

# Smoking (Public Health) Ordinance

## (Cap. 371)

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To prohibit smoking in certain 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; 39 of 2021 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—  
*(Amended 39 of 2021 s. 4)*

**activated** (已啟動)—see subsection (2); *(Added 39 of 2021 s. 4)*

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

**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. (*Added 39 of 2021 s. 4*)

***alternative smoking product*** (另類吸煙產品) means a product set out in Part 2 of Schedule 7; (*Added 39 of 2021 s. 4*)

***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); (*Added 39 of 2021 s. 4*)

***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, but does not include any alternative smoking product; (*Added 91 of 1994 s. 3. Amended 39 of 2021 s. 4*)

***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, but does not include any alternative smoking product; (*Amended 39 of 2021 s. 4*)

***cigarette tobacco*** (香煙煙草) means tobacco packaged as being suitable for the making by the purchaser of cigarettes for the purchaser's own use, but does not include any alternative smoking product; (*Amended 39 of 2021 s. 4*)

***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; (*Added 39 of 2021 s. 4*)

**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); (*Added 39 of 2021 s. 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); (*Added 39 of 2021 s. 4*)

**hospital** (醫院) means any establishment for the care of the sick, injured or infirm or those who require medical treatment—(*Amended 34 of 2018 s. 181*)

- (a) for which a licence for a hospital within the meaning of the Private Healthcare Facilities Ordinance (Cap. 633) under that Ordinance is in force; or (*Replaced 34 of 2018 s. 181 and E.R. 5 of 2018*)
- (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) (*Repealed 34 of 2018 s. 181*)
- (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, but does not include any alternative smoking product; (*Added 91 of 1994 s. 3. Amended 39 of 2021 s. 4*)

***pipe tobacco*** (煙斗煙草) means tobacco packaged as being suitable for smoking in a pipe, but does not include any alternative smoking product; (*Added 91 of 1994 s. 3. Amended 39 of 2021 s. 4*)

***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, means a container suitable for the retail marketing of cigarette 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 Health; (*Replaced L.N. 106 of 2002. Amended L.N. 130 of 2007; L.N. 144 of 2022*)

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

- (a) in relation to a conventional smoking product—the smoke of tobacco generated from the product; or
- (b) in relation to an alternative smoking product—the aerosol generated by or from the product; (*Added 39 of 2021 s. 4*)

**smoking act** (吸煙行為) means smoking or carrying—

- (a) a lighted cigarette, cigar or pipe; or
- (b) an activated alternative smoking product;

**Note—**

See also subsections (2), (3) and (4). (*Added 39 of 2021 s. 4*)

**smoking product** (吸煙產品) means—

- (a) a conventional smoking product; or
- (b) an alternative smoking product; (*Added 39 of 2021 s. 4*)

**smoking product advertisement** (吸煙產品廣告)—see section 14; (*Added 39 of 2021 s. 4*)

**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*)

**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; 39 of 2021 s. 4)*

- (2) An alternative smoking product is **activated** if any process, such as combustion or heating, is taking place for generating an aerosol by or from the product. *(Added 39 of 2021 s. 4)*
- (3) A person **ceases** a smoking act—
  - (a) in relation to a lighted cigarette, cigar or pipe, if the person extinguishes it; or
  - (b) in relation to an activated alternative smoking product, if the person deactivates it. *(Added 39 of 2021 s. 4)*
- (4) A person **deactivates** an activated alternative smoking product if the person stops the process mentioned in subsection (2) in relation to the product. *(Added 39 of 2021 s. 4)*
- (5) A reference in this Ordinance to marketing in relation to a smoking product includes marketing outside Hong Kong. *(Added 39 of 2021 s. 4)*
- (6) A note in the text of this Ordinance is for information only and has no legislative effect. *(Added 39 of 2021 s. 4)*

## 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 may do a smoking act in a no smoking area. *(Amended 39 of 2021 s. 5)*
- (2A) Subsection (2) does not prevent a person from smoking or carrying a lighted cigarette, cigar or pipe 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— *(Amended 39 of 2021 s. 5)*
  - (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;  
(*Replaced 39 of 2021 s. 5*)

- (b) where the person fails to cease the smoking act, require him— (*Amended 39 of 2021 s. 5*)
  - (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 may do a smoking act in a public transport carrier.  
(*Amended 39 of 2021 s. 6*)

- (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— *(Replaced 39 of 2021 s. 6)*
- (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; *(Replaced 39 of 2021 s. 6)*
- (b) where the person fails to cease the smoking act, require him— *(Amended 39 of 2021 s. 6)*
- (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 at level 2. *(Amended E.R. 5 of 2021)*

(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 Conventional Smoking Products**

*(Replaced 91 of 1994 s. 5. Amended 39 of 2021 s. 7)*

#### **8. Sales of conventional smoking products**

*(Amended 39 of 2021 s. 8)*

- (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 shall apply to anything done in relation to cigarettes, cigarette tobacco, cigars or pipe tobacco which are held— *(Amended 9 of 1992 s. 6; 91 of 1994 s. 6)*
  - (a) in bond; or
  - (b) by a manufacturer of conventional smoking products, *(Amended 39 of 2021 s. 8)*for export from Hong Kong.

#### **8A. Prohibition on sale of cigarette with 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 conventional smoking products from a vending machine**

*(Amended 39 of 2021 s. 9)*

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

*(Added 93 of 1997 s. 8. Amended 39 of 2021 s. 9)*

**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)*

**10. Offences under Part 3**

- (1) Any person who contravenes section 8, 8A, 8B or 9 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 conventional smoking products or his agent, or any wholesale distributor of conventional smoking products, who sells, offers for sale or possesses for the purpose of sale any conventional smoking product to which section 8 or 9 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)— (*Amended 39 of 2021 s. 10*)
  - (a) bears any term, descriptor, 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 conventional smoking products the packaging of which does not bear such term, descriptor, trade mark, figurative or sign; or (*Amended 39 of 2021 s. 10*)
  - (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— (*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*)
  - (b) the contents of such packet or container;
  - (c) any receptacle in which such packet or container is contained;
  - (ca) any vending machine or conventional smoking product in connection with an offence under section 8B; (*Added 93 of 1997 s. 10. Amended 39 of 2021 s. 11*)
  - (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

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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)*

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## **Part 4**

### **Advertising of Smoking Products**

*(Amended 39 of 2021 s. 12)*

#### **11. Smoking product advertisements in printed publications**

*(Amended 39 of 2021 s. 13)*

- (1) No person shall print, publish or cause to be published a smoking product advertisement in a printed publication to which this section applies. *(Replaced 93 of 1997 s. 11. Amended 39 of 2021 s. 13)*
- (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 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. *(Replaced 39 of 2021 s. 13)*

*(Amended 21 of 2006 s. 13)*

#### **12. No display of smoking product advertisement**

*(Amended 39 of 2021 s. 14)*

- (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 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 smoking product advertisement which— *(Amended 39 of 2021 s. 14)*

(a) is in or upon any premises—

(i) of any manufacturer of conventional smoking products or any wholesale dealer dealing in conventional smoking products; and *(Replaced 39 of 2021 s. 14)*

(ii) which are used for the manufacturing of 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 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. Amended 39 of 2021 s. 14)*

### **13. Prohibition on broadcast of smoking product advertisement by radio or visual images**

*(Amended 39 of 2021 s. 15)*

No person shall broadcast a smoking product advertisement— *(Amended 91 of 1994 s. 12; 39 of 2021 s. 15)*

(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 smoking product advertisement by film**

*(Amended 39 of 2021 s. 16)*

- (1) No person shall exhibit a smoking product advertisement by film. *(Amended 91 of 1994 s. 13; 39 of 2021 s. 16)*
- (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 smoking product advertisement on the Internet**

*(Amended 39 of 2021 s. 17)*

- (1) No person shall place or cause to be placed a 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 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. Amended 39 of 2021 s. 17)*

#### **14. Meaning of smoking product advertisement**

*(Amended 39 of 2021 s. 18)*

- (1) For the purposes of this Part an advertisement is a smoking product advertisement if it— *(Amended 39 of 2021 s. 18)*
- (a) contains any express or implied inducement, suggestion or request to purchase or smoke 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 any smoking product; or *(Amended 93 of 1997 s. 15)*
  - (c) illustrates or mentions smoking or 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 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 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 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 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 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 smoking product; or
    - (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. *(Replaced 39 of 2021 s. 18)*
  - (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 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 smoking product or the trade mark, trade name, brand name or logo of any smoking product where no valuable consideration has been or is intended to be given for such appearance is not a smoking product advertisement. (*Added 93 of 1997 s. 15*)
- (6) The display of the following at any premises where conventional smoking products are offered for sale is not a smoking product advertisement— (*Amended 39 of 2021 s. 18*)
- (a) one price marker for one type of conventional smoking product offered for sale in the premises that— (*Amended 39 of 2021 s. 18*)
    - (i) contains only the name and price of that type of conventional smoking product; and
    - (ii) is of a size—
      - (A) not greater than the size of the price marker of any of the 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 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 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; 39 of 2021 s. 18)*

#### **14A. Removal and disposal of smoking product advertisement**

*(Amended 39 of 2021 s. 19)*

- (1) An inspector may, without payment for it, remove or cause to be removed any 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 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. *(Amended 21 of 2006 s. 16)*
- (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 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. Amended 39 of 2021 s. 19)*

**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)*

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## **Part 4A**

### **Prohibition on Selling or Giving of Conventional Smoking Products**

*(Amended 93 of 1997 s. 18; 39 of 2021 s. 20)*

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

#### **15A. Prohibition on selling or giving of conventional smoking products, etc.**

*(Amended 39 of 2021 s. 21)*

- (1) No person shall sell any cigarette, cigarette tobacco, cigar or pipe tobacco 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 to any person. *(Amended 93 of 1997 s. 19)*
- (3) No person shall—
  - (a) sell, offer for sale or give a conventional smoking product to any person in exchange for a token;
  - (b) give to any person a conventional smoking product as a prize in any event or competition;
  - (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; *(Replaced 39 of 2021 s. 21)*
  - (d) sell, offer for sale or possess for the purposes of sale a conventional smoking product which includes or is accompanied by a gift;
  - (e) sell, offer for sale or possess for the purposes of sale a 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 product— (*Amended 21 of 2006 s. 18; 39 of 2021 s. 21*)
  - (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 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, cigars or pipe tobacco or contains any trade mark or brand name of a 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. Amended 39 of 2021 s. 21*)

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

(*Amended 39 of 2021 s. 22*)

- (1) Any person offering for sale, or promoting the sale, purchase, smoking or use of, cigarettes, cigarette tobacco, cigars or pipe tobacco 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 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, cigars or pipe tobacco.

### 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 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, cigars or pipe tobacco, whether or not with reference to a particular brand.

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## **Part 4AB**

### **Prohibition of Alternative Smoking Products**

*(Part 4AB added 39 of 2021 s. 23)*

#### **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, partners and members of unincorporated bodies**

- (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 a person specified in subsection (2); or
  - (b) is attributable to any neglect on the part of the person, 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).

**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 cargos**

- (1) Section 15DA(1)(a) does not apply in relation to an alternative smoking product that is an article in transit or air transshipment cargo.
- (2) However, section 15DA(1)(a) does apply in relation to an alternative smoking product if, at any time between its being brought into and taken out of Hong Kong—
  - (a) for an article in transit on an aircraft—the product is removed from the aircraft other than in the specified cargo transshipment area;
  - (b) for an article in transit in a vessel—the product is removed from the vessel; or
  - (c) for an air transshipment cargo—the product is removed from the specified cargo transshipment area.
- (3) If section 15DA(1)(a) applies in relation to a product because of subsection (2), for the purposes of the application—
  - (a) the product is deemed to be imported at the time of the removal mentioned in subsection (2); and
  - (b) the person who brought the product, or caused it to be brought, into Hong Kong as an article in transit or air transshipment cargo is deemed to be the person who imported the product.

- (4) It is a defence for a person mentioned in subsection (3)(b) who is charged under section 15DA(4) in relation to importing a product to show that the person took all reasonable steps and exercised reasonable diligence to avoid the removal mentioned in subsection (2).
- (5) Subsection (6) applies if a defence under subsection (4) involves an allegation that the offence was committed because of—
  - (a) another person's act or default; or
  - (b) the defendant's reliance on information given by another person.
- (6) Without the leave of the court, the defendant may not rely on the defence unless, at least 10 days before the hearing of the proceedings, the defendant has served a written notice on the prosecutor giving particulars of—
  - (a) the person who allegedly committed the act or default, or allegedly gave the information; and
  - (b) the act, default or information concerned,of which the defendant is aware at the time the notice is served.
- (7) The defendant may not rely on a defence under subsection (4) claiming that the offence was committed because of the defendant's reliance on information given by another person unless the defendant shows that the reliance was reasonable in all the circumstances, having regard in particular to—
  - (a) the steps that the defendant took, and those which might reasonably have been taken, for verifying the information; and
  - (b) whether the defendant had any reason to disbelieve the information.
- (8) In this section—

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

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

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

- (a) any part of the Hong Kong International Airport that is designated under section 35 of the Aviation Security Ordinance (Cap. 494) as a restricted area; or
- (b) an area approved by the Commissioner of Customs and Excise under section 2AA of the Import and Export Ordinance (Cap. 60).

#### **15DE. Exception for Government Chemists**

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

#### **15DF. Relationship with Pharmacy and Poisons Ordinance**

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

#### **15DG. Enforcement powers of inspectors**

- (1) An inspector may seize, remove or detain any article if the inspector reasonably suspects that—
  - (a) the article is an alternative smoking product; and

- (b) an offence under section 15DA(4) has been committed, is being committed or is about to be committed in respect of the article.
- (2) If an inspector reasonably suspects that a person has committed or is committing an offence under section 15DA(4), the inspector may detain the person for a reasonable period 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, removed or detained 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 for a reasonable period; 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);

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***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.

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## **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. (*Amended 39 of 2021 s. 24*)
- (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. (*Added 39 of 2021 s. 24*)

**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)*

## Smoking (Public Health) Ordinance

Part 5

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**19.**     *(Repealed 39 of 2021 s. 25)*

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## 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.	<p>A public bus operated under a passenger service licence for the purposes of—</p> <ul style="list-style-type: none"><li>(a) a tour service;</li><li>(b) an international passenger service;</li><li>(c) a hotel service;</li><li>(d) a student service;</li><li>(e) an employees' service;</li><li>(f) a residents' service;</li><li>(g) a multiple transport service; or</li><li>(h) any other service approved by the Commissioner for Transport,</li></ul> <p>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).</p>

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Item	Type of carrier
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. ( <i>Added 11 of 2007 s. 36</i> )
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. ( <i>Amended 11 of 2007 s. 36</i> )

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Item	Type of carrier
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. <i>(Added 11 of 2007 s. 36)</i>
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. <i>(Added 9 of 1992 s. 16)</i>

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## **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.

## Smoking (Public Health) Ordinance

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Item	Type of area
10.	Any place of refuge.
11.	Any reformatory school.
12.	Any hospital.
13.	<i>(Repealed 34 of 2018 s. 182)</i>
14.	Any public pleasure ground other than a bathing beach.
15.	The following areas within any bathing beach— <ul style="list-style-type: none"><li>(a) 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);</li><li>(b) the shore covered with sand or stones, together with any structure, showering facilities or natural feature on such shore; and</li><li>(c) any 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.</li></ul>
16.	The following areas within any public swimming pool— <ul style="list-style-type: none"><li>(a) any swimming pool;</li><li>(b) any sidewalk immediately adjacent to the swimming pool;</li><li>(c) any diving board or other apparatus or facility adjoining the swimming pool; and</li></ul>

## Smoking (Public Health) Ordinance

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Item	Type of area
	(d) any spectator stand.
17.	The following areas within any stadium— <ul style="list-style-type: none"><li>(a) any pitch;</li><li>(b) any running track;</li><li>(c) any sidewalk immediately adjacent to the pitch or running track; and</li><li>(d) any spectator stand.</li></ul>
18.	The Hong Kong Wetland Park designated under section 24(1) of the Country Parks Ordinance (Cap. 208).
19.	An indoor area in— <ul style="list-style-type: none"><li>(a) any shop, department store or shopping mall;</li><li>(b) any market (whether publicly or privately operated or managed);</li><li>(c) any supermarket;</li><li>(d) any bank;</li><li>(e) any restaurant premises;</li><li>(f) any bar;</li><li>(g) any karaoke establishment;</li><li>(h) any mahjong-tin kau premises;</li><li>(i) any bathhouse;</li></ul>

Item	Type of area
	<ul style="list-style-type: none"> <li>(j) any massage establishment;</li> <li>(k) any residential care home;</li> <li>(l) any treatment centre; or</li> <li>(m) any communal quarters (as defined in Part 3).</li> </ul>
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.	<p>The following bus interchanges and adjoining facilities—</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(b) Cross-Harbour Tunnel Bus Interchange, located on both sides of the toll plaza of the Cross-Harbour Tunnel, together with the adjoining staircases, part of the adjoining elevated walkways and the adjoining bus stop at Salisbury Road, as shown— (<i>Amended L.N. 169 of 2021</i>) <ul style="list-style-type: none"> <li>(i) coloured orange and edged red;</li> <li>(ii) coloured yellow and edged red;</li> <li>(iii) coloured orange stippled black and edged red; and</li> <li>(iv) coloured orange hatched black and edged red,</li> </ul> on Plan No. DH/TCO/T-001V2, signed by the Secretary on 12 August 2021 and deposited in the Land Registry; (<i>Amended L.N. 169 of 2021</i>) </li> </ul>

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Item	Type of area
(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-002V2, signed by the Secretary on 12 August 2021 and deposited in the Land Registry; ( <i>Amended L.N. 169 of 2021</i> )
(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; ( <i>Amended L.N. 81 of 2018</i> )

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Item	Type of area
(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; ( <i>Added L.N. 237 of 2015. Amended L.N. 81 of 2018</i> )
(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; ( <i>Added L.N. 81 of 2018</i> )
(j)	<p>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—</p> <ul style="list-style-type: none"><li>(i) coloured orange and edged red;</li><li>(ii) coloured yellow and edged red;</li><li>(iii) coloured orange stippled black and edged red; and</li><li>(iv) coloured orange hatched black and edged red,</li></ul> <p>on Plan No. DH/TCO/E-004V1, signed by the Secretary on 7 May 2018 and deposited in the Land Registry; (<i>Added L.N. 81 of 2018</i>)</p>
(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; ( <i>Added L.N. 81 of 2018. Amended L.N. 169 of 2021</i> )

Item	Type of area
(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; ( <i>Added L.N. 81 of 2018. Amended L.N. 169 of 2021</i> )
(m)	Fanling Highway Bus Interchange, located on the Fanling Highway southbound, as shown coloured orange and edged red on Plan No. DH/TCO/E-005V1, signed by the Secretary on 12 August 2021 and deposited in the Land Registry; ( <i>Added L.N. 169 of 2021</i> )
(n)	<p>Tseung Kwan O Tunnel Bus Interchange, located on both sides of the toll plaza of the Tseung Kwan O Tunnel, together with the adjoining staircases and ramps and part of the adjoining elevated walkways, as shown—</p> <ul style="list-style-type: none"><li>(i) coloured orange and edged red;</li><li>(ii) coloured orange stippled black and edged red; and</li><li>(iii) coloured orange hatched black and edged red,</li></ul> <p>on Plan No. DH/TCO/E-006V1, signed by the Secretary on 12 August 2021 and deposited in the Land Registry; (<i>Added L.N. 169 of 2021</i>)</p>
(o)	Tuen Mun-Chek Lap Kok Tunnel Bus Interchange, located at Tuen Mun Chek Lap Kok Tunnel Road, as shown coloured orange and edged red on Plan No. DH/TCO/T-009V1, signed by the Secretary on 12 August 2021 and deposited in the Land Registry. ( <i>Added L.N. 169 of 2021</i> )

## 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— <ul style="list-style-type: none"><li>(a) a child care centre;</li><li>(b) a school;</li><li>(c) a specified educational establishment;</li><li>(d) an approved institution;</li><li>(e) a place of detention;</li><li>(f) a place of refuge;</li><li>(g) a reformatory school;</li><li>(h) a hospital. (<i>Amended 34 of 2018 s. 182</i>)</li><li>(i) (<i>Repealed 34 of 2018 s. 182</i>)</li></ul>

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Item	Type of area
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— <ul style="list-style-type: none"><li>(a) a licence issued under the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) is in force in respect of the hotel or guesthouse; and (<i>Amended 6 of 2020 s. 50</i>)</li><li>(b) the room or suite of rooms is being hired for use as sleeping accommodation.</li></ul>
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— <ul style="list-style-type: none"><li>(a) situated within a public pleasure ground other than a bathing beach; and</li><li>(b) specified under section 107(3) of the Public Health and Municipal Services Ordinance (Cap. 132) to be used as a smoking area.</li></ul>
9.	A room designated for cigar tasting in a shop if all the following requirements are complied with—

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Item	Type of area
	<ul style="list-style-type: none"><li>(a) the shop is engaged in the retail sale of cigars;</li><li>(b) nothing except cigars and cigar accessories are offered for sale in the shop;</li><li>(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;</li><li>(d) the room is independently ventilated and completely partitioned off from the remainder of the shop; and</li><li>(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).</li></ul>
10.	<p>A room designated for 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— (<i>Amended 39 of 2021 s. 26</i>)</p> <ul style="list-style-type: none"><li>(a) the business is not engaged in the retail sale of smoking products;</li><li>(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; (<i>Replaced 39 of 2021 s. 26</i>)</li><li>(c) the room is only used for carrying out the tasting or testing;</li><li>(d) the room is independently ventilated and completely partitioned off from the remainder of the premises; and</li></ul>

Item	Type of area
	(e) no natural person, other than one who carries out the 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). (Amended 39 of 2021 s. 26)
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. (Added 39 of 2021 s. 26)

## 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;

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***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)*

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**Schedule 3**

*(Repealed 21 of 2006 s. 22)*

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**Schedule 4**

*(Repealed 21 of 2006 s. 23)*

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## 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; (*Added 39 of 2021 s. 27*)

**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;

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

(*Amended 39 of 2021 s. 27*)

(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 conventional smoking act in a no smoking area is exempt from section 3(2) of this Ordinance if he proves that— (*Amended 39 of 2021 s. 27*)

- (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 conventional smoking act in a no smoking area is exempt from section 3(2) of this Ordinance if he proves that— (*Amended 39 of 2021 s. 27*)

- (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 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**

(*Amended 39 of 2021 s. 27*)

For the purposes of sections 2(e) and 3(f), the following are the requirements specified in relation to a conventional smoking act—  
(*Amended 39 of 2021 s. 27*)

- (a) the act does not expressly or impliedly induce, suggest or request any person to purchase or smoke any 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 conventional smoking product;
- (c) the act does not illustrate the package of any conventional smoking product; and
- (d) the act does not illustrate any quality of any conventional smoking product except for the purpose of publicizing the harm of smoking.

(*Schedule 5 added 21 of 2006 s. 24. Amended 39 of 2021 s. 27*)

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**Schedule 6**

*(Repealed 39 of 2021 s. 28)*

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## Schedule 7

[s. 2(1)]

### Alternative Smoking Products

#### Part 1

#### Interpretation Provisions

1. In this Schedule—

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

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

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

- (a) that was any part of a plant, such as leaves, roots, flowers, fruit and seeds; and
- (b) that is not tobacco or a dangerous drug;

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

- (a) allows smoke to be generated other than by means of electricity; and
- (b) consists of or includes a jar or similar receptacle for containing a liquid through which the smoke of tobacco would pass before being inhaled by the user of the receptacle or device.

2. For the purposes of this Schedule, it is irrelevant whether the aerosol generated is visible.
3. For the purposes of this Schedule, a thing is capable of use for imitating conventional smoking if it is capable of use for smoking in the same way as conventional smoking in respect of—
  - (a) the bringing of the thing to the mouth; and
  - (b) the inhaling and expelling of aerosol.
4. For the purposes of this Schedule, it is irrelevant whether the component or accessory is sold separately from the device.

## **Part 2**

### **Products for Definition of *Alternative Smoking Product***

#### **Category 1**

- 1.1. A device (other than a waterpipe) that is capable of—
  - (a) generating an aerosol from any substance that is not tobacco or a dangerous drug, other than by means of lighting the substance directly; and
  - (b) use for imitating conventional smoking.
- 1.2. A thing that is designed for use as a component of, or accessory to, a device described in item 1.1 (such as a mouthpiece, heating element, battery or container of a substance mentioned in that item).

- 1.3. Any substance (other than tobacco or a dangerous drug)—
- (a) that is packaged as being suitable for use with a device described in item 1.1; and
  - (b) from which an aerosol is capable of being generated in the way described in that item.

**Category 2**

- 2.1. A device (other than a waterpipe) that is capable of—
- (a) generating an aerosol from tobacco, other than by means of lighting the tobacco directly; and
  - (b) use for smoking.
- 2.2. A thing that is designed for use as a component of, or accessory to, a device described in item 2.1 (such as a mouthpiece, heating element, battery or container of the tobacco mentioned in that item).
- 2.3. Tobacco—
- (a) that is packaged as being suitable for use with a device described in item 2.1; and
  - (b) from which an aerosol is capable of being generated in the way described in that item.

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### Category 3

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

*(Schedule 7 added 39 of 2021 s. 29)*

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## **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

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heatstick

HTP

香煙

捲煙

吸煙

煙草

煙絲

雪茄

煙斗

水煙

電子煙

電子尼古丁傳送系統

電子非尼古丁傳送系統

煙油

煙液

加熱煙

加熱非燃燒

草本煙

草藥煙

藥草煙

茶煙

水果煙

果味煙

有味煙

*(Schedule 8 added 39 of 2021 s. 29)*