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Smoking (Prohibition in Certain Places) (Amendment) Bill

Bill No. 31/2018.

Read the first time on 6 August 2018.

A BILL

intituled

An Act to amend the Smoking (Prohibition in Certain Places) Act
(Chapter 310 of the 2002 Revised Edition).

Be it enacted by the President with the advice and consent of the
Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Smoking (Prohibition in Certain Places) (Amendment) Act 2018 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 **Amendment of section 2**

2. Section 2 of the Smoking (Prohibition in Certain Places) Act (called in this Act the principal Act) is amended —

(a) by inserting, immediately after the definition of “authorised officer”, the following definition:

10 ““common property” has the meaning given by section 2(1) of the Building Maintenance and Strata Management Act (Cap. 30C) and includes limited common property (within the meaning given by that Act), if any;”;

15 (b) by deleting the definition of “manager” and substituting the following definitions:

20 ““manager”, in relation to a specified place, means the occupier of the specified place, and where there is no occupier, the owner of the specified place;

“occupier” means —

25 (a) in relation to a specified place — the person in occupation of the specified place or having the charge, management or control of the specified place; and

30 (b) in relation to any part of any specified place, different parts of which are occupied by different persons — the person in occupation or having the charge, management or control of that part,

but does not include a lodger;”;

(c) by inserting, immediately after the definition of “operator”, the following definitions:

““owner”, in relation to any place, has the meaning given by section 2 of the Environmental Public Health Act;

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“place” means any premises, structure or building, or any unenclosed area (including a road, pavement, wetland and any body of water), but not a vehicle, and includes part of a place;”;

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(d) by inserting, immediately after the definition of “public service vehicle”, the following definition:

““publicly accessible place” means any place to which the public or a section of the public has access as of right, or by virtue of express or implied permission with or without payment of a fee;”;

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(e) by deleting the definitions of “specified place” and “specified vehicle” and substituting the following definitions:

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““smoking facility” means an area or a room in a specified place that is designated under section 3C(3) by the manager of the specified place or the Director-General as an area or a room within which smoking is permitted;

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“specified place” has the meaning given by section 3A(3) and includes every place prescribed as a specified place under section 3A(1);

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“specified vehicle” means a public service vehicle prescribed as a specified vehicle under section 3A(4), and includes any part of a specified vehicle;

“statutory body” means a body corporate established by or under a public Act for a public purpose.”.

Repeal and re-enactment of section 3 and new sections 3A to 3D

5 **3.** Section 3 of the principal Act is repealed and the following sections substituted therefor:

“No smoking in specified places and specified vehicles

3.—(1) Subject to section 3B, a person must not smoke in a specified place or specified vehicle.

10 **(2)** A person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000.

Specified places, specified vehicles and no-smoking zones

15 **3A.—(1)** The Agency may, with the approval of the Minister, prescribe any of the following as a specified place:

- (a) any publicly accessible place;
- (b) any of the following that is not a publicly accessible place:
 - (i) any place owned, managed or occupied by the Government or a statutory body;
 - (ii) any common property of any residential premises or building;
 - (iii) any place used, or intended to be used, for a commercial or an industrial purpose, or for mixed purposes the predominant purpose of which is either a commercial or an industrial purpose, or any common property of such a place;
 - (iv) any recreational facility;
- (c) any ship, boat, air-cushioned vehicle or other similar craft used in navigation by water, however propelled or moved, for the carriage of passengers.

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(2) The Agency may, with the approval of the Minister, prescribe an area in Singapore as a no-smoking zone.

(3) Every publicly accessible place —

(a) within an area prescribed under subsection (2) as a no-smoking zone; and

(b) not prescribed as a specified place under subsection (1),

is a specified place from the date the area is prescribed as a no-smoking zone.

(4) The Agency may, with the approval of the Minister, prescribe any particular public service vehicle or any class of public service vehicles as a specified vehicle or specified vehicles.

Exceptions to smoking prohibition

3B.—(1) A person is permitted to smoke in a specified place only —

(a) when within a smoking facility in the specified place; or

(b) in such other circumstances, or under such conditions, as may be prescribed.

(2) A person is permitted to smoke in a specified vehicle only in such circumstances, or under such conditions, as may be prescribed.

Requirements for smoking facilities

3C.—(1) The Agency may, with the approval of the Minister, prescribe the specified places in which a smoking facility may be located and the requirements for a smoking facility in such specified places.

(2) For the purposes of subsection (1), different requirements may be prescribed —

(a) in relation to different specified places;

- (b) in relation to different classes of specified places; or
- (c) in relation to specified places within and outside a no-smoking zone.

5 (3) Where a specified place is prescribed as a specified place in which a smoking facility may be located, the manager of the specified place, or the Director-General (in accordance with subsection (4)), may designate an area or a room in the specified place as a smoking facility.

10 (4) Before designating a smoking facility in a specified place, the Director-General must —

(a) give written notice to the manager of the specified place of the Director-General's intention to designate a smoking facility in the specified place and when the designation is to take effect; and

15 (b) give the manager of the specified place an opportunity to submit reasons, within the period specified in the notice, why the Director-General should not designate a smoking facility in the specified place.

20 (5) The manager of a specified place must ensure that every smoking facility within the specified place complies with the requirements prescribed for a smoking facility in such a specified place.

25 (6) A manager of a specified place who contravenes subsection (5) shall be guilty of an offence and shall be liable on conviction —

(a) to a fine not exceeding \$5,000 and, in the case of a continuing offence, to a further fine not exceeding \$500 for every day or part of a day during which the offence continues after conviction; and

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(b) in the case of a second or subsequent conviction, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$500 for every day or part of a day during which the offence continues after conviction. 5

(7) In proceedings for an offence under subsection (6), it is a defence for the manager of the specified place to prove that —

(a) it was not reasonably practicable to do more than what was in fact done to comply with subsection (5); or 10

(b) there was no better practicable means than was in fact used to comply with subsection (5).

Appeal to Minister

3D.—(1) The manager of a specified place who is aggrieved by any designation by the Director-General under section 3C(3) may appeal to the Minister against the designation. 15

(2) Every appeal under this section must —

(a) be in writing;

(b) specify the grounds on which it is made; and

(c) be made within a prescribed period after the date of receipt of the written notice mentioned in section 3C(4). 20

(3) The Minister may reject the appeal of an appellant who fails to comply with subsection (2).

(4) After considering an appeal under this section, the Minister may — 25

(a) reject the appeal and confirm the Director-General's designation; or

(b) allow the appeal.

(5) The Minister's decision on appeal is final. 30

(6) Every appellant must be notified of the Minister's decision under subsection (4).

(7) A designation by the Director-General that is appealed against does not take effect until the appeal is determined or earlier withdrawn.

5 (8) The Minister may designate any of the following persons to hear and determine, in the Minister's place, any appeal under subsection (1):

- (a) the Second Minister, if any, for his Ministry;
- (b) any Minister of State, or Senior Minister of State, for his Ministry;
- 10 (c) any Parliamentary Secretary, or Senior Parliamentary Secretary, for his Ministry;
- (d) any public officer in his Ministry not subordinate to the Director-General whose designation is appealed against.

15 (9) Any reference to the Minister in subsections (1) to (7) includes a reference to a person designated under subsection (8).”.

New sections 4A and 4B

20 **4.** The principal Act is amended by inserting, immediately after section 4, the following sections:

“Powers of entry, etc.

25 **4A.**—(1) The Director-General or an authorised officer may, for the purpose of ascertaining whether there is or has been any contravention of this Act, do all or any of the following in relation to a specified place or specified vehicle without a warrant:

- (a) subject to subsection (2), enter, inspect and search the specified place or specified vehicle;
- 30 (b) inspect and make copies of, or take extracts from, any document or material kept at the specified place or in the specified vehicle;

- (c) take possession of any thing found at the specified place or in the specified vehicle that is reasonably believed to be connected to any contravention of this Act;
- (d) require any person whom the Director-General or authorised officer reasonably believes is in possession of a document or information relevant to any contravention of this Act to take reasonable steps to produce the document or provide the information; 5
- (e) require any person whom the Director-General or authorised officer reasonably believes is acquainted with any facts or circumstances relevant to any contravention of this Act — 10
- (i) to answer any question to the best of the person’s knowledge, information and belief, immediately or at such place and time specified in writing; or 15
- (ii) to take reasonable steps to provide information or produce a document, immediately or at such place and time specified in writing; 20
- (f) photograph or film, or make audio recordings or make sketches, of any part of the specified place or specified vehicle or any thing at the specified place or in the specified vehicle or of any person whom the Director-General or authorised officer reasonably believes is acquainted with any facts or circumstances relevant to any contravention of this Act. 25
- (2) The Director-General or an authorised officer may exercise the power of entry under subsection (1)(a) — 30
- (a) in relation to a specified place that is common property of any residential premises or building which is not a publicly accessible place — only if the condition mentioned in subsection (3) is satisfied; and 35

(b) in relation to any other specified place or any specified vehicle —

(i) at all reasonable times; or

(ii) at any time if the condition mentioned in subsection (3) is satisfied.

(3) For the purposes of subsection (2), the condition is that the Director-General or authorised officer reasonably believes that —

(a) an offence under this Act has been or is being committed in that place or vehicle; or

(b) evidence of the commission of an offence under this Act can be found in that place or vehicle.

(4) A statement made by a person examined under subsection (1)(e) must —

(a) be reduced to writing;

(b) be read over to the person;

(c) if the person does not understand English, be interpreted in a language that the person understands; and

(d) after correction (if necessary), be signed by the person.

Offence of obstructing, etc., Director-General or authorised officer in exercise of powers, etc.

4B.—(1) A person who, without reasonable excuse —

(a) obstructs, hinders or delays the Director-General or an authorised officer in the exercise of any power under section 4 or 4A;

(b) neglects or refuses to produce a document, material or thing or to provide any information as required under section 4A;

(c) produces any document, material or thing, or provides any information, as required under section 4A, that is false or misleading in any material particular; or

(d) neglects or refuses to attend before the Director-General or authorised officer as required under section 4A,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and, in the case of a second or subsequent offence, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 months or to both.

(2) To avoid doubt, for the purposes of subsection (1)(a) or (b), it is a reasonable excuse for a person to refuse or fail to provide any information, produce any document or answer any question if doing so might tend to incriminate that person.”

Amendment of section 6

5. Section 6 of the principal Act is amended —

- (a) by deleting the words “any notification made under” in subsection (1);
- (b) by deleting the words “smokes in a specified place in contravention of any notification made under section 3(1), any other person who is aggrieved by the smoking of that person” in subsection (3) and substituting the words “contravenes section 3(1), any other person”;
- (c) by inserting, immediately after the words “specified vehicle” in subsection (4)(a), the words “in contravention of section 3(1)”;
- (d) by inserting, immediately after the words “specified place” in subsection (4)(b), the words “in contravention of section 3(1)”;
- (e) by deleting the words “in contravention of any notification made under section 3(1),” in subsection (4); and
- (f) by deleting the words “a notification made under” in subsection (5).

Repeal and re-enactment of section 8

6. Section 8 of the principal Act is repealed and the following section substituted therefor:

“Fees, etc., payable to Agency, etc.

5 **8.**—(1) All fees, charges and moneys collected under this Act, other than composition sums, must be paid to the Agency.

(2) All composition sums collected under this Act must be paid into the Consolidated Fund.”.

Repeal and re-enactment of section 10

10 7. Section 10 of the principal Act is repealed and the following section substituted therefor:

“Exemption

15 **10.** The Agency may, with the approval of the Minister and by order in the *Gazette*, exempt any person or place from all or any of the provisions of this Act either generally or in a particular case and subject to such conditions as the Agency may impose in the order.”.

Amendment of section 11

20 **8.** Section 11(1) of the principal Act is amended by inserting, immediately after the words “of this Act”, the words “and for prescribing anything that is to be prescribed”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Smoking (Prohibition in Certain Places) Act (Cap. 310) for the following purposes:

- (a) to allow the prescribing of no-smoking zones;
- (b) to allow more types of places to be prescribed as specified places;
- (c) to require a manager of a specified place to ensure that smoking facilities in the specified place comply with requirements prescribed in regulations;

- (d) to empower the Director-General of Public Health (the Director-General) to designate one or more smoking facilities in any specified place in addition to any designated by the manager;
- (e) to enhance enforcement powers;
- (f) to make other amendments for the better administration of the Act.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 to insert definitions for new terms that are used in the amendments and to amend current definitions.

Clause 3 repeals and re-enacts section 3 and inserts new sections 3A to 3D.

The re-enacted section 3 makes it an offence to smoke in a specified place or specified vehicle unless otherwise permitted under the Act.

The new section 3A provides that the National Environment Agency (NEA) may, with the approval of the Minister, prescribe any place as a specified place, or any public service vehicle as a specified vehicle.

To make more public areas in Singapore smoke-free, the NEA may also, with the approval of the Minister, prescribe a geographical area in Singapore as a no-smoking zone. Every publicly accessible place within a no-smoking zone, such as the area along Orchard Road (when prescribed as a no-smoking zone), is a specified place where smoking is prohibited (unless otherwise provided under the new section 3B).

The new section 3B provides that a person may smoke in a specified place if the person smokes within a smoking facility. The NEA may by regulations further prescribe other circumstances in or conditions under which smoking is permitted in a specified place or specified vehicle.

The new section 3C relates to smoking facilities, which are located in specified places to allow individuals to smoke. The NEA may by regulations prescribe the specified places in which smoking facilities may be located and the requirements for such smoking facilities, and different requirements may be prescribed for smoking facilities according to the specified place or class of specified place that the smoking facility is located in, or according to whether the specified place is within or outside a no-smoking zone.

Where the NEA prescribes a specified place as one in which a smoking facility may be located, the manager of the specified place or the Director-General may designate one or more rooms or areas in the specified place as a smoking facility. The Director-General may designate a smoking facility in a specified place in addition to any smoking facility designated by the manager of the specified place or where no smoking facility has been designated by the manager of the specified place. The Director-General must give written notice to the manager of a specified place of the Director-General's intention to designate a smoking facility in the

specified place and give the manager of the specified place an opportunity to make representations.

Any manager of a specified place who fails to ensure that every smoking facility in the specified place complies with the prescribed requirements commits an offence. It is a defence for an accused manager of the specified place to prove that he or she had taken all reasonably practicable steps to ensure that every smoking facility complies with the prescribed requirements.

The new section 3D permits a manager of a specified place aggrieved by the Director-General's designation of a smoking facility in the specified place to appeal to the Minister and sets out the procedure for appeals. The new section 3D provides that a designation that is appealed against does not take effect until the appeal is determined or earlier withdrawn, and that the Minister may designate other persons to hear and determine appeals.

Clause 4 inserts new sections 4A and 4B.

The new section 4A sets out enforcement powers available to the Director-General and an authorised officer for the purpose of ascertaining whether there is a contravention of the Act, including powers of entry and to take photographs and videos at a specified place or in a specified vehicle. The power of entry may be exercised in relation to common property of any residential premises or building where public access is restricted only where the Director-General or authorised officer reasonably believes that an offence under the Act has been or is being committed, or evidence of the commission of an offence may be found in the place. For any other specified place or any specified vehicle, this power may be exercised where the Director-General or authorised officer reasonably believes that an offence under the Act has been or is being committed, or evidence of the commission of an offence may be found in the place or vehicle, or at all reasonable times.

The new section 4B sets out the offences of obstructing the Director-General or an authorised officer in exercise of the powers under section 4 and the new section 4A, of neglecting or refusing to produce a document, material or thing or to provide any information as required under the new section 4A, of producing any document, material or thing, or providing any information, as required under section 4A, that is false or misleading in any material particular, and of neglecting or refusing to attend before the Director-General or an authorised officer as required under the new section 4A.

Clause 5 amends section 6 to make amendments consequential to the amendments to section 3, and to remove reference (in section 6(3)) to a person "aggrieved" by another person unlawfully smoking in a specified place, such that any person may lodge a complaint to a manager of the specified place regarding the unlawful smoking.

Clause 6 repeals and re-enacts section 8 to provide that the NEA must pay all composition sums it collects under the Act into the Consolidated Fund.

Clause 7 repeals and re-enacts section 10 to empower the Agency, with the approval of the Minister, to exempt any person or place from all or any provision of the Act. The exemption must be published in the *Gazette*.

Clause 8 amends section 11 to provide that the NEA may make regulations to prescribe anything that is to be prescribed under the Act.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
