

WOMEN'S COMMISSION
Smoking (Public Health) (Amendment) Bill 2005

BACKGROUND

Following a consultation exercise conducted in mid 2001, anti-smoking advocates, the healthcare sector and the majority of the public have been urging the Administration to implement a smoking ban in indoor workplaces and public places. At the sitting of the Legislative Council on 20 October 2004, the motion calling for expeditious implementation of a total smoking ban in workplaces, restaurants and indoor public areas was carried by a large margin. Internationally, the adoption of the Framework Convention on Tobacco Control (FCTC) by the World Health Organization (WHO) in May 2003 has heightened momentum for tightening tobacco control laws worldwide.

2. Having regard to the irrefutable health risks of smoking and secondhand smoking, the latest community opinions and international developments, we propose that the Ordinance be amended to address the substantive issues described below.

DETAILS

Expansion of Statutory No Smoking Areas

3. Under the existing legislation, smoking is prohibited in certain indoor public places such as shopping malls, supermarkets, banks and department stores. We propose that the statutory smoking ban be extended to cover premises and places as elaborated below.

Restaurants, Bars and Other Hospitality Premises

4. Under the Ordinance, restaurants with seating capacity of 200 persons or less are not subject to statutory smoking ban. Those providing indoor seating for over 200 persons are required to make at least one-third of the seating area smokefree. In practice, this requirement has failed to protect restaurant goers and employees from secondhand smoking because tobacco smoke can diffuse from smoking areas to no smoking areas. Operationally, it has caused inconvenience

to restaurant management and conflicts between smokers and non-smokers. To address these problems, we propose prohibiting smoking in the indoor areas of all restaurants, regardless of their size and seating capacity. The smoking ban should also apply to the indoor areas of bars, karaoke establishments, mahjong premises, commercial bathhouses and public markets to ensure comprehensive health protection for employees in the catering and hospitality industries.

Educational and Welfare Institutions

5. The Ordinance presently provides that the management authority of a school, university or tertiary institution may designate the educational premises or part thereof as no smoking areas. As such designation is not compulsory, smoking is generally not prohibited in educational premises. To promote a smokeless learning environment and to curb youth smoking, we propose imposing a statutory ban on both the indoor and outdoor areas of all child care centres, kindergartens, primary and secondary schools, and in the indoor premises of all universities and post-secondary institutions.

6. At present, there is no requirement under the Ordinance to prohibit smoking in residential care homes for the elderly, residential treatment centres and hospitals. Following consultations with the licensing authorities, we propose designating the indoor parts of these premises as statutory no smoking areas under the Ordinance for the health benefits of patients, residents, elders and staff members therein.

Indoor Workplaces / Public Places

7. Currently, there is no legislation to restrict smoking in workplaces and public places generally. A survey conducted by the Census and Statistics Department in 2001 revealed that over 700,000 persons working in indoor premises were subject to the influence of secondhand smoking. In view of the growing evidence of the costs and health risks of secondhand smoking, we propose including indoor areas of workplaces and public places as statutory smokefree areas.

Advertisement and Promotion of Tobacco Products

Display of Tobacco Advertisement

8. Under the Ordinance, the display of tobacco advertisement is prohibited except at licensed hawker stalls and retail outlets employing not more than two employees. We observe that such exemptions have become a source of abuse. For example, numerous tobacco advertisements are being displayed at small retail

stalls selling tobacco products. Many large light-boxes displaying tobacco advertisements can be found in small shop premises throughout the territory. To arrest these undesirable phenomena, we propose revoking the exemptions currently applicable to licensed hawker stalls and retail outlets with two employees or less.

Price Board and Price Marker

9. Presently, price boards (for more than one type of tobacco products) and price markers (for a single type of tobacco product) can be lawfully displayed inside premises selling tobacco products. The Ordinance confines the size of a price board to 2,000 cm while there is no size limit for price markers. To prevent price markers/price boards from being used as advertising vehicles for specific brands of tobacco products, we propose tightening the Ordinance to limit the size of price boards and price markers to 1,500 cm and 50 cm respectively.

Sale of Tobacco Products in Association with Other Products

10. The existing legislation stipulates that a tobacco product cannot be sold in association with any gift, token, stamp or raffle ticket that may be exchanged for any gift. There is however no provision to prevent the package sale of tobacco products and non-tobacco products (e.g. watches or lighters). As such business practices have the undesirable effect of inducing purchase of tobacco products by smokers or non-smokers, we propose prohibiting the sale of tobacco product and non-tobacco merchandise as a single item.

Tobacco Sponsorship

11. At present, the display of a tobacco brand name in any sponsored event is deemed a tobacco advertisement and hence prohibited. However, the display of the tobacco brand name will be allowed if it is displayed in conjunction with a non-tobacco product and if no words associated with “smoking”, “cigarette”, “tobacco”, etc. are mentioned. In some events jointly sponsored by tobacco and non-tobacco products, the promotional materials were designed such that the brand name of the tobacco product was much more prominent than the non-tobacco product. To plug this loophole, we propose amending the Ordinance to prohibit the appearance of a tobacco brand name in association with a non-tobacco product unless the name does not form the most prominent part of the advertisement.

Packaging and Labeling of Tobacco Products

Health warnings

12. Under the Ordinance, health warnings in prescribed size and wording and the amount of tar and nicotine yields are required to be shown on the package of tobacco products. To enhance the visual impact and deterrent effect of the warnings, we propose amending the Smoking (Public Health)(Notices) Order (“the Order”)(Cap. 371 sub. leg. B) to require the packets or retail containers of tobacco products to bear health warnings with pictorial and graphic contents. To conform to international practices, we also recommend increasing the prescribed area of the health warnings to at least 50% of the principal surface areas of the packet/container of any tobacco product.

Misleading descriptors

13. At present, the use of descriptors on the package of any tobacco product such as “light”, “mild” and “low tar” is permitted. There is no scientific evidence indicating that products with these descriptors pose lesser health risks to smokers. On the contrary, the above descriptors may give the false impression that the tobacco products concerned are less harmful than others, thus encouraging deeper inhalation and increased daily consumption by smokers. In line with international practice, we recommend prohibiting the appearance of the words “light”, “lights”, “mild”, “milds”, “low tar” or other words that may have similar misleading effects on any package of tobacco product.

Law Enforcement

14. At present, several government departments are involved in enforcing the Ordinance, notably the Police and Customs and Excise Department. In addition, managers of statutory no smoking areas are empowered to enforce the law. In February 2001, the Tobacco Control Office (TCO) was established under the Department of Health to coordinate the Government’s efforts on tobacco control. There are however no concurrent conferment of legal powers on TCO staff to take enforcement actions under the Ordinance. To address this deficiency, we propose empowering TCO inspectors to deal with certain existing offences in the Ordinance and new offences arising from the proposed amendments. The general powers of enforcement proposed to be given to TCO inspectors include the powers of entry, evidence collection and seizure.

15. Government efforts alone are not adequate to eradicate smoking offences under the Ordinance. For expeditious handling of smoking-related complaints and

removal of nuisances caused by secondhand smoke, managers of statutory no smoking areas should take immediate remedial actions (e.g. requiring a smoker to extinguish a lighted cigarette) upon detecting or being notified of a smoking act. We recommend extending the enforcement powers conferred on managers of existing statutory smokefree areas to managers of new statutory smokefree areas such as indoor workplaces, restaurants and bars. As with the present practice, they will not be held accountable for a smoking act in the premises concerned provided the statutory requirement to display no-smoking signs is met.

Exceptional Arrangements and Transitional Provisions

16. We consider that transitional arrangements are necessary to facilitate compliance with the new statutory requirements. The Amendment Ordinance will come into operation on the ninetieth day after it is published in the Gazette. In respect of packaging of tobacco products and display of tobacco advertisements by licensed hawkers/small retailers, we propose that a longer adaptation period of 1 year be allowed. During the adaptation periods, we will publicize the new regulatory requirements among the communities and trades concerned and offer necessary training and assistance to promote compliance.

17. While the majority of indoor areas in non-residential buildings will have to go smokefree according to our proposals, some places will be exempted from the smoking ban on human rights, privacy and enforceability grounds. These comprise accommodation areas including private residence, staff dormitories, guest rooms and suites in hotels, buildings under construction, smoking rooms in airport passenger terminals and correctional institutions.

18. Given the large clientele and workforce associated with catering and hospitality premises in Hong Kong, we consider it inappropriate from the public health angle to exempt the indoor part of these premises from the smoking ban. Taking into account the lead-time required to examine the Bill by the Legislative Council, we consider that the 90-day adaptation period as written into the Bill should suffice. It is important to apply the same transitional arrangements to different types of catering and hospitality premises to avoid distorting the level playing field.

Health Division
Health, Welfare and Food Bureau
June 2005