

LCQ21: Enforcement of smoking ban

Following is a question by the Hon Tony Tse and a written reply by the Secretary for Food and Health, Professor Sophia Chan, in the Legislative Council today (March 20):

Question:

Although the legislation banning smoking in the indoor areas of restaurants has come into operation for over one decade, some members of the public currently still find, from time to time at present, patrons blatantly smoking in the indoor areas of restaurants. This, coupled with the fact that there are often patrons and staff members of restaurants smoking in the open-air areas of restaurants and in the areas outside restaurant entrances, has caused nuisances to other patrons. Regarding the enforcement of the smoking ban, will the Government inform this Council:

(1) of the number of staff members in the Tobacco and Alcohol Control Office (TACO) under the Department of Health who are currently responsible for the enforcement of the smoking ban; whether there are plans to increase such manpower;

(2) of the respective numbers of (i) complaints received in the past five years and (ii) prosecutions instituted last year, by the authorities in respect of smoking offences, with a breakdown by type of no smoking areas;

(3) whether TACO has proactively deployed staff to conduct inspections at restaurants; if so, set out by year the respective numbers of routine and surprise inspections conducted during daytime and night-time in the past five years;

(4) whether the authorities received complaints in the past five years about law enforcement officers in TACO suspected of being absent from duty without authorisation; if so, of the number of such complaints and, among them, the number of those found to be substantiated, as well as the penalties imposed on the officers concerned;

(5) whether it has uncovered cases of restaurant operators condoning or giving tacit consent to patrons smoking in the indoor areas of restaurants; if so, of the measures to deal with the situation; and

(6) whether it will consider designating the following areas as statutory no smoking areas: (i) areas within a reasonable distance outside the entrances of restaurants and (ii) open-air areas of restaurants which are within a reasonable distance from the indoor areas of the restaurants; whether, in the long run, it will, by drawing reference from the anti-smoking policies adopted in certain overseas countries, switch from the current practice of designating statutory no smoking areas to imposing a total ban on smoking in open-air public areas (except designated smoking areas)?

Reply:

President,

Since the amendment of the Smoking (Public Health) Ordinance (Cap. 371) in 2006, the statutory smoking ban has been gradually extended and now covers all indoor working places and public places as well as many outdoor public places. Around 240 public transport facilities have been designated as no smoking areas (NSAs) progressively. Since 2016, the Government has also extended the smoking ban to 11 bus interchanges leading to expressways or tunnels by phases.

My reply to the various parts of the question raised by the Hon Tony Tse is as follows:

(1) The Tobacco Control Office of the Department of Health has been renamed as Tobacco and Alcohol Control Office (TACO) in November 2018. Apart from Cap. 371, TACO is also responsible for the enforcement of the new Part 5 of the Dutiable Commodities (Liquor) Regulations (Cap. 109B), which prohibits the sale and supply of intoxicating liquor to minors in the course of business. The current approved establishment of TACO's frontline enforcement staff is 119. The Department of Health will review its staffing position regularly to meet actual needs, and will seek additional resources, if required, in accordance with the established mechanism.

(2) The numbers of complaints received and fixed penalty notices/summonses issued in relation to smoking offences processed by TACO in the past five years are as follows:

Year		2014	2015	2016	2017	2018
Complaints received	Food premises	2 220	2 336	2 761	2 370	2 214
	Non- food premises (Note 1)	15 134	15 539	20 178	15 984	15 886
	Total	17 354	17 875	22 939	18 354	18 100
Fixed penalty notices or summonses issued	Food premises	598	519	598	672	542
	Non- food premises (Note 1)	7 429	7 337	8 259	9 188	8 282
	Total	8 027	7 856	8 857	9 860	8 824

Note 1: TACO does not maintain breakdown of enforcement figures according to the different types of NSAs.

(3) TACO follows up on every complaint by arranging daytime and night-time surprise inspections. In addition, TACO also conducts proactive inspections

at locations with more serious smoking problems. To ensure effective enforcement, all inspections conducted by TACO are surprise inspections. TACO has strengthened night-time enforcement actions since 2017. The number of daytime and night-time operations conducted in 2017 and 2018 are as follows:

Year	2017	2018
Daytime Operation (Note 2)	1 455	1 373
Night-time Operation (Note 3)	542	1 002
Total Operation	1 997	2 375

Note 2: "Daytime operation" covers the "morning and afternoon shift" for the period from 6.30am to 6.30pm.

Note 3: "Night-time operation" in 2017 covers the "afternoon and evening shift", "evening shift" and "overnight shift" for the periods noon to 11pm, 6pm to 11pm, and 8pm to 6am respectively. "Night-time operation" in 2018 covers the "afternoon and evening shift" and "evening shift" for the period 10am to 11pm and the "overnight shift" for the period 8pm to 6am.

TACO does not maintain the breakdown of the daytime and night-time inspection figures at food premises.

(4) TACO has not found any cases of unauthorised absence involving law enforcement officers that would result in disciplinary action in the past five years. TACO also does not maintain the relevant complaint figures.

(5) Under Cap. 371, venue managers of NSAs are empowered to request smokers to cease smoking or leave the NSAs, and may call for police assistance if necessary. Venue managers have been reminded of their authority empowered by Cap. 371 during inspections and through talks on smoking ban regulations conducted by TACO. In addition, guidelines are in place to assist venue managers to implement the smoking ban. When members of the public are found smoking in NSAs, Tobacco and Alcohol Control Inspectors will prosecute offenders without prior warning. In general, venue managers are co-operative in facilitating operations conducted by the law enforcement officers of TACO.

(6) The main purpose of designating NSAs or introducing tobacco control measures is to minimise the effect of secondhand smoke on the public. There is also a need to balance the interests of all parties, including both smokers and non-smokers. Before putting any smoking ban or other tobacco control measures in place, it is imperative to ensure that they can be effectively enforced and can be easily complied with by the public, such as whether there are clear and conspicuous demarcations between NSAs and non-NSAs. The Government has received both supporting and opposing views when extending the smoking ban in the past. The Government must therefore carefully consider and take into account different views when further extending the smoking ban.