sound by means of radio waves; broadcast a smoking product advertisement by the transmission of visual images or sound by wireless or otherwise than by wireless; exhibit a smoking product advertisement by film; and place or cause to be placed a smoking product advertisement on the Internet. The meaning of smoking product advertisement is set out in the proposed section 14 of the Ordinance, which would basically cover various forms of advertising in relation to a smoking product or smoking. A smoking product is defined, under the proposed section 2(1) of the Ordinance, to mean CSP or ASP.

35. Mr Frankie YICK has sought clarification as to whether designing packages of ASPs for advertising in places outside Hong Kong would be allowed under the Bill. The Administration has affirmed that there would be no such prohibition under the Bill. Under the proposed section 11(3) of the Ordinance, the prohibition on printing and publication of a smoking product advertisement in a printed publication and display of a smoking product advertisement in writing would not apply in relation to a smoking product advertisement in a printed publication that is published for the smoking products trade, or as the in-house publication of any company engaged in that trade. The proposed section 13B(3) of the Ordinance provides that the prohibition on placing of smoking advertisement on the Internet would not apply to any smoking product advertisement which is contained in any private correspondence on the Internet and is not for commercial purposes.

36. Members note that the primary basis of criminal jurisdiction in Hong Kong is territorial, and section 13B(2) of the Ordinance currently provides that a holder of a Public Non-Exclusive Telecommunications Service Licence granted under the Telecommunications Ordinance (Cap. 106) shall not be responsible for any content placed on the Internet by a user and made available for the use of another user unless the holder has knowledge of such content and can reasonably be expected to block the use of such content or require amendment of such content; or any such content to which the holder only provides access, including the

automatic and temporary storage of such content by the holder due to the request of a user. In view of the growth in the use of Internet for advertising, members have raised queries over the liability of a local Internet host where a smoking product advertisement is being uploaded to the Internet by a third party from a place outside Hong Kong and/or through servers located outside Hong Kong. The Administration has informed the Bills Committee that a person who places or causes to be placed a smoking product advertisement on the Internet targeting at Hong Kong would be held liable under the proposed section 13B(1) of the Ordinance. For the Internet hosts that have no knowledge over the advertisement uploaded or distributed, they would be required to, within a reasonable period of time, remove the advertisement from their platforms.

Prohibition on smoking in certain designated areas

37. Section 3(2A) of the Ordinance currently provides that a person is exempt from the prohibition of smoking or carrying a lighted cigarette, cigar or pipe in a no smoking area if the exemptions contained in Schedule 5 to the Ordinance apply (i.e. the exemption for live performance and the exemption for recording for film or television programme). Mr MA Fung-kwok takes the view that the Bill should extend these exemptions to the smoking or carrying of an activated ASP in a no smoking area.

38. The Administration has explained that it seeks to avoid the situation where the use of ASPs during a live performance and recording for film or television programme generates public interest in such products. In addition, there should no longer be any local supply of ASPs if the Bill is passed. Hence, it considers it not necessary to extend the exemptions under section 3(2A) of the Ordinance to ASPs.

39. Under the proposed item 10 of Part 2 of Schedule 2 to the Ordinance, a room which is designated for tasting or testing of smoking products (i.e. CSPs or ASPs) in the manufacturing or business premises of a business engaged in the smoking products trade would be, subject to compliance with the specified conditions, an exempt area. By virtue of section 3(1AA) of the Ordinance, such an exempt area would not be regarded as a no smoking area and accordingly the relevant smoking prohibition would not apply. Given that manufacturing of ASPs would be prohibited under the proposed new section 15DA(1)(b) of the Ordinance, the Legal Adviser to the Bills Committee has enquired on the need to include a room which is designated for tasting or testing of ASPs in the manufacturing premises of a business engaged in the ASP trade as an exempt area.

40. The Administration has advised that if the Bill is passed, it is possible that businesses engaging in the ASP trade would carry out tasting or testing of ASPs with their remaining stock in their business premises as necessary for conducting

the business of export. As tasting or testing of ASPs within the aforesaid premises is unlikely to generate public interest in ASPs or create a possible loophole that undermines the very high level of protection to the public which the Bill is seeking to achieve, it is proposed that the exemption of smoking ban be extended to the tasting or testing of ASPs in the specific business premises.

Interpretations of ASPs for the purposes of the Ordinance

41. The proposed new Schedule 7 to the Ordinance contains the interpretation provisions and products for definition of ASP. Noting that pursuant to section 16A of the Ordinance, the Secretary for Food and Health may by order published in the Gazette amend the above proposed new Schedule and such an order would be subsidiary legislation subject to scrutiny by LegCo pursuant to the negative vetting procedure under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), Mr SHIU Ka-fai has expressed reservation about the arrangement.

Commencement

42. Members note that the Bill, if passed, would come into operation on the expiry of six months after the day on which it is published in the Gazette as an Ordinance.

Amendments to the Bill

Amendments to be moved by the Administration

43. Apart from the amendments to be moved by the Administration to the Bill as elaborated in paragraphs 30, 32 and 33 above, the Administration has proposed some textual amendments to the Bill with reference to the observations made by the Legal Adviser to the Bills Committee. A full set of its proposed amendments is in **Appendix III**. The Bills Committee raises no objection to these amendments.

Amendments to be moved by individual members

44. The Bills Committees takes note that Mr SHIU Ka-fai intends to move a set of amendments to the Bill, as elaborated in paragraph 22 above, in his own name. A marked-up copy of the Ordinance showing these draft proposed amendments is in **Appendix IV**. The Bills Committees also takes note that Mr Frankie YICK and Mr SHIU Ka-fai may propose certain other amendments to the Bill as mentioned in paragraph 26 above.

45. The Bills Committee will not propose any amendments to the Bill.

Resumption of Second Reading debate on the Bill

46. Members in general raise no objection to the resumption of the Second Reading debate on the Bill. Having regard to members' views, the Administration has indicated its intention to resume the Second Reading debate on the Bill at the Council meeting of 20 October 2021.

Advice sought

47. Members are invited to note the deliberations of the Bills Committee and the date for the resumption of the Second Reading debate on the Bill.

Council Business Division 2
Legislative Council Secretariat
8 October 2021

**Bills Committee on Smoking (Public Health) (Amendment) Bill 2019
(2020-2021 session)**

Membership list*

Chairman	Hon WONG Ting-kwong, GBS, JP
Deputy Chairman	Hon Frankie YICK Chi-ming, SBS, JP
Members	Hon Abraham SHEK Lai-him, GBS, JP Hon Tommy CHEUNG Yu-yan, GBS, JP Hon CHAN Kin-por, GBS, JP Hon Mrs Regina IP LAU Suk-yeet, GBM, GBS, JP Hon Paul TSE Wai-chun, JP Hon YIU Si-wing, SBS Hon MA Fung-kwok, GBS, JP Hon LEUNG Che-cheung, SBS, MH, JP Hon KWOK Wai-keung, JP Hon Elizabeth QUAT, BBS, JP Hon Martin LIAO Cheung-kong, GBS, JP Ir Dr Hon LO Wai-kwok, GBS, MH, JP Hon CHUNG Kwok-pan Hon Jimmy NG Wing-ka, BBS, JP Hon Holden CHOW Ho-ding Hon SHIU Ka-fai, JP Hon Wilson OR Chong-shing, MH Hon YUNG Hoi-yan, JP Dr Hon Pierre CHAN Hon CHEUNG Kwok-kwan, JP Hon LUK Chung-hung, JP Hon LAU Kwok-fan, MH, JP

(Total : 24 members)

Clerk Ms Maisie LAM

Legal Adviser Ms Wendy KAN

* Changes in membership are shown in Annex to Appendix I.

Annex to Appendix I

**Bills Committee on Smoking (Public Health) (Amendment) Bill 2019
(2020-2021 session)**

Changes in membership

Member	Relevant date
Hon Kenneth LAU Ip-keung, BBS, MH, JP	Up to 9 November 2020
Prof Hon Joseph LEE Kok-long, SBS, JP	Up to 10 November 2020
Hon IP Kin-yuen	Up to 10 November 2020
Hon SHIU Ka-chun	Up to 11 November 2020
Dr Hon Helena WONG Pik-wan	Up to 12 November 2020
Hon Andrew WAN Siu-kin	Up to 12 November 2020
Hon LEUNG Yiu-chung	Up to 15 November 2020
Dr Hon Fernando CHEUNG Chiu-hung	Up to 18 November 2020
Dr Hon CHENG Chung-tai	Up to 25 August 2021

For **changes in LegCo Membership**, please refer to the link below:
(<https://www.legco.gov.hk/general/english/members/yr16-20/notes.htm>)

**Bills Committee on Smoking
(Public Health) (Amendment) Bill 2019 (2020-2021 session)**

Organizations and individuals which/who have provided written submissions to the Bills Committee

1. Alliance for Regulating Heated Tobacco Product
2. Asian Consultancy on Tobacco Control
3. Association of Principals of Government Secondary Schools
4. BOF
5. British-American Tobacco Company (Hong Kong) Limited
6. CECES Blossom
7. Christian Family Service Centre
8. Clear the Air
9. Coalition of Hong Kong Newspaper and Magazine Merchants
10. Coalition on Tobacco Affairs
11. College of Nursing, Hong Kong
12. Community Drug Advisory Council
13. Council of Hong Kong & Kowloon Kai-Fong Associations Limited
14. Faculty of Medicine, The Chinese University of Hong Kong
15. Federation of Hong Kong Kowloon New Territories Hawker Associations
16. Federation of Parent Teacher Associations Hong Kong Island
17. Federation of Parent Teacher Associations in Kwun Tong District Ltd.
18. Federation of Parent Teacher Associations of Hong Kong Eastern District
19. Federation of Parent Teacher Associations of Islands District
20. Federation of Parent-Teacher Associations of the Central and Western District Limited
21. Federation of Parent-Teacher Associations of the Sai Kung District
22. Federation of Parent-Teacher Associations of Yuen Long District Limited
23. Federation of Parent-Teacher Association, Kowloon City District
24. Federation of Parent-Teacher Associations (Kwai Tsing District) Ltd.
25. Federation of Parent-Teacher Associations Sham Shui Po District Limited
26. Federation of Parent-Teacher Association, Southern District, H.K.
27. Federation of Parent-Teacher Association, Tai Po District
28. Federation of Parent-Teacher Associations, Tuen Mun
29. Federation of Parent-Teacher Associations, Wanchai District

30. Federation of Parent Teacher Associations Wongtaisin District Limited
31. Heated Tobacco Concern Group (HK)
32. HK Aided Primary School Heads Association
33. Hong Kong Academy of Medicine
34. Hong Kong Alliance of Patients' Organizations Limited
35. Hong Kong Association of Youth Development
36. Hong Kong Bar and Club Association
37. Hong Kong College of Cardiac Nursing
38. Hong Kong College of Cardiology
39. Hong Kong College of Community and Public Health Nursing
40. Hong Kong College of Community Medicine
41. Hong Kong College of Critical Care Nursing
42. Hong Kong College of Education & Research in Nursing
43. Hong Kong College of Emergency Medicine
44. Hong Kong College of Emergency Nursing
45. Hong Kong College of Gerontology Nursing
46. Hong Kong College of Medical Nursing
47. Hong Kong College of Mental Health Nursing
48. Hong Kong College of Midwives
49. Hong Kong College of Nursing & Health Care Management
50. Hong Kong College of Orthopaedic Nursing
51. Hong Kong College of Paediatric Nursing
52. Hong Kong College of Paediatricians
53. Hong Kong College of Perioperative Nursing
54. Hong Kong College of Physicians
55. Hong Kong College of Radiologists
56. Hong Kong College of Surgical Nursing
57. Hong Kong Council on Smoking and Health
58. Hong Kong Dental Association
59. Hong Kong Direct Subsidy Scheme Schools Council
60. Hong Kong Doctors Union
61. Hong Kong Early Childhood Education Administrative Professional Association
62. Hong Kong Island School Heads Association
63. Hong Kong Kindergarten Association
64. Hong Kong Newspaper Hawker Association
65. Hong Kong Patients' Voice
66. Hong Kong Subsidized Secondary Schools Council
67. I Smoke Alliance

68. International Academy of Cultural Exchange
69. Kowloon Region School Heads Association
70. Life Education Activity Programme
71. LKS Faculty of Medicine, The University of Hong Kong
72. Medical Conscience
73. Medical Service Department, The Lok Sin Tong Benevolent Society,
Kowloon
74. Momentum 107
75. New Territories School Heads Association
76. New Voice Club
77. North District Federation of Parent-Teacher Associations
78. Pok Oi Hospital
79. Quit-Winners Club Limited
80. Sai Kung District School Heads Association
81. School of Health Sciences, Caritas Institute of Higher Education
82. School of Nursing and Health Studies, The Open University of Hong Kong
83. School of Nursing, LKS Faculty of Medicine, The University of Hong Kong
84. School of Nursing, Tung Wah College
85. School of Public Health, LKS Faculty of Medicine, The University of Hong
Kong
86. Sha Tin District Primary School Heads Association
87. Sha Tin District Secondary School Heads Association
88. Sik Sik Yuen
89. The Boys' & Girls' Clubs Association of Hong Kong
90. The College of Dental Surgeons of Hong Kong
91. The College of Ophthalmologists of Hong Kong
92. The College of Surgeons of Hong Kong
93. The Education University of Hong Kong Past Student's Association of Early
Childhood Teacher Education
94. The Federation of Medical Societies of Hong Kong
95. The Hong Kong Academy of Nursing
96. The Hong Kong Anti-Cancer Society
97. The Hong Kong Association of the Heads of Secondary Schools
98. The Hong Kong College of Anaesthesiologists
99. The Hong Kong College of Family Physicians
100. The Hong Kong College of Obstetricians and Gynaecologists
101. The Hong Kong College of Orthopaedic Surgeons
102. The Hong Kong College of Otorhinolaryngologists
103. The Hong Kong College of Pathologists
104. The Hong Kong College of Psychiatrists

105. The Hong Kong Liver Transplant Patients' Association
106. The Hong Kong Medical Association
107. The Hong Kong Taxi & Public Light Bus Association Limited
108. The Jockey Club School of Public Health and Primary Care, Faculty of Medicine, The Chinese University of Hong Kong
109. The Joint Council of Parent-Teacher Associations of the Shatin District Ltd.
110. The Lion Rock Institute
111. The Lok Sin Tong Benevolent Society, Kowloon
112. The Nethersole School of Nursing, Faculty of Medicine, The Chinese University of Hong Kong
113. The Non-Profit-Making Kindergarten Council of Hong Kong
114. The Pharmaceutical Society of Hong Kong
115. The Society of Hospital Pharmacists of Hong Kong
116. The Youth Quitline
117. Tsuen Wan District Parent Teacher Association Federation Limited
118. Tuen Mun District Kindergarten Heads Association
119. Tung Wah Group of Hospitals Integrated Centre on Smoking Cessation
120. Union of Government Primary School Headmasters and Headmistresses
121. United Christian Nethersole Community Health Service
122. Women Quitline, School of Nursing, The University of Hong Kong
123. Yan Chai Hospital
124. Yau Tsim Mong District School Heads Association
125. Yau Tsim Mong Federation Of Parents Teachers Association
126. Youth Quitline, School of Nursing, The University of Hong Kong
127. 九龍城區幼稚園校長會
128. 沙田區幼稚園校長會
129. 旅遊業從業員關注規管加熱煙連線
130. 深水埗幼兒教育校長會
131. CHAN Suet
132. CHUNG CIE
133. CHUNG James
134. CHUNG Pan-yiu
135. CHUNG PY
136. CIE
137. David Oglive
138. David T. Sweanor
139. Franco KAM Wing-kai
140. Henry TONG
141. Hiroya Kumamaru

142. KM CHUNG P Yunice
143. Michael CHAN
144. 方奕展
145. 朱國能
146. 何梓晴
147. 林至穎
148. 徐家健
149. 梁天卓
150. 陳陳明明
151. 曾國平

Smoking (Public Health) (Amendment) Bill 2019

Committee StageAmendments to be moved by the Secretary for Food and Health

<u>Clause</u>	<u>Amendment Proposed</u>
5	<p>By adding—</p> <p>“(1A) Section 3(2A), Chinese text—</p> <p style="padding-left: 40px;">Repeal</p> <p style="padding-left: 40px;">“他吸煙”</p> <p style="padding-left: 40px;">Substitute</p> <p style="padding-left: 40px;">“該人吸用”.”.</p>
21	<p>In the Chinese text, by deleting subclause (2) and substituting—</p> <p>“(2) 第 15A(3)(a)條 ——</p> <p style="padding-left: 40px;">廢除</p> <p style="padding-left: 40px;">在“得將”之後的所有字句</p> <p style="padding-left: 40px;">代以</p> <p style="padding-left: 40px;">“(或要約將)傳統吸煙產品售賣予或將傳統吸煙產品給予任何其他人，以換取換物憑證；”。</p>
23	<p>By deleting the proposed section 15DB and substituting—</p> <p>“15DB. Liability of officers of bodies corporate, partners and members of unincorporated bodies</p> <p>(1) If a body corporate commits an offence under section 15DA(4), and it is proved that the offence—</p> <p style="padding-left: 40px;">(a) was committed with the consent or connivance of a person specified in subsection (2); or</p> <p style="padding-left: 40px;">(b) is attributable to any neglect on the part of the person,</p>

the person also commits the offence.

- (2) The person referred to in subsection (1) is—
 - (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).
- (3) If a partner in a partnership commits an offence under section 15DA(4), and it is proved that the offence—
 - (a) was committed with the consent or connivance of a person specified in subsection (4); or
 - (b) is attributable to any neglect on the part of the person, the person also commits the offence.
- (4) The person referred to in subsection (3) is—
 - (a) any other partner in the partnership or any other person concerned in the management of the partnership; or
 - (b) a person purporting to act in the capacity of a person referred to in paragraph (a).
- (5) If a member of any other unincorporated body commits an offence under section 15DA(4), and it is proved that the offence—
 - (a) was committed with the consent or connivance of a person specified in subsection (6); or
 - (b) is attributable to any neglect on the part of the person, the person also commits the offence.
- (6) The person referred to in subsection (5) is—
 - (a) any other member, or any manager, secretary or other similar officer, of the unincorporated body; or
 - (b) a person purporting to act in the capacity of a person referred to in paragraph (a).”.

- 23 In the proposed section 15DH(2), in the Chinese text, by deleting “條” and substituting “款”.
- 23 In the proposed section 15DH(4), by adding “, removed or detained” after “seized”.
- 23 In the proposed section 15DH(5)(a), by adding “for a reasonable period” after “person”.

Cap. 371

Smoking (Public Health)
Ordinance

31/8/2018

To prohibit smoking in certain ~~areas; to provide for the display of a health warning and other information on packets or retail containers of tobacco products; to restrict tobacco advertising; to restrict the sale or giving of tobacco products; 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;~~ to provide for the appointment, powers and duties of inspectors for the enforcement of certain provisions of this Ordinance; and to provide for incidental and related matters.

(Amended 91 of 1994 s. 2; 21 of 2006 s. 3)

[13 August 1982] *L.N. 314 of 1982*

(Format changes—E.R. 1 of 2012)

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Smoking (Public Health) Ordinance.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—

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.

advertisement (廣告) means any announcement to the public made or to be made in any manner;

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

amusement game centre (遊戲機中心) means—

- (a) an amusement game centre within the meaning of section 2(1) of the Amusement Game Centres Ordinance (Cap. 435);
- (b) any place that is the subject of an order under section 3(1)(a) of that Ordinance; or

(c) any area that is specified in an order under section 3(1)(b) of that Ordinance; (*Replaced 21 of 2006 s. 4*)

approved institution (核准院舍) means an approved institution within the meaning of section 2(1) of the Probation of Offenders Ordinance (Cap. 298); (*Added 21 of 2006 s. 4*)

bar (酒吧) means any place that is exclusively or mainly used for the sale and consumption of intoxicating liquors as defined in section 53(1) of the Dutiable Commodities Ordinance (Cap. 109); (*Added 21 of 2006 s. 4*)

bathhouse (浴室) means a bathhouse—

(a) that is within the meaning of section 3(1) of the Commercial Bathhouses Regulation (Cap. 132 sub. leg. I); and

(b) in respect of which a licence granted under that Regulation is in force; (*Added 21 of 2006 s. 4*)

bathing beach (泳灘) means any bathing beach specified in the Fourth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132); (*Added 21 of 2006 s. 4*)

brand (牌子), except in section 14(3), includes a brand product, that is to say a variety of a brand marketed as having qualities differing from another variety of that brand;

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

child care centre (幼兒中心) means a child care centre within the meaning of section 2(1) of the Child Care Services Ordinance (Cap. 243); (*Added 21 of 2006 s. 4*)

cigar (雪茄) means tobacco rolled up in tobacco, in such form as to be capable of immediate use for [smoking; smoking, but does not include any alternative smoking product;](#) (*Added 91 of 1994 s. 3*)

cigarette (香煙) means tobacco rolled up in paper or in any other material except tobacco, in such form as to be capable of immediate use for [smoking; smoking, but does not include any alternative smoking product;](#)

cigarette tobacco (香煙煙草) means tobacco packaged as being suitable for the making by the purchaser of cigarettes for [his own use; the purchaser's own use, but does not include any alternative smoking product;](#)

cinema (電影院), **theatre** (劇院) and **concert hall** (音樂廳) mean—

(a) any building or part of a building used primarily as a cinema, theatre or concert hall, as the case may be, whether or not it is being so used at the material time, other than the premises of any club, association or other body in which films are exhibited, or plays or music performed for the benefit primarily of the members thereof and their guests;

(b) any place of public entertainment licensed under the Places of Public Entertainment Ordinance (Cap. 172) while open to the public on account of any concert, stage play, stage performance or other musical, dramatic or theatrical entertainment or any cinematograph display; (*Added 9 of 1992 s. 2*)

conventional smoking product (傳統吸煙產品) means any cigarette, cigarette tobacco, ~~cigar or pipe tobacco~~ **cigar, pipe tobacco or heated tobacco product**;

correctional facility (懲教機構) means—

- (a) any of the sites and buildings specified in the Schedule to the Prisons Order (Cap. 234 sub. leg. B);
- (b) any of the buildings specified in the Schedule to the Prisons (Hostel) Order (Cap. 234 sub. leg. C); or
- (c) an addiction treatment centre within the meaning of section 2 of the Drug Addiction Treatment Centres Ordinance (Cap. 244); (*Added 21 of 2006 s. 4*)

deactivate (熄掉)—see subsection (4);

domestic premises (住宅) means any premises that have been constructed to be used, and are used, as a private dwelling; (*Added 21 of 2006 s. 4*)

escalator (自動梯) means an escalator as defined by section 2(1) of the Lifts and Escalators Ordinance (Cap. 618); (*Replaced 8 of 2012 ss. 156 & 160*)

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

heated tobacco product (加熱煙草產品) means tobacco that is packaged in such form as to be capable of generating an aerosol from heating (other than by means of direct combustion) of the tobacco which is capable of use for smoking, but does not include any alternative smoking product;

hospital (醫院) means any establishment for the care of the sick, injured or infirm or those who require medical treatment, including a nursing home—

- (a) whether or not it is a hospital to which the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) applies; or
- (b) whether or not it is a public hospital within the meaning of section 2(1) of the Hospital Authority Ordinance (Cap. 113); (*Added 21 of 2006 s. 4*)

indoor (室內) means—

- (a) having a ceiling or roof, or a cover that functions (whether temporarily or permanently) as a ceiling or roof; and
- (b) enclosed (whether temporarily or permanently) at least up to 50% of the total area on all sides, except for any window or door, or any closeable opening that functions as a window or door; (*Added 21 of 2006 s. 4*)

inspector (督察) means an inspector appointed under section 15F; (*Added 21 of 2006 s. 4*)

karaoke establishment (卡拉OK場所) means—

- (a) a karaoke establishment within the meaning of section 2(1) of the Karaoke Establishments Ordinance (Cap. 573); or
- (b) a karaoke establishment referred to in section 3(1) of that Ordinance; (*Added 21 of 2006 s. 4*)

mahjong-tin kau premises (麻將天九耍樂處所) means any premises that are licensed under section 22 of the Gambling Ordinance (Cap. 148) for—

- (a) the playing therein of games in which mahjong tiles are used; or
- (b) the playing therein of games in which tin kau tiles are used; *(Added 21 of 2006 s. 4)*

manager (管理人), in relation to a no smoking area or a public transport carrier, means—

- (a) any person who is responsible for the management or is in charge or control of the no smoking area or public transport carrier, and includes an assistant manager and any person holding an appointment analogous to that of a manager or assistant manager; or
- (b) in the case where there is no such person in relation to any premises, the owner of the premises; *(Replaced 21 of 2006 s. 4)*

massage establishment (按摩院) means a massage establishment—

- (a) that is within the meaning of section 2 of the Massage Establishments Ordinance (Cap. 266); and
- (b) in respect of which a licence granted under that Ordinance is in force; *(Added 21 of 2006 s. 4)*

maternity home (留產院) means any premises used or intended to be used for the reception of pregnant women or of women immediately after childbirth—

- (a) whether or not it is a maternity home to which the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) applies; or
- (b) whether or not it is a maternity home that is run as part of a public hospital within the meaning of section 2(1) of the Hospital Authority Ordinance (Cap. 113), or managed or controlled by the Hospital Authority established under that Ordinance; *(Added 21 of 2006 s. 4)*

newspaper (報刊), **local newspaper** (本地報刊) and **printed document** (印刷文件) have the same meaning as in the Registration of Local Newspapers Ordinance (Cap. 268); *(Amended 15 of 1987 s. 19)*

nicotine yield (尼古丁量) means the nicotine yield per cigarette rounded off to one decimal place and expressed in milligrams; *(Added 93 of 1997 s. 2)*

no smoking area (禁止吸煙區) means an area designated as a no smoking area under section 3; *(Replaced 9 of 1992 s. 2. Amended 93 of 1997 s. 2; 21 of 2006 s. 4)*

pipe (煙斗) means a receptacle or other device designed for use for smoking tobacco in a form other than as a cigarette or ~~cigar~~; cigar, but does not include any alternative smoking product; *(Added 91 of 1994 s. 3)*

pipe tobacco (煙斗煙草) means tobacco packaged as being suitable for smoking in a ~~pipe~~; pipe, but does not include any alternative smoking product; *(Added 91 of 1994 s. 3)*

place of detention (拘留地方) means—

- (a) a place of detention specified in Schedule 2 to the Immigration (Places of Detention) Order (Cap. 115 sub. leg. B); or
- (b) a place of detention within the meaning of section 2(1) of the Juvenile Offenders Ordinance (Cap. 226); (*Added 21 of 2006 s. 4*)

place of refuge (收容所) means a place of refuge within the meaning of section 2 of the Protection of Children and Juveniles Ordinance (Cap. 213); (*Added 21 of 2006 s. 4*)

proof of identity (身分證明文件) means proof of identity for the purposes of Part IVA of the Immigration Ordinance (Cap. 115);

public lift (公共升降機) means a lift to which the public have access and includes any lift giving access to separately occupied flats, offices or other units of accommodation and a hotel lift;

public place (公眾地方) means—

- (a) any place to which for the time being the public are entitled or permitted to have access, whether on payment or otherwise; or
- (b) a common part of any premises notwithstanding that the public are not entitled or permitted to have access to that common part or those premises; (*Added 21 of 2006 s. 4*)

public pleasure ground (公眾遊樂場地) means a public pleasure ground within the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132); (*Added 21 of 2006 s. 4*)

public swimming pool (公眾泳池) means a public swimming pool within the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132); (*Added 21 of 2006 s. 4*)

public transport carrier (公共交通工具) means any public bus, public light bus, taxi, train, light rail vehicle, car, tramcar or ferry vessel mentioned in Schedule 1; (*Added 9 of 1992 s. 2. Amended 21 of 2006 s. 4*)

publish (刊登) in relation to an advertisement means making known an advertisement in any manner;

reformatory school (感化院) means a reformatory school within the meaning of section 2 of the Reformatory Schools Ordinance (Cap. 225); (*Added 21 of 2006 s. 4*)

regulations (規例) means regulations under section 18;

residential care home (院舍) means—

- (a) a residential care home as defined by section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459); or
- (b) a residential care home for PWDs as defined by section 2 of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613); (*Replaced 12 of 2011 s. 29*)

restaurant premises (食肆處所) means any premises on or from which there is carried on—

- (a) a factory canteen or restaurant within the meaning of section 31(2) of the Food Business Regulation (Cap. 132 sub. leg. X); or

- (b) any other trade or business the purpose of which is for the sale or supply of meals or unbottled non-alcoholic drinks (including Chinese herb tea) for human consumption on the premises (whether or not it is carried on by a person who is the holder of a licence under the Hawker Regulation (Cap. 132 sub. leg. AI)); (*Added 21 of 2006 s. 4*)

retail container (零售盛器)—

- (a) in relation to any cigarette **or heated tobacco product**, means a container suitable for the retail marketing of cigarette **or heated tobacco product** packets; or
- (b) in relation to any cigar, pipe tobacco or cigarette tobacco, means a container suitable for the retail marketing of cigar, pipe tobacco or cigarette tobacco; (*Replaced 21 of 2006 s. 4*)

sale, sell (出售、售賣、銷售、售) includes the disposal by barter or raffling but excludes the disposal of confiscated cigarettes without health warnings through auctions by the Government; (*Added 93 of 1997 s. 2*)

school (學校) means a school within the meaning of section 3 of the Education Ordinance (Cap. 279); (*Added 21 of 2006 s. 4*)

Secretary (局長) means the Secretary for Food and Health; (*Replaced L.N. 106 of 2002. Amended L.N. 130 of 2007*)

~~**smoke** (吸煙、吸用) means inhaling and expelling the smoke of tobacco or other substance;~~

~~**smoking** (吸煙、吸用) means inhaling and expelling—~~

- ~~(a) in relation to a conventional smoking product— the smoke **or aerosol** 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;~~
(a) a lighted cigarette, cigar or pipe;
(b) an activated heated tobacco product; or
(c) 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;~~

specified educational establishment (指明教育機構) means any establishment specified in section 2 of the Education Ordinance (Cap. 279); (*Added 21 of 2006 s. 4*)

stadium (體育場) means a stadium within the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132); (*Added 21 of 2006 s. 4*)

tar yield (焦油量) means the tar yield per cigarette rounded off to the nearest milligram; (*Added 93 of 1997 s. 2*)

~~**tobacco advertisement** (煙草廣告) has the meaning assigned to it by section 14; (*Added 91 of 1994 s. 3*)~~

~~**tobacco product** (煙草產品) means any cigarette, cigarette tobacco, cigar or pipe tobacco; (*Added 93 of 1997 s. 2*)~~

trade mark (商標) has the same meaning as in section 3 of the Trade Marks Ordinance (Cap. 559); (*Added 93 of 1997 s. 2. Amended 35 of 2000 s. 98*)

treatment centre (治療中心) means a treatment centre within the meaning of section 2 of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566); (*Added 21 of 2006 s. 4*)

workplace (工作地方) means a place—

- (a) that is occupied for conducting a business or non-profit making undertaking; and
- (b) in which natural persons work in the course of any self-employment, employment or engagement (whether for income or not),

including any part of the place that is set aside for use by those persons during any interval for taking a meal or rest. (*Added 21 of 2006 s. 4*)

(*Amended 9 of 1992 s. 2; 91 of 1994 s. 3; 21 of 2006 s. 4; E.R. 1 of 2013*)

- (2) A heated tobacco product or an **activated** 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 **heated tobacco product or an activated** alternative smoking product, if the person deactivates it.
- (4) A person **deactivates** an activated **heated tobacco product or 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.

Part 2

No Smoking Areas

3. Prohibition on smoking in certain designated areas

- (1) The areas described in Part 1 of Schedule 2 are designated as no smoking areas. *(Replaced 21 of 2006 s. 5)*
- (1AA) Subsection (1) does not apply to the exempt areas described in Part 2 of Schedule 2. *(Added 21 of 2006 s. 5)*
- (1AB) The Director of Health may, by notice published in the Gazette, designate as a no smoking area the whole or a part of—
- (a) any area that consists of the termini of 2 or more modes of public transport and is used for effecting and facilitating interchange between them; or
 - (b) any bus terminus of more than one specified route as defined in section 2 of the Public Bus Services Ordinance (Cap. 230). *(Added 21 of 2006 s. 5)*
- (1A)-(1C) *(Repealed 21 of 2006 s. 5)*
- (2) No person ~~shall smoke or carry a lighted cigarette, cigar or pipe~~ may do a smoking act in a no smoking area.
- (2A) Subsection (2) does not prevent a person from smoking or carrying a lighted cigarette, cigar or pipe or an activated heated tobacco product if he is exempt from that subsection under Schedule 5. *(Added 21 of 2006 s. 5)*
- (3) The manager of a no smoking area or any person authorized in that behalf by any such manager may, in respect of any person who appears to be contravening subsection (2) in the no smoking area—
- ~~(a) after indicating that the person is smoking or carrying a lighted cigarette, cigar or pipe, as the case may be, in a no smoking area in contravention of subsection (2), require the person to extinguish the lighted cigarette, cigar or pipe;~~
 - (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;
 - (b) where the person fails to ~~extinguish the lighted cigarette, cigar or pipe;~~ cease the smoking act, require him—
 - (i) to give his name and address and to produce proof of identity; and
 - (ii) to leave the no smoking area;
 - (c) where the person fails, as required under paragraph (b)—
 - (i) to give his name and address and to produce proof of identity; or
 - (ii) to leave the no smoking area,remove him from the no smoking area by the use of reasonable force if necessary and detain him and call for the assistance of a police officer to assist in the enforcement of this section.

- (4) Where a person is, under subsection (3), required to leave a no smoking area, removed from a no smoking area or detained, he shall not be entitled to a refund of any admission fee or money paid by him for entry into the premises or building in which the no smoking area is situated.
- (5) For the avoidance of doubt, it is declared that subsections (1) and (1AB) apply to any premises that are owned or occupied by, or under the management and control of, the Government. *(Added 21 of 2006 s. 5)*

(Replaced 9 of 1992 s. 3)

4. Prohibition on smoking in public transport carriers

- (1) No person ~~shall smoke or carry a lighted cigarette, cigar or pipe~~ may do a smoking act in a public transport carrier.
- ~~(2) The driver, conductor, inspector, ticket collector or manager of any public transport carrier or any person authorized in that behalf by any such manager may, in respect of any person who appears to be contravening subsection (1) — *(Amended 68 of 1995 s. 39)*~~
- (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—
 - ~~(a) — after indicating that the person is smoking or carrying a lighted cigarette, cigar or pipe, as the case may be, in a public transport carrier in contravention of subsection (1), require the person to extinguish the lighted cigarette, cigar or pipe;~~
 - (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;
 - (b) where the person fails to ~~extinguish the lighted cigarette, cigar or pipe, cease the smoking act,~~ require him—
 - (i) to give his name and address and to produce proof of identity; and
 - (ii) to leave the public transport carrier;
 - (c) where the person fails, as required under paragraph (b)—
 - (i) to give his name and address and to produce proof of identity; or
 - (ii) to leave the public transport carrier,
remove him from the public transport carrier by the use of reasonable force if necessary and detain him and call for the assistance of a police officer to assist in the enforcement of this section.
- (3) Where a person is, under subsection (2), required to leave a public transport carrier, removed from a public transport carrier or detained, he shall not be entitled to a refund of any money paid by him for carriage by the public transport carrier.

(Replaced 9 of 1992 s. 3)

5. *(Repealed 21 of 2006 s. 6)*

6. *(Repealed 9 of 1992 s. 4)*

6A. *(Repealed 21 of 2006 s. 7)*

7. **Offences under Part 2**

- (1) Any person who contravenes section 3 or 4 commits an offence and is liable on summary conviction to a fine of \$5,000.
 - (2) Any person who fails to give his name and address or to produce proof of identity when required to do so under section 3(3) or 4(2) or who then gives a false or misleading name or address commits an offence and is liable on summary conviction to a fine at level 3.
 - (3)-(4) *(Repealed 21 of 2006 s. 8)*
(Amended 9 of 1992 s. 5; 93 of 1997 s. 5; E.R. 1 of 2012)
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Part 3

Sales of ~~Tobacco~~ Conventional Smoking Products

(Replaced 91 of 1994 s. 5)

8. Sales of ~~cigarettes and tobacco~~ conventional smoking products

- (1) No person shall sell, offer for sale or possess for the purposes of sale any cigarettes unless—
 - (a) they are in a packet of at least 20 sticks; and
 - (b) the packet thereof and, if the packet is within a retail container, the container also, bear in the prescribed form and manner—
 - (i) a health warning;
 - (ii) the tar and nicotine yields. *(Replaced 93 of 1997 s. 6)*
- (2) Nothing in this section or in section ~~8A or 9~~ 8A, 9 or 9A shall apply to anything done in relation to cigarettes, cigarette tobacco, ~~cigars or pipe tobacco~~ cigars, pipe tobacco or heated tobacco products which are held— *(Amended 9 of 1992 s. 6; 91 of 1994 s. 6)*
 - (a) in bond; or
 - (b) by a manufacturer of ~~tobacco~~ conventional smoking products,

for export from Hong Kong.

8A. Prohibition on sale of cigarette a tar yield exceeding 17 milligrams

- (1) No person shall sell, offer for sale or possess for the purposes of sale any cigarette containing an amount of tar exceeding 17 milligrams.
- (2) A certificate purporting to be under the hand of the Government Chemist and stating that a cigarette contains an amount of tar exceeding 17 milligrams shall be evidence of the facts stated in the certificate as at the date of such certificate and shall be received in evidence without further proof.

(Added 9 of 1992 s. 7. Amended 93 of 1997 s. 7)

8B. Prohibition on sale of ~~tobacco~~ conventional smoking products from a vending machine

No person shall sell or offer for sale any ~~tobacco~~ conventional smoking product from a vending machine.

(Added 93 of 1997 s. 8)

9. Sale of cigar, pipe tobacco or cigarette tobacco

No person shall sell, offer for sale or possess for the purposes of sale any cigar, pipe tobacco or cigarette tobacco unless it is in a retail container that bears a health warning in the prescribed form and manner.

(Replaced 91 of 1994 s. 7. Amended 21 of 2006 s. 10)

9A. Sale of heated tobacco products

No person shall sell, offer for sale or possess for the purposes of sale any heated tobacco products unless—

- (a) they are in a packet of at least 20 sticks or 20 capsules; and**
- (b) the packet thereof and, if the packet is within a retail container, the container also, bear a health warning in the prescribed form and manner.**

10. Offences under Part 3

- (1) Any person who contravenes section 8, 8A, ~~8B or 9~~ **8B, 9 or 9A** commits an offence and is liable on summary conviction to a fine at level 5. (*Amended 93 of 1997 s. 9; 21 of 2006 s. 11*)
- (1A) In any proceedings for a contravention of section 8A it shall be a defence for the person charged to prove that he did not know and had no reason to believe that any cigarette to which the proceedings relate contained an amount of tar exceeding 17 milligrams. (*Added 9 of 1992 s. 8*)
- (2) Any manufacturer of cigarettes or his agent and any wholesale distributor of cigarettes who sells, offers for sale or possesses for the purpose of sale any cigarettes to which section 8 applies which have on their packet or retail container a tar yield or nicotine yield which, having regard to any determination under section 16 and the regulations, is incorrect, commits an offence and is liable on summary conviction to a fine at level 5. (*Amended 21 of 2006 s. 11*)
- (3) Any manufacturer of ~~tobacco~~ **conventional smoking** products or his agent, or any wholesale distributor of ~~tobacco~~ **conventional smoking** products, who sells, offers for sale or possesses for the purpose of sale any ~~tobacco~~ **conventional smoking** product to which section ~~8 or 9~~ **8, 9 or 9A** applies commits an offence if any packaging of the product (including any packet, retail container, wrapping, and any label attached to or printed on the packaging or the product)—
 - (a) bears any term, descriptor, ~~trademark~~ **trade mark**, figurative or any other sign that is likely to create an erroneous impression that the product is less harmful to health than other ~~tobacco~~ **conventional smoking** products the packaging of which does not bear such term, descriptor, ~~trademark~~ **trade mark**, figurative or sign; or
 - (b) promotes the product by any means that is false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions. (*Replaced 21 of 2006 s. 11*)
- (4) A person who commits an offence under subsection (3) is liable on summary conviction to a fine at level 5. (*Added 21 of 2006 s. 11*)
(*Amended 9 of 1992 s. 8; 93 of 1997 s. 9; E.R. 1 of 2012*)

10A. Seizure and forfeiture

- (1) A person holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap. 342) may without warrant

- seize, remove and detain for the purpose of proceedings under this Part—
- (a) any packet or retail container of cigarettes, cigarette tobacco, ~~cigars or pipe tobacco~~ **cigars, pipe tobacco or heated tobacco products**— (*Amended 91 of 1994 s. 8*)
 - (i) which does not bear a health warning or, where required, the tar and nicotine yields, in the form and manner required by section 8 or 9; or
 - (ii) which that person reasonably suspects may contain any cigarette containing an amount of tar exceeding 17 milligrams; (*Replaced 9 of 1992 s. 9. Amended 93 of 1997 s. 10*)
 - (aa) any packet of cigarettes which contains less than 20 sticks of cigarettes; (*Added 93 of 1997 s. 10*)
 - (ab) any packet of heated tobacco products which contains less than 20 sticks or 20 capsules of heated tobacco products;**
 - (b) the contents of such packet or container;
 - (c) any receptacle in which such packet or container is contained;
 - (ca) any vending machine or ~~tobacco~~ **conventional smoking** product in connection with an offence under section 8B; (*Added 93 of 1997 s. 10*)
 - (d) anything which appears to that person to be evidence of an offence under this Part.
- (1A) A person holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap. 342) may without warrant seize, remove and detain for the purpose of proceedings under this Part—
- (a) any cigarette not contained in any packet or retail container whether or not referred to in subsection (1)(a) and which that person reasonably suspects may contain an amount of tar exceeding 17 milligrams; (*Amended 93 of 1997 s. 10*)
 - (b) any receptacle in which such cigarette is contained;
 - (c) anything which appears to that person to be evidence of an offence under this Part. (*Added 9 of 1992 s. 9*)
- (2) Subject to subsection (4), any article seized under subsection (1) or (1A) may be retained in the custody of the Commissioner of Customs and Excise until either proceedings under this Part are completed or it is decided that no such proceedings shall be brought.
- (3) For the purposes of section 16 of the Dutiable Commodities Ordinance (Cap. 109) (which relates to obstruction of a member of the Customs and Excise Service) as read with section 46 of that Ordinance, any article seized under subsection (1) or (1A) shall be deemed to have been seized in pursuance of a power conferred by that Ordinance.
- (4) A magistrate may, on the application of the Commissioner of Customs and Excise, order the forfeiture of any article mentioned in subsection (1)(a), (aa), (b), (c) or (ca) or (1A)(a) or (b), whether or not any person is convicted of any offence under this Part, on the

grounds that an offence under this Part has been committed in relation to such article or that such article may not lawfully be sold or possessed for the purposes of sale in Hong Kong: (*Amended 93 of 1997 s. 10*) Provided that the magistrate shall not order such forfeiture unless he is first satisfied that all persons with an interest in such article have, in so far as is reasonably practicable, had the opportunity of making representations thereon to the magistrate or that no such persons can, after reasonable inquiry, be found.

- (5) Any article forfeited under subsection (4) shall be destroyed or disposed of in the same manner as any article forfeited under sections 48, 48A and 48C of the Dutiable Commodities Ordinance (Cap. 109), and the provisions of sections 49 and 50 of that Ordinance shall apply in relation to articles forfeited under subsection (4) as they do to articles forfeited under sections 48, 48A and 48C of that Ordinance. (*Amended 70 of 1993 s. 7*)

(*Added 52 of 1983 s. 2. Amended 9 of 1992 s. 9*)

Part 4

~~Tobacco Advertising~~ Advertising of Smoking Products

(Replaced 91 of 1994 s. 9)

11. ~~Tobacco~~ Smoking Product advertisements in printed publications

- (1) No person shall print, publish or cause to be published a ~~tobacco~~ smoking product advertisement in a printed publication to which this section applies. *(Replaced 93 of 1997 s. 11)*
- (2) This section applies to—
 - (a) any local newspaper;
 - (b) any printed document printed, published or distributed in Hong Kong. *(Replaced 93 of 1997 s. 11)*
- ~~(3) Nothing in this section or section 12 shall apply in relation to a tobacco advertisement in a printed publication that is published for the tobacco trade or as the “in house” magazine of any company engaged in that trade. *(Amended 91 of 1994 s. 10)*~~
- (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.

(Amended 21 of 2006 s. 13)

12. No display of ~~tobacco~~ smoking product advertisement

- (1) No person shall—
 - (a) display or cause to be displayed; or
 - (b) publish or distribute for the purpose of display or cause to be published or distributed for the purpose of display,any ~~tobacco advertisement~~ smoking product advertisement in writing or other permanent or semi-permanent form.
- ~~(2)-(3) *(Repealed 21 of 2006 s. 14)*~~
- (4) Subsection (1) does not apply to any ~~tobacco advertisement~~ smoking product advertisement which—
 - (a) is in or upon any premises—
 - ~~(i) of any manufacturer of tobacco products or any wholesale dealer dealing in tobacco products; and~~
 - (i) of any manufacturer of conventional smoking products or any wholesale dealer dealing in conventional smoking products; and
 - (ii) which are used for the manufacturing of ~~tobacco products or for the purpose of dealing by wholesale in tobacco products; and~~ conventional smoking products or for the purpose of dealing by wholesale in conventional smoking products; and

(b) is not visible from outside the premises.

- (5) The ~~tobacco~~—advertisement mentioned in subsection (4) is not required to bear a health warning or the tar and nicotine yields.

(Replaced 93 of 1997 s. 12)

13. Prohibition on broadcast of ~~tobacco~~ smoking product advertisement by radio or visual images

No person shall broadcast a ~~tobacco~~ smoking product advertisement—
(Amended 91 of 1994 s. 12)

- (a) by the transmission of sound by means of radio waves; or
(b) by the transmission of visual images or sound by wireless or otherwise than by wireless,

intended for general reception by members of the public. *(Amended 93 of 1997 s. 13)*

(Replaced 9 of 1992 s. 11)

13A. Prohibition on exhibition of ~~tobacco~~ smoking product advertisement by film

- (1) No person shall exhibit a tobacco advertisement by film.
(Amended 91 of 1994 s. 13)
- (2) In this section *exhibit* (上映) and *film* (電影) mean, respectively, exhibit and film within the meaning of section 2 of the Film Censorship Ordinance (Cap. 392).

(Added 9 of 1992 s. 11)

13B. Prohibition on placing of ~~tobacco~~ smoking product advertisement on the Internet

- (1) No person shall place or cause to be placed a ~~tobacco~~ smoking product advertisement on the Internet.
- (2) For the avoidance of doubt, a holder of a Public Non- Exclusive Telecommunications Service Licence granted under the Telecommunications Ordinance (Cap. 106) shall not be responsible for— *(Amended 36 of 2000 s. 28)*
- (a) any content placed on the Internet by a user and made available for the use of another user unless the holder has knowledge of such content and can reasonably be expected to block the use of such content or require amendment of such content; or
- (b) any such content to which the holder only provides access, including the automatic and temporary storage of such content by the holder due to the request of a user.
- (3) Subsection (1) shall not apply to any ~~tobacco~~ smoking product advertisement which is contained in any private correspondence on the Internet and is not for commercial purposes.

(Added 93 of 1997 s. 14)

14. Meaning of ~~tobacco~~ smoking product advertisement

- (1) For the purposes of this Part an advertisement is a ~~tobacco advertisement~~ smoking product advertisement if it—
- (a) contains any express or implied inducement, suggestion or request to purchase or smoke ~~cigarettes, cigarette tobacco, cigars or pipe tobacco~~ any smoking product; (*Amended 93 of 1997 s. 15*)
 - (b) relates to smoking in terms which are calculated, expressly or impliedly, to promote or encourage the use of ~~cigarettes, cigarette tobacco, cigars or pipe tobacco~~ any smoking product; or (*Amended 93 of 1997 s. 15*)
 - (c) illustrates or mentions smoking or ~~cigarettes, cigarette tobacco, cigars or pipe tobacco~~ any smoking products or their packages or qualities. (*Added 93 of 1997 s. 15*)
- (1A) Notwithstanding subsection (1)(c), an advertisement is not regarded as a ~~tobacco smoking product~~ advertisement if its purpose is to discourage smoking. (*Added 93 of 1997 s. 15*)
- (2) Subject to subsections (3) to (5), where—
- (a) an advertisement; or
 - (b) any object, other than a ~~tobacco~~ smoking product, which is displayed to the public, whether for sale or otherwise, in the course of conducting any business or providing any service, includes the name or trade name of any person associated with the marketing of any ~~tobacco product, or any trade mark or brand name of a tobacco smoking product, or any trade mark or brand name of a smoking~~ product, or any pictorial device or part thereof commonly associated therewith, then the advertisement or object shall be deemed to be a ~~tobacco advertisement~~ smoking product advertisement. (*Replaced 93 of 1997 s. 15*)
- (3) Subsection (2) shall not apply to any advertisement or object if the name, trade name, trade mark, brand name or pictorial device or part thereof mentioned in that subsection— (*Amended 21 of 2006 s. 15*)
- (a) is included exclusively for—
 - (i) a ~~non-tobacco~~ product or service that is not a smoking product or service; or
 - (ii) job recruitment purposes; and
 - (b) does not form a prominent part of the advertisement or object. (*Replaced 93 of 1997 s. 15. Amended 21 of 2006 s. 15*)
- (4) If the conditions set out in subsection (4A) are satisfied, subsection (2) shall not apply to any advertisement or object which includes— (*Amended 21 of 2006 s. 15*)
- (a) the name of any company or body corporate associated with the manufacture or marketing of any ~~tobacco~~ smoking product; or
 - ~~(b) any name identified with the trade name or brand name of any tobacco product, in association with any product not being tobacco. (*Added 93 of 1997 s. 15. Amended 21 of 2006 s. 15*)~~
 - (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.

- (4A) The conditions mentioned in subsection (4) are—
- (a) that the name mentioned in that subsection is included as the sponsor of an event or for congratulating another person or thing on an achievement of, or event relating to, such person or thing;
 - (b) that the name does not form a prominent part of the advertisement or object; and
 - (c) that the advertisement or object does not mention ~~the words “cigarette”, “cigarettes”, “smoking”, “tobacco”, “cigar”, “cigars”, “pipe” or “pipes” or “香煙”, “吸煙”, “煙草”, “雪茄” or “煙斗”.~~ 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). *(Added 21 of 2006 s. 15)*
- (5) Notwithstanding subsection (2), any accidental or incidental appearance of any ~~tobacco product~~ smoking product or the trade mark, trade name, brand name or logo of any ~~tobacco product~~ smoking product where no valuable consideration has been or is intended to be given for such appearance is not a ~~tobacco advertisement~~ smoking product advertisement. *(Added 93 of 1997 s. 15)*
- (6) The display of the following at any premises where ~~tobacco products are offered for sale is not a tobacco~~ conventional smoking products are offered for sale is not a smoking product advertisement—
- (a) one price marker for one type of ~~tobacco~~ conventional smoking product offered for sale in the premises that—
 - (i) contains only the name and price of that type of ~~tobacco~~ conventional smoking product; and
 - (ii) is of a size—
 - (A) not greater than the size of the price marker of any of the ~~non-tobacco~~ products that are not smoking products offered for sale in the premises; and
 - (B) not greater than 50 square centimetres;
 - (b) one price board if—
 - (i) it lists only the names and prices of the ~~tobacco~~ conventional smoking products offered for sale in the premises;
 - (ii) it is of a size not greater than 1 500 square centimetres;
 - (iii) each item on the board containing the name and price of one type of ~~tobacco~~ conventional smoking product is of a size not greater than 50 square centimetres; and
 - (iv) it bears a health warning in the prescribed form and manner; or
 - (c) in the case of a shop in which nothing except cigars and cigar accessories are offered for sale, 3 sets of catalogues, each

listing only the names and prices of the cigars offered for sale in the shop. (*Replaced 21 of 2006 s. 15*)

(*Amended 91 of 1994 s. 14*)

14A. Removal and disposal of ~~tobacco~~ smoking product advertisement

(1) An inspector may, without payment for it, remove or cause to be removed any ~~tobacco~~ smoking product advertisement or advertising structure in respect of which he reasonably suspects that an offence under this Ordinance has been or is being committed. (*Amended 21 of 2006 s. 16*)

(2) A magistrate may, on an application of the Secretary or an inspector, order the disposal of any ~~tobacco advertisement or advertising 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 such advertisement or structure. (*Amended 21 of 2006 s. 16*)~~ 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.

(3) The magistrate shall not order such disposal unless he is first satisfied that all persons with an interest in such advertisement or structure have, in so far as is reasonably practicable, had the opportunity of making representations thereon to the magistrate or that no such persons can, after reasonable inquiry, be found.

(4) The Government may recover the costs of the removal or disposal from the proprietor of the brand of ~~tobacco product which is mentioned in the tobacco advertisement or advertising structure removed under subsection (1) or from the owner of such advertisement or structure.~~ smoking product which is mentioned in the removed advertisement or structure or from the owner of the advertisement or structure.

(*Added 93 of 1997 s. 16*)

15. Offences under Part 4

(1) Any person who contravenes section 11(1), 12(1), 13, 13A or 13B commits an offence and is liable on summary conviction to a fine at level 5 and, in the case of a continuing offence, to a further penalty of \$1,500 for each day during which the offence continues. (*Amended 9 of 1992 s. 13; 93 of 1997 s. 17; 21 of 2006 s. 17*)

(2) In any proceedings for a contravention of section 11(1) it shall be a defence for the person charged to prove that the advertisement to which the proceedings relate was printed or published in such circumstances that he did not know and had no reason to believe he was taking part in the printing or publication thereof.

(*Amended E.R. 1 of 2012*)

Part 4A

Prohibition on Selling or Giving of ~~Tobacco~~ Conventional Smoking Products

(Amended 93 of 1997 s. 18)

(Part 4A added 91 of 1994 s. 15)

15A. Prohibition on selling or giving of ~~tobacco~~ conventional smoking products, etc.

- (1) No person shall sell any cigarette, cigarette tobacco, ~~cigar or pipe tobacco~~ cigar, pipe tobacco or heated tobacco product to any person under the age of 18 years.
- (2) No person shall, for the purposes of promotion or advertisement, give any cigarette, cigarette tobacco, ~~cigar or pipe tobacco~~ cigar, pipe tobacco or heated tobacco product to any person. (Amended 93 of 1997 s. 19)
- (3) No person shall—
 - (a) sell, offer for sale or give a ~~tobacco~~ conventional smoking product to any person in exchange for a token;
 - (b) give to any person a ~~tobacco~~ conventional smoking product as a prize in any event or competition;
 - ~~(c) give valuable consideration to any individual in order to induce him to buy a particular tobacco product or otherwise to promote to him that tobacco product;~~
 - (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;
 - (d) sell, offer for sale or possess for the purposes of sale a ~~tobacco~~ conventional smoking product which includes or is accompanied by a gift;
 - (e) sell, offer for sale or possess for the purposes of sale a ~~tobacco~~ conventional smoking product which includes or is accompanied by a token, stamp or raffle ticket, which may be exchanged for a gift, prize or discount on any product;
 - (f) sell, offer for sale or possess for the purposes of sale a ~~non-tobacco product which includes or is accompanied by a tobacco product as a gift; (Amended 21 of 2006 s. 18)~~ product—
 - (i) that is not a smoking product; and
 - (ii) that includes or is accompanied by a conventional smoking product as a gift;
 - (fa) sell, offer for sale or possess for the purposes of sale a ~~tobacco product and a non-tobacco~~ conventional smoking product and a product that is not a smoking product as a single item; or (Added 21 of 2006 s. 18)
 - (g) give to any person any object which contains the name or trade name of any person associated with the marketing of

cigarettes, cigarette tobacco, ~~eigars or pipe tobacco~~ **cigars, pipe tobacco or heated tobacco products** or contains any trade mark or brand name of a ~~tobacco~~ **conventional smoking product** or any pictorial device or part thereof commonly associated therewith, and which is intended to be shown in public. (*Added 93 of 1997 s. 19*)

15B. Display of sign when offering ~~tobacco~~ conventional smoking products for sale, etc.

- (1) Any person offering for sale, or promoting the sale, purchase, smoking or use of, cigarettes, cigarette tobacco, ~~eigars or pipe tobacco~~ **cigars, pipe tobacco or heated tobacco products** shall place and keep in place in a prominent position at his premises or at the place of promotion a sign in English and Chinese to indicate that no cigarette, cigarette tobacco, ~~cigar or pipe tobacco~~ **cigar, pipe tobacco or heated tobacco product** may be sold to any person under the age of 18 years or given to any person. (*Amended 93 of 1997 s. 20*)
- (2) A sign required by subsection (1) shall be of the prescribed description and shall be maintained in legible condition and good order by the person offering for sale, or promoting the sale, purchase, smoking or use of, cigarettes, cigarette tobacco, ~~eigars or pipe tobacco~~ **cigars, pipe tobacco or heated tobacco products**.

15C. Offences under Part 4A

- (1) Any person who contravenes section 15A or 15B commits an offence and is liable on summary conviction to a fine at level 4.
- (2) It shall be a defence to a charge under section 15A of selling any cigarette, cigarette tobacco, ~~cigar or pipe tobacco~~ **cigar, pipe tobacco or heated tobacco product** to a person under the age of 18 years to prove that at the time the offence is alleged to have been committed, the person charged inspected an identity card or passport purporting to be the identity card or passport of the person under the age of 18 years and believed on reasonable grounds that such person was not under the age of 18 years. (*Amended 93 of 1997 s. 21*)

(Amended E.R. 1 of 2012)

15D. Interpretation

For the purposes of this Part ***promotion or advertisement*** (推廣或宣傳) means a promotion or advertisement intended as an inducement to purchase, smoke or encourage the use of cigarettes, cigarette tobacco, ~~eigars or pipe tobacco~~ **cigars, pipe tobacco or heated tobacco products**, whether or not with reference to a particular brand.

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

- (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 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 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.

Part 4B

Provisions Relating to Inspectors

(Part 4B added 21 of 2006 s. 19)

15E. Interpretation of Part 4B

In this Part—

relevant offence (有關罪行) means any offence under this Ordinance other than an offence under Part 3;

relevant provision (有關條文) means any provision of this Ordinance other than a provision of Part 3.

(Amended E.R. 1 of 2012)

15F. Appointment of inspectors

The Secretary may appoint in writing any public officer to be an inspector to exercise any of the powers and perform any of the duties conferred or imposed on an inspector by this Ordinance.

15G. General powers and duties of inspectors

- (1) Without limiting any other provisions of this Ordinance, an inspector may, subject to subsections (2) and (3) and on production of his authority as an inspector if requested, do all or any of the following—
 - (a) at any time enter any place in which the inspector reasonably suspects that a relevant offence has been or is being committed;
 - (b) at any reasonable time enter and inspect a no smoking area in a public place for the purpose of ascertaining whether the relevant provisions are complied with;
 - (c) seize any thing that appears to the inspector to be evidence of any relevant offence;
 - (d) require any person to give his name and address and to produce proof of identity if the inspector reasonably suspects that the person has committed a relevant offence;
 - (e) take photographs or make sound or video recording for the purpose of obtaining evidence in connection with any relevant offence;
 - (f) require any person to produce for inspection documents or records under the control of the person for the purpose of enabling the inspector to ascertain whether the relevant provisions are complied with;
 - (g) make copies of all or any part of any such documents or records;
 - (h) require any person to provide the inspector with such assistance or information as is reasonably necessary to enable the inspector to exercise any power or perform any duty conferred or imposed by this Ordinance.

- (2) An inspector shall not enter under subsection (1)(a)—
 - (a) any domestic premises; or
 - (b) any correctional facility without the approval of the Commissioner of Correctional Services.
- (3) An inspector shall not enter under subsection (1)(b) any public place that is a common part of any premises to which the public are not entitled or permitted to have access.
- (4) A person who wilfully obstructs an inspector who is in the exercise of a power or the performance of a duty conferred or imposed by this Ordinance commits an offence and is liable on summary conviction to a fine at level 3.
- (5) A person who fails to give his name and address or to produce proof of identity when required to do so under subsection (1)(d), or who then gives a false or misleading name or address commits an offence and is liable on summary conviction to a fine at level 3.

15H. Disposal of property seized by inspectors

- (1) If an inspector seizes any property while exercising a power or performing a duty conferred or imposed by this Ordinance, section 102 of the Criminal Procedure Ordinance (Cap. 221) shall apply as if the inspector were the police within the meaning of that section and such property were property that had come into possession of the police in connection with a criminal offence.
- (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.

15I. Inspectors not personally liable for certain acts and omissions

- (1) An inspector is not personally liable for any act done or omitted to be done by the inspector while exercising a power or performing a duty conferred or imposed by this Ordinance if the inspector did the act or omitted to do the act in the honest belief that the act or omission was required or authorized by or under this Ordinance.
- (2) Subsection (1) does not affect any liability that the Government may have because an inspector has done an act or omitted to do an act to which that subsection applies.

Part 5

Supplementary

16. Evidence of tar and nicotine yields

- (1) The Government Chemist may from time to time analyse any cigarette for the purpose of determining its tar and nicotine yields for the purposes of this Ordinance and may publish the result of any such analysis.
- (2) The determination of the Government Chemist under subsection (1) as published by him shall be evidence of the tar and nicotine yields of the brand of cigarettes from which the cigarette analysed was taken subject to such conditions or limitations as may be prescribed; and any publication purporting to be a determination so published shall be deemed to be such a determination unless and until the contrary is proved.
- (3) The power of a member of the Customs and Excise Service to take samples of any goods to which the Dutiable Commodities Ordinance (Cap. 109) applies conferred by section 11(1)(d) of that Ordinance shall extend to the taking of samples of cigarettes for analysis by the Government Chemist for the purposes of this section.

(Amended 93 of 1997 s. 22)

16A. Amendment of Schedules

The Secretary may by order published in the Gazette amend the Schedules.

(Added 9 of 1992 s. 14. Amended 80 of 1997 s. 22; L.N. 106 of 2002; L.N. 130 of 2007)

17. *(Had its effect)*

18. Regulations and Orders

- (1) The Chief Executive in Council may make regulations for all or any of the following matters— *(Amended 60 of 2000 s. 3)*
 - (a) prescribing anything required or permitted to be prescribed under this Ordinance;
 - (b) prescribing the manner in which the tar and nicotine yields of a cigarette are to be determined; *(Replaced 93 of 1997 s. 23)*
 - (c) requiring notification of anything done by any person which may be relevant to the tar and nicotine yields of cigarettes and imposing penalties not exceeding a fine at level 3 for a failure to comply with such requirement; *(Amended 9 of 1992 s. 15)*
 - (d) excepting any tobacco advertisement from the provisions of Part 4 either absolutely or subject to such exceptions as may be prescribed; and

- (e) for the better carrying into effect of this Ordinance.
- (2) Subject to the regulations, the Secretary may by order in the Gazette prescribe all or any of the following matters—
 - (a) the form (including specifications) of—
 - (i) *(Repealed 21 of 2006 s. 20(b))*
 - (ii) any health warning; and
 - (iii) any indication of tar and nicotine yields;
 - (b) the manner in which any of the matters referred to in paragraph (a) is to be displayed. *(Replaced 21 of 2006 s. 20(a))*

(Amended 93 of 1997 s. 23; E.R. 1 of 2012)

~~19. **Transitional provisions relating to Smoking (Public Health) (Amendment) Ordinance 2006**~~

~~Schedule 6 provides for the transitional arrangements relating to the Smoking (Public Health) (Amendment) Ordinance 2006 (21 of 2006).~~

~~*(Added 21 of 2006 s. 41)*~~

Schedule 1

[s. 2]

Public Transport Carriers Where Smoking is Prohibited

Item	Type of Carrier
1.	A public bus operated under a franchise granted under the Public Bus Services Ordinance (Cap. 230).
2.	A public bus operated under a passenger service licence for the purposes of— <ol style="list-style-type: none">(a) a tour service;(b) an international passenger service;(c) a hotel service;(d) a student service;(e) an employees' service;(f) a residents' service;(g) a multiple transport service; or(h) any other service approved by the Commissioner for Transport, under the Road Traffic Ordinance (Cap. 374) other than when hired to any person under regulation 38 of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D).
3.	A public light bus within the meaning of the Road Traffic Ordinance (Cap. 374) other than when hired to any person under regulation 38 of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D).
4.	A registered taxi within the meaning of the Road Traffic Ordinance (Cap. 374) other than when hired to any person under regulation 38 of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D).
5.	A train operated on the Mass Transit Railway under the Mass Transit Railway Ordinance (Cap. 556). (<i>Amended 13 of 2000 s. 65</i>)
6.	A train operated on the Kowloon-Canton Railway under the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) at any time outside the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556). (<i>Amended 11 of 2007 s. 36</i>)
6A.	A train operated on the KCRC Railway within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556) during the

Concession Period referred to in item 6. (*Added 11 of 2007 s. 36*)

7. A light rail vehicle operated on the North-west Railway under the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) at any time outside the Concession Period referred to in item 6. (*Amended 11 of 2007 s. 36*)
- 7A. A light rail vehicle operated on the North-west Railway within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556) during the Concession Period referred to in item 6. (*Added 11 of 2007 s. 36*)
8. A car used upon the tramway under the Tramway Ordinance (Cap. 107) other than on a hire tramway service.
9. A tramcar used upon the tramway under the Peak Tramway Ordinance (Cap. 265).
10. Those parts of a ferry vessel operated under a franchise or a licence granted under the Ferry Services Ordinance (Cap. 104) opened, kept or used for or in connection with the carriage of passengers or to which the passengers have or are permitted to have access.

(Added 9 of 1992 s. 16)

Schedule 2

[s. 3(1) & (1AA)]

Designated No Smoking Areas and Exempt Areas

Part 1

Designated No Smoking Areas

Item	Type of Area
1.	Any cinema, theatre or concert hall.
2.	Any public lift.
3.	Any escalator.
4.	Any amusement game centre.
5.	Any child care centre.
6.	Any school.
7.	Any specified educational establishment.
8.	Any approved institution.
9.	Any place of detention.
10.	Any place of refuge.
11.	Any reformatory school.
12.	Any hospital.
13.	Any maternity home.
14.	Any public pleasure ground other than a bathing beach.
15.	The following areas within any bathing beach— <ol style="list-style-type: none">any part of the waters set aside for the sole use of swimmers under section 10 of the Bathing Beaches Regulation (Cap. 132 sub. leg. E) (which includes any beach raft and any other thing on the surface of or above those waters);the shore covered with sand or stones, together with any structure, showering facilities or natural feature on such shore; andany area specified under section 107(3) of the Public Health and

Municipal Services Ordinance (Cap. 132) to be used as a barbecue area, camp site or children's play area.

16. The following areas within any public swimming pool—
 - (a) any swimming pool;
 - (b) any sidewalk immediately adjacent to the swimming pool;
 - (c) any diving board or other apparatus or facility adjoining the swimming pool; and
 - (d) any spectator stand.

17. The following areas within any stadium—
 - (a) any pitch;
 - (b) any running track;
 - (c) any sidewalk immediately adjacent to the pitch or running track; and
 - (d) any spectator stand.

18. The Hong Kong Wetland Park designated under section 24(1) of the Country Parks Ordinance (Cap. 208).

19. An indoor area in—
 - (a) any shop, department store or shopping mall;
 - (b) any market (whether publicly or privately operated or managed);
 - (c) any supermarket;
 - (d) any bank;
 - (e) any restaurant premises;
 - (f) any bar;
 - (g) any karaoke establishment;
 - (h) any mahjong-tin kau premises;
 - (i) any bathhouse;
 - (j) any massage establishment;
 - (k) any residential care home;
 - (l) any treatment centre; or
 - (m) any communal quarters (as defined in Part 3).

20. An indoor area in a workplace or public place to the extent that it is not an area described in any other item in this Part.
21. The following bus interchanges and adjoining facilities—
- (a) Lion Rock Tunnel Bus Interchange, located on both sides of the toll plaza of the Lion Rock Tunnel, as shown coloured orange and edged red on Plan No. DH/TCO/T-004V1, signed by the Secretary on 4 December 2015 and deposited in the Land Registry;
 - (b) Cross-Harbour Tunnel Bus Interchange, located on both sides of the toll plaza of the Cross-Harbour Tunnel, together with the adjoining staircases and part of the adjoining elevated walkways, as shown—
 - (i) coloured orange and edged red;
 - (ii) coloured yellow and edged red;
 - (iii) coloured orange stippled black and edged red; and
 - (iv) coloured orange hatched black and edged red,on Plan No. DH/TCO/T-001V1, signed by the Secretary on 4 December 2015 and deposited in the Land Registry;
 - (c) Eastern Harbour Crossing Bus Interchange, located on both sides of the toll plaza of the Eastern Harbour Crossing, as shown coloured orange and edged red on Plan No. DH/TCO/T-002V1, signed by the Secretary on 4 December 2015 and deposited in the Land Registry;
 - (d) Shing Mun Tunnels Bus Interchange, located on both sides of the toll plaza of the Shing Mun Tunnels, as shown coloured orange and edged red on Plan No. DH/TCO/T-006V1, signed by the Secretary on 4 December 2015 and deposited in the Land Registry;
 - (e) Tate's Cairn Tunnel Bus Interchange, located on both sides of the toll plaza of the Tate's Cairn Tunnel, as shown coloured orange and edged red on Plan No. DH/TCO/T-005V1, signed by the Secretary on 4 December 2015 and deposited in the Land Registry;
 - (f) Western Harbour Crossing Bus Interchange, located on both sides of the toll plaza of the Western Harbour Crossing, as shown coloured orange and edged red on Plan No. DH/TCO/T-003V1, signed by the Secretary on 4 December 2015 and deposited in the Land Registry;
 - (g) Tai Lam Tunnel Bus Interchange, located on both sides of the toll plaza of the Tai Lam Tunnel, as shown coloured orange and edged

red on Plan No. DH/TCO/T-007V1, signed by the Secretary on 4 December 2015 and deposited in the Land Registry; (*Amended L.N. 81 of 2018*)

- (h) Tsing Sha Highway Bus Interchange, located on both sides of the toll plaza on Tsing Sha Highway, as shown coloured orange and edged red on Plan No. DH/TCO/T-008V1, signed by the Secretary on 4 December 2015 and deposited in the Land Registry; (*Added L.N. 237 of 2015. Amended L.N. 81 of 2018*)
- (i) Tuen Mun Road Bus Interchange (Kowloon Bound), located at Tuen Mun Road, as shown coloured orange and edged red on Plan No. DH/TCO/E-003V1, signed by the Secretary on 7 May 2018 and deposited in the Land Registry; (*Added L.N. 81 of 2018*)
- (j) Tuen Mun Road Bus Interchange (Tuen Mun Bound), located at Tuen Mun Road, together with the adjoining staircases and part of the adjoining elevated walkways, as shown—
 - (i) coloured orange and edged red;
 - (ii) coloured yellow and edged red;
 - (iii) coloured orange stippled black and edged red; and
 - (iv) coloured orange hatched black and edged red,on Plan No. DH/TCO/E-004V1, signed by the Secretary on 7 May 2018 and deposited in the Land Registry; (*Added L.N. 81 of 2018*)
- (k) Lantau Toll Plaza Bus Interchange, located on both sides of the toll plaza on North Lantau Highway, as shown coloured orange and edged red on Plan No. DH/TCO/E-002V1, signed by the Secretary on 7 May 2018 and deposited in the Land Registry; and (*Added L.N. 81 of 2018*)
- (l) Aberdeen Tunnel Bus Interchange, on both sides of the unnamed road near the junction of Nam Fung Road with Wong Chuk Hang Road, as shown coloured orange and edged red on Plan No. DH/TCO/E-001V1, signed by the Secretary on 7 May 2018 and deposited in the Land Registry. (*Added L.N. 81 of 2018*)

Part 2

Exempt Areas

Item	Type of Area
1.	An area described in item 20 of Part 1 that is situated in domestic premises.

2. Type 1 private quarters (as defined in Part 3).
3. Type 2 private quarters (as defined in Part 3) that are not situated within any of the following—
 - (a) a child care centre;
 - (b) a school;
 - (c) a specified educational establishment;
 - (d) an approved institution;
 - (e) a place of detention;
 - (f) a place of refuge;
 - (g) a reformatory school;
 - (h) a hospital;
 - (i) a maternity home.
4. A bedspace apartment in respect of which a licence or certificate of exemption issued under the Bedspace Apartments Ordinance (Cap. 447) is in force.
5. A room or suite of rooms in a hotel or guesthouse if—
 - (a) a licence or certificate of exemption issued under the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) is in force in respect of the hotel or guesthouse; and
 - (b) the room or suite of rooms is being hired for use as sleeping accommodation.
6. An area designated by the Airport Authority as a smoking area as referred to in section 16 of the Airport Authority Bylaw (Cap. 483 sub. leg. A).
7. An area in a correctional facility that is set aside for smoking by prisoners who are allowed to do so in accordance with orders under rule 25 of the Prison Rules (Cap. 234 sub. leg. A).
8. An area that is—
 - (a) situated within a public pleasure ground other than a bathing beach; and
 - (b) specified under section 107(3) of the Public Health and Municipal Services Ordinance (Cap. 132) to be used as a smoking area.

9. A room designated for cigar tasting in a shop if all the following requirements are complied with—
- (a) the shop is engaged in the retail sale of cigars;
 - (b) nothing except cigars and cigar accessories are offered for sale in the shop;
 - (c) the room is not used for smoking except for the purpose of tasting the cigars, or samples of the cigars, that are sold or offered for sale in the shop;
 - (d) the room is independently ventilated and completely partitioned off from the remainder of the shop; and
 - (e) no natural person is required to enter the room while it is being occupied for cigar tasting (whether or not he could have been required to do so by contract or otherwise).
10. A room designated for ~~tobacco tasting in the manufacturing or business premises of a business engaged in the tobacco trade~~ tasting or testing of smoking products in the manufacturing or business premises of a business engaged in the smoking products trade if all the following requirements are complied with—
- (a) the business is not engaged in the retail sale of ~~tobacco~~ smoking products;
 - ~~(b) the tobacco tasting is carried out for the purpose of conducting research and development or quality control of tobacco products in the normal course of the business;~~
 - (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;
 - (c) the room is only used for carrying out the ~~tobacco tasting~~ tasting and testing;
 - (d) the room is independently ventilated and completely partitioned off from the remainder of the premises; and
 - (e) no natural person, other than one who carries out the ~~tobacco tasting, is required to enter the room while it is being occupied for the tobacco tasting~~ tasting or testing, is required to enter the room while it is being occupied for the tasting or testing (whether or not he could have been required to do so by contract or otherwise).

11. An area set aside by the Director of Immigration under rule 11A of Schedule 1 to the Immigration (Treatment of Detainees) Order (Cap. 115 sub. leg. E) in a place specified in Schedule 2 to that Order for smoking by persons detained there. (*Added L.N. 16 of 2010*)

12. A Government laboratory.

Part 3

Interpretation

In this Schedule—

communal quarters (共用宿舍) means any premises that are the living accommodation provided by an employer to 2 or more employees, or to those employees and their families, whether or not any monetary consideration is received by the employer for providing the accommodation, but does not include—

- (a) any room occupied exclusively by one employee, or by that employee and his family, within any such accommodation; and
- (b) any such accommodation that is, or forms part of, the private dwelling of the employer or any other person;

Type 1 private quarters (第一類私人宿舍) means any premises that comply with the following requirements—

- (a) the premises are the living accommodation provided by an employer to one employee, or to that employee and his family, whether or not any monetary consideration is received by the employer for providing the accommodation;
- (b) the accommodation is occupied exclusively by that employee, or by him and his family; and
- (c) the block of building in which the accommodation is situated consists only of such accommodation and the common parts (if any) shared by such accommodation;

Type 2 private quarters (第二類私人宿舍) means any premises that comply with the following requirements—

- (a) the premises are the living accommodation provided by an employer to one employee, or to that employee and his family, whether or not any monetary consideration is received by the employer for providing the accommodation;
- (b) the accommodation is occupied exclusively by that employee, or by him and his family;
- (c) the accommodation is permanently and completely partitioned off from the remainder of any area described in Part 1 within which the accommodation is situated; and
- (d) none of any window, door or other closeable opening of the accommodation opens to an indoor part of that area (except a common part).

(*Schedule 2 replaced 21 of 2006 s. 21*)

Schedule 3

(Repealed 21 of 2006 s. 22)

Schedule 4

(Repealed 21 of 2006 s. 23)

Schedule 5

[s. 3(2A)]

Exemption from Section 3(2) of this Ordinance

Exemption for live performance or recording
for film or television programme

1. Interpretation of Schedule 5

(1) In this Schedule—

conventional smoking act (傳統吸煙行為) means smoking or carrying a lighted cigarette, cigar or pipe or an activated heated tobacco product;

film (電影) means a film within the meaning of section 2(1) of the Film Censorship Ordinance (Cap. 392);

live performance (現場表演) means a performance given or done before a live audience, whether on payment or otherwise, and includes the final rehearsal of the performance;

performance (表演) means any play, show, entertainment or any other kind of performance;

~~**smoking act** (吸煙動作) means smoking or carrying a lighted cigarette, cigar or pipe;~~

television programme (電視節目) means a television programme within the meaning of section 2(1) of the Broadcasting Ordinance (Cap. 562);

(2) For the purposes of this Schedule, a venue is a designated performance venue if it is—

(a) situated in—

(i) a school other than one that provides any nursery, kindergarten or primary education within the meaning of section 3(1) of the Education Ordinance (Cap. 279); or

(ii) a specified educational establishment; and

(b) designated by the manager of that school or establishment as a venue for any live performance.

2. Exemption for live performance

For the purposes of section 3(2A) of this Ordinance, a person who does a ~~smoking act~~ a **conventional smoking act** in a no smoking area is exempt from section 3(2) of this Ordinance if he proves that—

(a) he is performing in a live performance, and his **conventional smoking act** forms part of the performance;

(b) the no smoking area in which the live performance takes place is not a school or specified educational establishment except a designated performance venue;

(c) the manager of the no smoking area has given his prior permission for the live performance with the **conventional smoking act** to take place in the no smoking area, and in the case of a designated performance venue in a secondary school within the meaning of section 3(1) of the Education Ordinance

(Cap. 279), that prior permission has been given in writing;

- (d) the live performance takes place only within the time and at the location permitted by the manager; and
- (e) the conventional smoking act complies with all the requirements specified in relation to such an act under section 4.

3. Exemption for recording for film or television programme

For the purposes of section 3(2A) of this Ordinance, a person who does ~~a smoking act~~ a conventional smoking act in a no smoking area is exempt from section 3(2) of this Ordinance if he proves that—

- (a) he is performing in a performance, and his conventional smoking act forms part of the performance;
- (b) the performance is being recorded for the production of a film or television programme (whether live or otherwise);
- (c) the film or television programme is not, and does not form part of, a ~~tobacco~~ smoking product advertisement;
- (d) the manager of the no smoking area in which the performance takes place has given his prior permission for the performance with the conventional smoking act to take place in the no smoking area, and in the case of a school that provides any nursery, kindergarten, primary or secondary education within the meaning of section 3(1) of the Education Ordinance (Cap. 279), that prior permission has been given in writing;
- (e) the performance takes place only within the time and at the location permitted by the manager; and
- (f) the conventional smoking act complies with all the requirements specified in relation to such an act under section 4.

4. Specified requirements for conventional smoking act

For the purposes of sections 2(e) and 3(f), the following are the requirements specified in relation to a conventional smoking act —

- (a) the act does not expressly or impliedly induce, suggest or request any person to purchase or smoke any ~~tobacco~~ conventional smoking product;
- (b) the act does not illustrate smoking in a manner that is calculated, expressly or impliedly, to promote or encourage the use of any ~~tobacco~~ conventional smoking product;
- (c) the act does not illustrate the package of any ~~tobacco~~ conventional smoking product; and
- (d) the act does not illustrate any quality of any ~~tobacco~~ conventional smoking product except for the purpose of publicizing the harm of smoking.

(Schedule 5 added 21 of 2006 s. 24)

Transitional Provisions Relating to Smoking (Public Health)
(Amendment) Ordinance 2006

Part 1

Requirements Relating to Tobacco Product Packaging

1. Interpretation of Part 1

In this Part, *appointed day** (指定日期) means the day on which the Smoking (Public Health) (Amendment) Ordinance 2006 (21 of 2006) is published in the Gazette.

2. Sale of tobacco products with pre-amendment health warnings, etc.

(1) During the 12 months after the appointed day, compliance with the relevant provisions of this Ordinance as in force immediately before the appointed day shall, for the purposes of sections 8 and 9 of this Ordinance, be deemed to be compliance with the relevant provisions of this Ordinance.

(2) In this section, *relevant provisions* (有關規定) means the provisions relating to health warnings and indication of tar and nicotine yields.

3. Offence relating to tobacco product packaging

No prosecution shall be brought under section 10(3) of this Ordinance in respect of an act done during the 12 months after the appointed day if that act would not have constituted an offence under that section as in force immediately before the appointed day.

Part 2

(Omitted as expired—E.R. 1 of 2012)

(Schedule 6 added 21 of 2006 s. 42)

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~~ **cigar, pipe or heated tobacco product**;
 - 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~~ **cigarette, cigar or heated tobacco product** 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 **Category 2**

- 32. 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

heated tobacco product

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](#)

[加熱煙草產品](#)

[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](#)

**Smoking (Public Health) (Prescribed Information)
Order***(L.N. 66 of 2017)*

(Cap. 371, section 18(2))

[13 August 1982]

*(Format changes—E.R. 1 of 2019)***1. Citation**

This Order may be cited as the Smoking (Public Health) (Prescribed Information) Order.

*(L.N. 66 of 2017)***2. *(Repealed 21 of 2006 s. 34)*****2A. Interpretation**

(1) In this Order— *(L.N. 126 of 2017)*

specified seal (指明封條), in relation to a packet of cigarettes, means an affixture to the packet that is affixed to—

- (a) the top part of the 2 surfaces that bear the health warning; and
- (b) the surface that adjoins the top of those 2 surfaces; *(L.N. 126 of 2017)*

surface (表面), in relation to a packet of cigarettes **or heated tobacco products**, or a retail container of cigarette **or heated tobacco product** packets, cigars, pipe tobacco or cigarette tobacco—

- (a) means an outer surface of the packet or container; and
 - (b) includes any part of the lid of the packet or container that forms part of the surface.
- (2) For the purposes of paragraph 3, a packet is a specified packet with seal if—
- (a) the packet does not have a lid any part of which forms, when the lid is closed, part of a surface that bears the health warning;
 - (b) the packet bears one specified seal that partially obscures any health warning appearing on any surface of the packet; and
 - (c) the area of the warning so obscured does not exceed 23 mm in width and 14 mm in length. *(L.N. 126 of 2017)*

3. Health warning and indication of tar and nicotine yields on packet or retail container of cigarettes

- (1) For the purposes of section 8 of the Ordinance, this paragraph applies to any packet of cigarettes containing 20 or more cigarettes and any retail container of cigarette packets containing any number of cigarettes.
- (2) Each packet and each container must bear a health warning and an indication of tar and nicotine yields. *(L.N. 66 of 2017)*
- (3) Subject to subparagraph (9), the health warning and indication of tar and nicotine yields must be printed on the packets and containers. *(L.N. 66 of 2017)*
- (4) The health warning must comply with the following requirements—
 - (a) it must conform to—
 - (i) for a container and a packet other than a specified packet with seal—either version A or version B of one of the forms prescribed in Part 2 of the Schedule; and
 - (ii) for a specified packet with seal—version C of one of the forms prescribed in Part 2 of the Schedule; *(L.N. 126 of 2017)*
 - (b) it must appear on the 2 largest surfaces of each packet and of each container;
 - (c) if a packet or container has more than 2 largest surfaces, the warning must appear on any 2 of those surfaces;
 - (d) subject to sub-subparagraph (a), the 2 surfaces must respectively bear the Chinese version and English version of version A, version B or version C of the same warning; *(L.N. 126 of 2017)*
 - (e) each Chinese or English version of the warning must cover at least 85% of the area of the surface on which it appears. *(L.N. 66 of 2017; L.N. 126 of 2017)*
- (5) Despite subparagraph (4), if a packet or container is in the shape of a cylindrical drum—
 - (a) the health warning must be in one of the forms prescribed in Part 2A of the Schedule;
 - (b) the Chinese version of the warning—
 - (i) must appear on the curved surface of the drum; and
 - (ii) must cover at least 85% of the area of that surface; and
 - (c) the English version of the same warning—
 - (i) must appear on the top surface of the lid of the drum; and
 - (ii) must cover at least 50% of the area of that surface.

(L.N. 66 of 2017)

- (6) For subparagraphs (4)(a) and (5)(a), each form of the health warning prescribed in Part 2 or 2A of the Schedule must appear on the packets and retail containers of each brand of cigarette with equal frequency during any continuous period of 24 months. *(L.N. 66 of 2017)*
- (7) The indication of tar and nicotine yields—
 - (a) must be in either of the forms prescribed in Part 2C of the Schedule; and
 - (b) must appear on a surface of each packet and of each retail container other than a surface bearing the health warning. *(L.N. 66 of 2017)*
- (8) The health warning and indication of tar and nicotine yields appearing on a packet or retail container must not be obscured by—
 - (a) any part of the lid of the packet or container when it is closed;
 - (b) an affixture to the packet or container;
 - (c) the wrapping of the packet or container;
 - (d) an affixture to that wrapping; or
 - (e) anything contained in that wrapping. *(L.N. 66 of 2017)*
- (8A) Subparagraph (8) is not contravened in relation to a specified packet with seal by reason only of the affixture of a specified seal to the packet. *(L.N. 126 of 2017)*
- (9) The health warning and indication of tar and nicotine yields may appear on a label securely affixed to a packet or retail container if—
 - (a) the packet or container is made of metal or is a plastic drum; or
 - (b) the Commissioner of Customs and Excise approves the affixing of the label to the packet or container on being satisfied that—
 - (i) it is not reasonable to expect to have had a health warning and an indication of tar and nicotine yields printed on the packet or container at the time of its manufacture; and
 - (ii) the approval is required for a limited period of time or in relation to a particular consignment of cigarettes only. *(L.N. 66 of 2017)*

(21 of 2006 s. 35)

4. *(Repealed L.N. 188 of 1999)*

4A. **Health warning on ~~retail container of cigar, pipe tobacco or cigarette tobacco~~ packet or retail container of cigar, pipe tobacco, cigarette tobacco or heated tobacco product (other than retail container containing one cigar)**

- (1) For the purposes of section 9 or 9A of the Ordinance, this paragraph applies to any ~~retail container of any cigar, pipe tobacco or cigarette tobacco~~ packet or retail container of any cigar, pipe tobacco, cigarette tobacco or heated tobacco product (other than a retail container containing one cigar).
- (2) Each packet or container must bear a health warning. (*L.N. 66 of 2017*)
- (3) Subject to subparagraph (10), the health warning must be printed on the packets or containers. (*L.N. 66 of 2017*)
- (4) The health warning must comply with the following requirements—
 - (a) it must conform to either version A or version B of one of the forms prescribed in Part 2 of the Schedule; (*L.N. 126 of 2017*)
 - (b) it must appear on the 2 largest surfaces of each packet and of each container;
 - (c) if a packet or container has more than 2 largest surfaces, the warning must appear on any 2 of those surfaces;
 - (d) if appearing on a retail container of cigars, the warning must also comply with subparagraph (5);
 - (e) if appearing on a ~~retail container of pipe tobacco or cigarette tobacco~~ packet or retail container of pipe tobacco, cigarette tobacco or heated tobacco products, the warning must also comply with subparagraph (6). (*L.N. 66 of 2017*)
- (5) For a retail container of cigars—
 - (a) the Chinese version of the warning—
 - (i) must appear on the largest surface on the front of the container; and
 - (ii) must cover at least 70% of the area of that surface; and
 - (b) the English version of the same warning—
 - (i) must appear on the largest surface on the back of the container; and
 - (ii) must cover 100% of the area of that surface. (*L.N. 66 of 2017*)
- (6) For a ~~retail container of pipe tobacco or cigarette tobacco~~ packet or retail container of pipe tobacco, cigarette tobacco or heated tobacco products—
 - (a) subject to subparagraph (4)(a), the 2 surfaces bearing the warning must respectively bear the Chinese version and English version of version A or version B of the same warning; and (*L.N. 126 of 2017*)
 - (b) each Chinese or English version of the warning must

cover at least 85% of the area of the surface on which it appears. (*L.N. 66 of 2017; L.N. 126 of 2017*)

- (7) Despite subparagraphs (4), (5) and (6), if a **packet or** container is in the shape of a cylindrical drum—
- (a) the health warning must be in one of the forms prescribed in Part 2A of the Schedule;
 - (b) the Chinese version of the warning—
 - (i) must appear on the curved surface of the drum; and
 - (ii) must cover at least 85% of the area of that surface; and
 - (c) the English version of the same warning—
 - (i) must appear on the top surface of the lid of the drum; and
 - (ii) must cover at least 50% of the area of that surface. (*L.N. 66 of 2017*)
- (8) For subparagraphs (4)(a) and (7)(a), each form of the health warning prescribed in Part 2 or 2A of the Schedule must appear on the ~~retail containers of each brand of cigar, pipe tobacco or cigarette tobacco~~ **packets or retail containers of each brand of cigar, pipe tobacco, cigarette tobacco or heated tobacco product** with equal frequency during any continuous period of 24 months. (*L.N. 66 of 2017*)
- (9) The health warning appearing on a **packet or** retail container must not be obscured by—
- (a) any part of the lid of the **packet or** container when it is closed;
 - (b) an affixture to the **packet or** container;
 - (c) the wrapping of the **packet or** container;
 - (d) an affixture to that wrapping; or
 - (e) anything contained in that wrapping. (*L.N. 66 of 2017*)
- (10) The health warning may appear on a label securely affixed to a **packet or** retail container with an approval given by the Commissioner of Customs and Excise on being satisfied that it is not reasonable to expect to have had a health warning printed on the **packet or** container at the time of its manufacture. (*L.N. 66 of 2017*)

(21 of 2006 s. 36)

4AA. Health warning on retail container containing one cigar

- (1) For the purposes of section 9 of the Ordinance, this paragraph applies to any retail container containing one cigar.
- (2) Each container must bear a health warning. (*L.N. 66 of 2017*)
- (3) Subject to subparagraph (7), the health warning must be printed on the containers. (*L.N. 66 of 2017*)
- (4) The health warning must comply with the following

requirements—

- (a) it must conform to one of the forms prescribed in Part 2B of the Schedule; *(L.N. 126 of 2017)*
 - (b) both the Chinese version and English version of the warning must appear on the largest surface of the container. *(L.N. 66 of 2017)*
- (5) For subparagraph (4)(a), each form of the health warning prescribed in Part 2B of the Schedule must appear on the retail containers of each brand of cigar with equal frequency during any continuous period of 24 months. *(L.N. 66 of 2017)*
- (6) The health warning appearing on a retail container must not be obscured by—
- (a) any part of the lid of the container when it is closed;
 - (b) an affixture to the container;
 - (c) the wrapping of the container;
 - (d) an affixture to that wrapping; or
 - (e) anything contained in that wrapping. *(L.N. 66 of 2017)*
- (7) The health warning may appear on a label securely affixed to a retail container with an approval given by the Commissioner of Customs and Excise on being satisfied that it is not reasonable to expect to have had a health warning printed on the container at the time of its manufacture. *(L.N. 66 of 2017)*

(21 of 2006 s. 36)

4B. *(Repealed 21 of 2006 s. 37)*

5. *(Repealed 21 of 2006 s. 38)*

5A. Health warning on price board of ~~tobacco~~ conventional smoking products

- (1) For the purposes of section 14(6)(b)(iv) of the Ordinance, this paragraph applies to a price board that lists the names and prices of the ~~tobacco~~ conventional smoking products offered for sale in any premises.
- (2) The price board shall bear a health warning in the form set out in Part 3A of the Schedule.
- (3) The health warning must cover at least 20% of the area of the price board.

(21 of 2006 s. 39; L.N. 66 of 2017)

6.-7. *(Repealed L.N. 188 of 1999)*

8. Sign when offering ~~tobacco~~ convention smoking products for sale, etc.
A sign required by section 15B of the Ordinance shall be as set out in Part 6 of the Schedule and shall— *(L.N. 66 of 2017)*

- (a) be rectangular in shape with sides of at least 38 centimetres in length and 20 centimetres in width;
- (b) be in plain and readily legible letters and characters;
- (c) have letters and characters of a colour which contrasts with the colour of the background upon which they are printed; and
- (d) be printed—
 - (i) in English, in Univers Bold; and
 - (ii) in Chinese, in Gothic Bold (中粗黑/粗黑).

(L.N. 558 of 1994)

9. Transitional provision relating to Smoking (Public Health) (Notices) (Amendment) Order 2017 (L.N. 66 of 2017)

(E.R. 1 of 2019)

During the period between 21 December 2017 and 20 June 2018 (both dates inclusive), compliance with paragraph 3, 4A or 4AA as in force immediately before 21 December 2017 is, for the purposes of sections 8 and 9 of the Ordinance, taken to be compliance with paragraph 3, 4A or 4AA, as may be appropriate.

(L.N. 66 of 2017; L.N. 126 of 2017)

Schedule

[paras. 3, 4A, 4AA, 5A & 8]

(L.N. 558 of 1994; L.N. 188 of

1999; 21 of 2006 s. 40)

Part I

(Repealed L.N. 188 of 1999)

Part 2

**Forms of Health Warning on Packet of Cigarettes or
Heated Tobacco Products or Retail Container of
Tobacco Conventional Smoking Products
 (Not in Cylindrical Drum Shape, Not Containing
 One Cigar)**

Part 2A

**Forms of Health Warning on Packet of Cigarettes ~~or~~
~~Heated Tobacco Products~~ or Retail Container of
~~Tobacco~~ Conventional Smoking Products (in Cylindrical
Drum Shape, Not Containing One Cigar)**

Part 2B

**Forms of Health Warning on Retail Container
Containing One Cigar**

Part 2C

**Forms of Indication of Tar and Nicotine Yields on
Packet of Cigarettes or Retail Container of Cigarette
Packets**

Part III

(Repealed 21 of 2006 s. 40)

Part 3A

~~**Form of Health Warning on Price Board of
Tobacco Products**~~

**Form of Health Warning on Price Board
of Conventional Smoking Products**

Part IV

(Repealed L.N. 188 of 1999)

Part V

(Repealed 21 of 2006 s. 40)

Part 6

~~Sign when Offering Tobacco Products
for Sale, etc.~~

Sign When Offering Conventional Smoking
Products for Sale, etc.

To amend the law relating to the taxation and control of liquors, tobacco, hydrocarbon oil, methyl alcohol and other substances, for providing for the licensing of certain dealings in liquors and for purposes connected therewith.

(Amended 3 of 1970 s. 2; 40 of 1974 s. 2; 34 of 1976 s. 2; 20 of 1985 s. 2; 66 of 1986 s. 2; 35 of 1992 s. 2; 32 of 1993 s. 2)

[16 October 1963] *L.N. 120 of 1963*

PART I

PRELIMINARY

1. Short title

This Ordinance may be cited as the Dutiable Commodities Ordinance.

2. Interpretation...

3. Application

(1) This Ordinance applies to—

(a) subject to section 3AA, alcoholic liquors; *(Replaced 16 of 2008 s. 3)*

~~(b) tobacco (other than any smokeless tobacco product within the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132));~~

~~(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);~~

(c) the following types of hydrocarbon oil—

(i) aircraft spirit;

(ii) light diesel oil;

(iii) motor spirit; and

(iv) kerosene; and

(d) methyl alcohol. *(Replaced 46 of 1996 s. 3)*

(2) The Legislative Council may from time to time by resolution published in the Gazette apply to any substance any of the

provisions of this Ordinance specified in the resolution with such modifications, if any, as may to them seem desirable, having regard to the nature of the substance to which the resolution relates.

- (3) While any resolution relating to any substance is in force under this section the provisions of this Ordinance thereby applied shall have effect as if the substance were goods to which this Ordinance applies, but subject to such modifications, if any, as may be provided by the resolution.
- (4) This Ordinance does not apply to goods which are the property of or imported or purchased for the Central People's Government, the Chinese People's Liberation Army or the Government of the Hong Kong Special Administrative Region. (*Amended 46 of 1996 s. 3; 131 of 1997 s. 2; 2 of 2012 s. 3*)
- (5) Except as may be prescribed by regulations, the provisions of this Ordinance relating to the importation, exportation and movement of goods shall not apply to postal packets as defined in the Post Office Ordinance (Cap. 98).

Editorial Note:

Adaptation amendments retroactively made - see 2 of 2012 s. 3

PART IV

TOBACCO

65. Definition of tobacco

In the application of this Ordinance to tobacco—

“Chinese prepared tobacco” (中國熟煙) (Suk Yin 熟煙) is tobacco prepared in the traditional Chinese manner from tobacco leaf grown in China, and comprises 7 main types, namely—

Sang Chit	(生切)
Ting Sook	(丁熟)
Yee Sook	(二熟)
Chai See	(齊絲)
Kan Yip	(揀葉)
Sheung Sook	(上熟)
and Jing Chit	(正切)

and may include any other traditional Chinese prepared tobacco which, in the opinion of the Commissioner, is of a type and quality approximate to any of the 7 types of Chinese prepared tobacco specified above; (*Amended 3 of 1970 s. 29; L.N. 294 of 1982; L.N. 254 of 1997*)

“cigar” (雪茄) means any roll of tobacco capable of being smoked by itself and which—

- (a) has an outer wrapper of natural tobacco; or
- (b) predominately contains broken or threshed leaf and has a binder of reconstituted tobacco and an outer wrapper of reconstituted tobacco fitted spirally; *(Added 66 of 1986 s. 29)*

“cigarette” (香煙) means any roll of tobacco capable of being smoked by itself not being a cigar; *(Added 66 of 1986 s. 29)*

“heated tobacco product” (加熱煙草產品) has the meaning given by section 2(1) of the Smoking (Public Health) Ordinance (Cap. 371);

“manufacture” (製造) means the conversion of tobacco into manufactured tobacco;

“manufactured tobacco” (製成煙草) includes cigarettes, cigars, snuff, hand-rolling tobacco, smoking tobacco, cigar cuttings, reconstituted ~~tobacco and Chinese prepared tobacee~~ tobacco, Chinese prepared tobacco and heated tobacco products; *(Added 66 of 1986 s. 29)*

“manufacturer” (製造商) includes any person who owns or controls any factory or other place wherein tobacco is manufactured;

“tobacco” (煙草) includes manufactured and unmanufactured tobacco of every description and tobacco stalks, tobacco refuse, tobacco seedlings and tobacco plants;

“unmanufactured tobacco” (未製成煙草) means tobacco which has undergone no process of manufacture except curing, stripping or drying or any of them.

66. *(Repealed 10 of 1988 s. 2)*

67. **Manufacture, etc. of adulterated tobacco**

- (1) A tobacco manufacturer shall not in manufacturing tobacco use any substance other than water or steam, except to such extent as may be permitted by the Commissioner and subject to such conditions as the Commissioner may impose. *(Amended L.N. 294 of 1982)*
- (2) Save where their use by him is permitted by or under this section, a tobacco manufacturer shall not receive or have in his possession any of the following substances, namely—
 - (a) sugar or any other saccharine substance or extract, except such as he proves to be for domestic use;
 - (b) leaves or plants of any description other than tobacco leaves or plants;
 - (c) any substance for use, or capable of being used, as a substitute for or to increase the weight of tobacco.
- (3) Any tobacco manufacturer who contravenes any of the provisions of this section shall be liable to a fine at level 5 and the tobacco or other substance in respect of which the offence was committed shall be liable to forfeiture. *(Amended L.N. 338 of 1995)*

68. **Restriction on tobacco growing**

No person shall plant or cultivate tobacco (on any land of any category)

without the written approval of the Commissioner or other officer deputed by him in that behalf.

(Amended 3 of 1970 s. 30; 29 of 1989 s. 7)

Schedule 1

[ss. 3AA & 4]

*(Amended 46 of 1996 s. 32;
16 of 2008 s. 5)*

PART II

DUTY ON TOBACCO

1. Duty shall be payable on tobacco at the following rates— *(Amended L.N. 204 of 1999; 57 of 2000 s. 9)*

	\$
(a) for each of 1 000 cigarettes.....	1,906
(aa) for each of 1 000 sticks or capsules of heated tobacco products.....	1,906
(b) cigars.....	2,455/kg
(c) Chinese prepared tobacco.....	468/kg
(d) all other manufactured tobacco except tobacco intended for the manufacture of cigarette.....	2,309/kg

(Amended L.N. 158 of 1988; 16 of 1989 s. 5; L.N. 218 of 1990; L.N. 194 of 1991; L.N. 195 of 1991; 35 of 1992 s. 6; 32 of 1993 s. 5; 42 of 1995 s. 2; 32 of 1996 s. 2; 67 of 1997 s. 3; 21 of 1998 s. 2; L.N. 61 of 2001 and 14 of 2001 s. 2; L.N. 27 of 2009 and 5 of 2009 s. 3; L.N. 32 of 2011 and 10 of 2011 s. 3; L.N. 25 of 2014 and 9 of 2014 s. 3)

2. For the purpose of applying the duty under paragraph 1(a) a cigarette more than 90 mm long, excluding any filter or mouthpiece, shall be treated as if each additional 90 mm or portion of 90 mm were a separate cigarette.
3. *(Repealed 57 of 2000 s. 9)*

(Part II replaced 10 of 1988 s. 3)