

**Thirty-fifth Meeting of
The Business Facilitation Advisory Committee**

Agenda Item 2 : Dutiable Commodities (Amendment) Bill 2017

Purpose

The Government proposes to legislate the prohibition of the sale and supply of intoxicating liquor to minors in the course of business. This paper briefs members on the progress regarding the Dutiable Commodities (Amendment) Bill 2017 (“the Amendment Bill”).

Background

2. Regulation 28 of the Dutiable Commodities (Liquor) Regulations (Chapter 109B) (“Regulations”) provides that no person holding a liquor licence shall permit any person under the age of 18 years to drink any intoxicating liquor on any licensed premises. There is no prohibition on the sale or supply of intoxicating liquor to minors in licensed premises.

3. There is also no prohibition on the sale or supply of intoxicating liquor to minors in non-licensed premises including retail stores (such as liquor stores, convenience stores and supermarkets). Whilst these retail stores do not require a liquor licence for selling intoxicating liquor to their customers, the retail industry has been refraining from selling intoxicating liquor to minors on a voluntary basis for a number of years. However, there are concerns over the effectiveness of such a voluntary measure. There is also no prohibition on the sale or supply of intoxicating liquor to minors through remote means (such as orders received on the internet, over the phone, and by mail).

4. For the overall well-being of minors and to plug the loophole, we consider it necessary to amend the law.

The Bill

5. The Amendment Bill has the following main suggestions –
- (a) restricting the sale of intoxicating liquor from vending machines, offender is liable to a fine at Level 5 (i.e.\$50,000);
 - (b) prohibiting the sale or supply of intoxicating liquor to minors in the course of business, offender is liable to a fine at Level 5;
 - (c) imposing a requirement to display a sign containing the prescribed notice on the prohibition of sale or supply of intoxicating liquor to minors at the place of sale or supply in face-to-face distribution, offender is liable to a fine at Level 4 (i.e. \$25,000);
 - (d) imposing requirements to include the prescribed notice and to receive an age declaration from the purchaser or recipient for remote distribution, offender is liable to a fine at Level 4; and
 - (e) the Secretary for Food and Health be given the authority to appoint public officers of the Department of Health (DH) to carry out enforcement actions

Vending machine

6. Vending machine is a special sale channel where there is no direct contact between the operator and the purchaser. It would be difficult to prevent sales to minors through vending machines. We consider it necessary to restrict the sale of intoxicating liquor from vending machines.

Age inspection or declaration

7. For face-to-face distribution, we do not intend to impose requirement to check purchaser's or recipient's proof of identity. Instead, it

is one of the defences to a charge for selling or supplying intoxicating liquor to minors to establish that the person charged had inspected the proof of identity of the purchaser or recipient of the intoxicating liquor, and was reasonably satisfied that the purchaser or recipient was not a minor.

8. For remote distribution, we intend to impose a requirement to require the vendor to receive from the purchaser or recipient an age declaration to the effect that the purchaser or recipient has reached 18 years of age before intoxicating liquor is sold or supplied. It is one of the defences to a charge for selling or supplying intoxicating liquor to minors to establish that the person charged had received a declaration from the purchaser or recipient that he or she had reached the age of 18 years, and there was no circumstance that caused the person to reasonably suspect that the declaration was false.

Display of sign containing prescribed notice

9. For face-to-face distribution, we propose to impose a requirement to display at the place of sale or supply a sign containing the prescribed notice on the prohibition of sale or supply of intoxicating liquor to minors. Similarly, for remote distribution, we propose to impose the requirement to include the prescribed notice in an offer to sell or to supply intoxicating liquor.

Enforcement

10. Routine inspection or checking of all places and remote means that involve selling or supplying intoxicating liquor is not practicable. For face-to-face distribution, DH officers will conduct inspections and carry out enforcement actions upon receipt of intelligence and complaints; DH officers may conduct inspections, either randomly or targeted, on places in face-to-face distribution to check whether the vendors have displayed the sign, and enhance inspection of black spots. For remote distribution, DH officers will also conduct inspections and carry out enforcement actions upon receipt of intelligence and complaints; DH officers may conduct inspections, either randomly or targeted, on remote means (such as the internet website and phone number for customers to purchase the concerned alcohol), to

check whether the vendors have complied with the relevant requirements. To facilitate compliance of the trade under the proposed regulatory regime, DH will prepare detailed guidelines.

11. In proposing the penalty level, we have made reference to the regulatory regimes related to on-site consumption of alcohol on licensed premises under the Regulations, the control on tobacco products under the Smoking (Public Health) Ordinance (Chapter 371) and overseas experience. We believe the proposed sanctions are commensurate with the seriousness of offences.

Public Consultation

12. We conducted briefing sessions between January and February 2017 for relevant stakeholders including the wine industry, medical and health sector, and education sector as well as the Chairmen and vice-Chairmen of the District Councils to introduce our proposal and exchange ideas. We also invited stakeholders to provide written submissions in order to gauge their views on the proposal. Among the 100 written submissions received, 78 submissions supported the proposed regulatory regime, 20 submissions had reservations about the proposal and suggested introducing a Government-led voluntary scheme instead, and none expressed in-principle objection. The trade requested the Government to provide detailed guidelines to facilitate their compliance with the new requirements, including display of the prescribed notice, age declaration measures, etc., and expressed concerns on the statutory defence for the new offences, penalty and a reasonable adaptation period.

13. The Panel on Health Services of the Legislative Council was consulted on the proposed legislative amendments on 25 April 2017. The majority of the Members of the Panel supported the legislative intent to prohibit the commercial sale and supply of intoxicating liquor to minors. Among other things, concerns were raised on the operational difficulties to be faced by frontline staff in complying with the proposed legislative amendments, and the difficulties in enforcement by DH. Some Members also suggested to the Government to consider reviewing the alcohol tax

policy with a view to further limiting minors' access to alcohol. We also consulted the Liquor Licensing Board on 9 May 2017, and conducted another briefing session for the trade on 22 May 2017.

14. We also conducted a briefing session for members of the Wholesale and Retail Task Force, Food Business and Related Services Task Force, and Task Force on Business Liaison Groups under the Business Facilitation Advisory Committee on 24 May 2017. At the said briefing session, stakeholders generally supported the proposed legislative amendment. Regarding the proposed restriction on the sales of intoxicating liquor from vending machines, stakeholders were concerned whether the definition of vending machine would include dispensing machine that dispenses alcohol, usually found in bars and food courts. Provided there is face-to-face contact between the operator of the food and beverage establishment and the purchaser in the course of business (such as the face-to-face sale of a pre-paid card with cash value by the operator for the purchaser to purchase intoxicating alcohol from the dispensing machine), we consider this transaction a type of face-to-face distribution rather than sales from vending machines. Stakeholders raised similar concerns on the arrangement for self-checkout counters usually found in supermarkets. The self-checkout counters is no more than a payment method, and the operator is still required to comply with the requirements as applicable to conventional payment method (such as staff counter). Stakeholders also enquired the duration for which the operator should maintain records of age inspection or declaration. While there is no requirement in the Amendment Bill, we suggest the operator to maintain such records (such as closed circuit television recording in a face-to-face transaction and age declaration submitted by the purchaser or recipient in a remote transaction) for a reasonable period of time as a defence.

Current Situation

15. The Amendment Bill was gazetted on 9 June 2017, and introduced into the Legislative Council on 21 June 2017. A Bills Committee to study the Amendment Bill in detail was formed.

Way Forward

16. Members are invited to note the contents of the paper and offer comments, if any.

**Food and Health Bureau
Department of Health
August 2017**