

LCQ12: Combating illegal smoking

Following is a question by the Hon Wilson Or and a written reply by the Secretary for Food and Health, Professor Sophia Chan, in the Legislative Council today (April 28):

Question:

Under the Smoking (Public Health) Ordinance (Cap. 371), no person shall smoke in a no smoking area, and no smoking areas include the indoor areas of premises such as bars and restaurants. It has been reported that in recent years, quite a number of bars, restaurants and private clubs have provided waterpipes for smoking by customers in order to solicit business, and have not stopped their customers from smoking illegally on their premises. In this connection, will the Government inform this Council:

(1) whether it has compiled statistics on the current number of various types of premises providing waterpipes to their customers; if so, of the details; if not, the reasons for that;

(2) of (i) the number of inspections of bars, restaurants, party rooms and private clubs conducted, and (ii) the number of prosecutions instituted by invoking the provisions on smoking-related offences under Cap. 371, by the Tobacco and Alcohol Control Office (TACO) of the Department of Health in each of the past five years, with a breakdown by the offence involved, type of premises and District Council district;

(3) whether it has taken targeted measures at the premises where illegal smoking is prevalent, e.g. by listing such premises as black spots for smoking offences and stepping up law enforcement efforts there, as well as sending officers there to distribute promotional materials on smoking ban;

(4) given that for the first time, a bar and a staff member of it were convicted of and fined last month for aiding and abetting its/his customers to smoke a waterpipe in a no smoking area, whether TACO will step up the relevant law enforcement efforts; and

(5) whether it will study amending Cap. 371 to stipulate that the person-in-charge of premises who knowingly does not stop any customer from smoking in a no smoking area of his/her premises commits an offence?

Reply:

President,

My reply to the various parts of the question raised by the Hon Wilson Or is as follows:

(1) The sale, distribution and advertising of tobacco products in Hong Kong

are strictly regulated under the Smoking (Public Health) Ordinance (Cap. 371). It is illegal to smoke waterpipe in no smoking areas. Since no specific licence is required for retailers selling tobacco products, we are unable to collate statistics on the number of premises selling waterpipes in Hong Kong. During the enforcement inspections conducted by the Tobacco and Alcohol Control Office (TACO) of the Department of Health, around 80 restaurants/bars were found to be providing waterpipes to customers for consumption at present.

(2) The numbers of Fixed Penalty Notices (FPNs)/summonses issued and inspections conducted by TACO from 2016 to 2020 to restaurants and bars on the offence of prohibition on smoking in no smoking areas under the Smoking (Public Health) Ordinance (Cap. 371) and the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) are as follows:

	2016	2017	2018	2019	2020
Number of inspections conducted	4 333	5 092	4 199	4 303	4 928
– restaurants	(3 538)	(3 838)	(3 088)	(3 429)	(3 987)
– bars	(795)	(1 254)	(1 111)	(874)	(941)
Number of FPNs issued	904	1 000	712	505	330
– restaurants	(592)	(656)	(537)	(342)	(236)
– bars	(312)	(344)	(175)	(163)	(94)
Number of summonses issued	9	18	9	6	9
– restaurants	(6)	(16)	(5)	(3)	(5)
– bars	(3)	(2)	(4)	(3)	(4)

TACO does not maintain a breakdown of the figures by type of premises, namely party room and private club, as well as by District Council district.

(3) TACO will follow up and investigate every complaint about illegal smoking by, inter alia, conducting inspections and taking enforcement actions in the venue concerned. To strengthen the deterrent effect, proactive inspections are conducted in venues where illegal smoking is prevalent. TACO also adopts different strategies as appropriate to enhance the effectiveness of law enforcement. These include conducting joint inspections and enforcement actions with other law enforcement agencies, as well as stepping up detection and evidence collection by plain-clothes officers. To address the increasing demand for enforcement duties, a task force with retired disciplined services officers was established in the end of 2017 to strengthen the enforcement actions, especially during night-time or public holidays and in venues where illegal smoking is prevalent. TACO will continue to adjust its enforcement strategies and measures in a timely manner to strengthen its enforcement efforts on tobacco control.

(4) During a covert operation mounted by TACO at a bar in Central on 23 June 2020, the bar and its staff member were found providing waterpipe apparatus

and tobacco to customers for consumption in the bar where smoking was prohibited. The two customers who smoked the waterpipe at the time were each fined \$1,500 for the smoking offence. The bar and its staff member, who aided and abetted customers to smoke in a statutory no smoking area, were convicted of an offence contrary to section 89 of the Criminal Procedure Ordinance (Cap. 221) for aiding, abetting, counseling or procuring the commission by another person of any offence, and fined \$2,000 and \$1,500 respectively. This is the first convicted case for aiding and abetting smoking offences prosecuted by TACO. The Liquor Licensing Board was notified of the case and made aware of the contraventions of the law and the smoking offence situation at this bar.

In view of the growing popularity of waterpipe smoking, the TACO sent letters in April 2020, January 2021 and March 2021 to restaurants and bars known to have provided waterpipes to remind their venue managers not to provide waterpipes for consumption in no smoking areas. TACO has also stepped up proactive inspections of such restaurants and bars since June 2020. So far, TACO conducted 566 proactive inspections at this type of restaurants and bars, issued 35 FPNs/summons to persons smoking waterpipes in no smoking areas, and prosecuted a bar and its staff member for aiding and abetting customers to smoke waterpipes in a statutory no smoking area (i.e. the abovementioned case). TACO will continue to take enforcement actions against any person who aids and abets a smoking offence.

(5) Under the Smoking (Public Health) Ordinance (Cap. 371), venue managers are empowered to require smokers to cease smoking in or leave the statutory no smoking area, and may call for police assistance if necessary. To ensure effective implementation of the smoking ban legislation, TACO has rendered assistance to venue managers in the effective management of no smoking areas, including drawing up implementation guidelines which set out the steps and practical tips for implementing smoke-free policies in different venues to facilitate the implementation of tobacco control legislation and measures by venue managers in charge of statutory no smoking areas; distributing no smoking signs and promotional materials to venue managers for display in no smoking areas; and organising talks as well as providing information during inspections to enable venue managers to understand their authority empowered by the ordinance.

The Government will review the overall tobacco control strategy and various control measures from time to time. Regarding the proposal to impose legal liability on a venue manager who knowingly failing to stop any customer from smoking in the no smoking area of his/her premises, the Government will need to look into the implementation and effectiveness of the existing smoking ban legislation, the acceptability of various sectors and the public, as well as the feasibility of law enforcement, etc.