

立法會
Legislative Council

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LC Paper No. CB(2)2379/06-07
(These minutes have been seen
by the Administration)

Panel on Health Services

**Minutes of special meeting
held on Friday, 1 June 2007, at 10:45 am
in the Chamber of the Legislative Council Building**

- Members present** : Dr Hon Joseph LEE Kok-long, JP (Chairman)
Dr Hon KWOK Ka-ki (Deputy Chairman)
Hon Fred LI Wah-ming, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Yuen-han, JP
Hon Bernard CHAN, GBS, JP
Dr Hon YEUNG Sum
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, BBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon LI Kwok-ying, MH, JP
- Members absent** : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
- Public Officers attending** : Items I & II
Mrs Ingrid YEUNG
Deputy Secretary for Health, Welfare and Food
(Health) 2
- Item I only
Mr Thomas CHAN
Principal Assistant Secretary for Health, Welfare and
Food (Health) 3
Dr Cindy LAI
Assistant Director of Health (Special Health Services)

Dr Christine WONG
Head, Tobacco Control Office
Department of Health

Item II only

Dr CHAN Wai-chi
Associate Consultant (Research Office)
Health, Welfare and Food Bureau

Clerk in attendance : Miss Mary SO
Chief Council Secretary (2)5

Staff in attendance : Ms Amy YU
Senior Council Secretary (2)3

Ms Sandy HAU
Legislative Assistant (2)5

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I. Enforcement of the statutory smoking prohibition and proposed introduction of a fixed penalty system for smoking offence
[LC Paper No. CB(2)1982/06-07(01)]

At the invitation of the Chairman, Deputy Secretary for Health, Welfare and Food (Health)2 (DSHWF(H)2) briefed members on the Administration's paper detailing the Administration's efforts in enforcing the smoking prohibition under the Smoking (Public Health) Ordinance (Cap. 371) (the Ordinance) and the latest progress of the proposal to introduce a fixed penalty system (FPS) for smoking offence.

2. Dr YEUNG Sum urged the Administration to step up efforts on educating youth and women on the harmful effects of smoking, in view of the growing prevalence of smoking amongst these two groups of people. Dr YEUNG then asked the following questions -

- (a) whether any study or consultation had been conducted by the Administration before arriving at the proposal to fix the penalty level for smoking offence at \$1,500; and
- (b) whether, and if so, what measures would be made to improve the manpower of Tobacco Control Office (TCO) to better enforce the smoking prohibition.

In respect of (b), Dr YEUNG pointed out that the fact that Tobacco Control

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Inspectors (TCIs) had failed to take immediate enforcement at the scene when someone was reported to have breached the smoking ban through the TCO hotline was a testament that the existing manpower level of TCO was inadequate to enforce the law.

3. Responding to Dr YEUNG's first question, DSHWF(H)2 said that the Administration had yet to consult the public on the proposed penalty level for smoking offence. This meeting was the first opportunity for the Administration to seek public views on the proposed penalty level for smoking offence, and the Administration would be open to the views of members on the proposal. DSHWF(H)2 further said that the proposed penalty level for smoking offence was comparable to the high end of the penalty levels meted out by the Courts and was on par with that of public cleanliness offences which equally had public health implications.

4. Regarding Dr YEUNG's second question, DSHWF(H)2 said that the Administration planned to increase the manpower of TCO from 66 in 2006-2007 to 109 in 2007-2008. The number of TCIs would be increased from 34 in 2006-2007 to 71 in 2007-2008. DSHWF(H)2 further said that despite the increase in manpower, and no matter how large the establishment would become, it would not be practicable or reasonable to expect TCIs to arrive at the scene instantly when someone was reported to be breaching/or to have breached the law, in view of the nature of the smoking offence which took place within a very short time.

5. Mr Andrew CHENG asked -

- (a) whether consideration could be given to increasing the tobacco duty and using the revenue generated to further increase the number of TCIs, having regard to the reported low morale of some TCIs due to the heavy workload and the limited powers provided to them under the law to carry out the enforcement work; and
- (b) whether the Police would be enlisted to issue fixed penalty notices in all statutory no smoking areas under the proposed FPS for smoking offence.

Mr CHENG further urged the Administration to expeditiously conduct public consultation on the proposed FPS for smoking offence so that the bill to implement such could be introduced into the Legislative Council (LegCo) in October 2007 at the beginning of the next legislative session.

6. DSHWF(H)2 responded as follows -

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- (a) the Administration would continue to closely monitor the manpower of TCO with a view to effectively carrying out their duties. The suggestion of increasing the tobacco duty would be conveyed to the Financial Services and the Treasury Bureau for consideration;
- (b) TCO would remain the leading enforcement agency for the smoking prohibition, including the issuance of fixed penalty notices for smoking offence, if implemented, and the Police would continue its present supporting role in enforcing the smoking prohibition, albeit such enforcement works would not be the work priority of the Police; and
- (c) the Administration had completed a preliminary round of consultations with relevant government bureaux and departments and were currently making preparations for the drafting of the primary legislation to provide for the proposed FPS for smoking offence. The Administration would strive to introduce the bill into LegCo as soon as practicable, subject to availability of legislative timeslots, smooth progress in drafting and resolution of other related practical matters relevant to the proposed FPS.

7. Assistant Director of Health (Special Health Services) (ADH(SHS)) supplemented that the number of complaints in relation to smoking offence received by TCO following the implementation of the statutory no smoking ban in all indoor workplaces and indoor public places on 1 January 2007 was about 3 000 in January. The number of complaints in relation to smoking offences had dropped significantly at about 1 000 to 2 000 complaints a month over the recent months. ADH(SHS) further said that TCIs well understood that they should seek the assistance of the Police when they encountered difficulties in their enforcement actions. Since January 2007, TCIs had sought the assistance of the Police on 12 occasions, but had not encountered any violent acts in carrying out their enforcement actions so far. ADH(SHS) pointed out that to enable TCIs to carry out compliance monitoring, investigation and enforcement effectively, all TCIs were required to first undergo training in law enforcement provided by the Police officers seconded to the TCO. ADH(SHS) believed that with the recruitment of an additional 37 TCIs in 2007-2008, adequate training on law enforcement provided to TCIs, and the growing awareness of the public on the need to comply with the smoking ban, the work pressure of TCIs should continue to subside. Notwithstanding, ADH(SHS) considered that the most effective way to ensure compliance of the smoking ban was through education. To this end, further publicity and education work would be carried out by TCO. In addition, TCO would step up efforts on conducting unannounced checks to places where repeated violations of the statutory smoking ban were noticed.

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8. Mr Andrew CHENG expressed regret that the Administration had yet to draft the bill to implement the FPS for smoking offence, as introducing a FPS for smoking offence was supported by all members during the deliberations of the Smoking (Public Health) Amendment Bill 2005. Mr CHENG urged the Administration to introduce the bill to implement the FPS for smoking offence in October 2007, so that the new measure could come into force by 1st quarter of 2008. Mr CHENG further said that one way to speed up the implementation of the FPS for smoking offence was to modify the existing computer system to support the FPS for public cleanliness offences, instead of developing a new system to support the FPS for smoking offence. Dr KWOK Ka-ki and Dr YEUNG Sum echoed similar views.

9. DSHWF(H)2 responded that more time was needed in drafting as previous legal advice had indicated that a separate primary legislation would be needed to implement the FPS for smoking offence. In order to expedite the drafting of the bill, reference would be drawn from the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570) as appropriate. DSHWF(H)2 further said that given that the FPS for smoking offence would involve a separate legislation and mechanism, it would be simpler to develop a separate system to support the enforcement under the FPS. ADH(SHS) supplemented that TCO had been in touch with the Food and Environmental Hygiene Department (FEHD) to learn about the setting up and operation of its computer system to support the FPS for public cleanliness offences. This should help TCO to expedite the development of the computer system to support the FPS for smoking offence.

10. Mr LI Kwok-ying welcomed the Administration's plan to introduce FPS for smoking offence. Mr LI shared members' views about the adequacy of the number of TCIs to carry out enforcement work, having regard to the fact that during the period from 1 January to 20 May 2007, the some 100 TCIs had only managed to arrange to issue 597 summons for smoking offence. Although the Police would also be involved in issuing the fixed penalty notices under the proposed FPS for smoking offence, such work would not overtake their current priorities. In the light of this, Mr LI asked whether consideration could also be given to involving FEHD inspectors to issue the same for smoking offence which took place at food premises.

11. DSHWF(H)2 responded that it was considered not practicable to involve FEHD inspectors to issue fixed penalty notices for smoking offence because inspections to food premises focused mainly on the kitchen and related food preparation areas, rather than areas for serving patrons. To expand the scope of work of FEHD inspectors to include issuing fixed penalty notices for smoking offence would disrupt their current work pattern. Moreover, FEHD inspectors were not stationed at the food premises, but only carried out inspection to the premises on a regular basis in accordance with the track record and risk

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classification of the premises ranging from once every four to 20 weeks. DSHWF(H)2 further said that as managers of statutory no smoking areas were empowered under the Ordinance to take immediate remedial actions and to mitigate the situation on the spot, a more practical approach was to help these managers to build up their capacity in this regard.

12. Ms Audrey EU commended the Administration for the swift action in coming up with the proposed FPS for smoking offence following the passage of the amendments to the Ordinance in October 2006. Ms EU then asked the following questions -

- (a) which government departments were vested with the authority to issue fixed penalty notices for public cleanliness offences, as compared with those for the issuance of fixed penalty notices for smoking offence;
- (b) whether the prescribed form of the fixed penalty notices for public cleanliness offences could incorporate the fixed penalty notices for smoking offence, so as to provide convenience to the enforcement departments which were vested with the authority to issue both fixed penalty notices; and
- (c) what were the criteria for issuing a fixed penalty notice and a summons for smoking offence.

13. DSHWF(H)2 responded as follows -

- (a) seven government departments, namely, the Leisure and Cultural Services (LCSD), FEHD, the Housing Department (HD), the Agriculture and Fisheries and Conservation Department, the Marine Department, the Environmental Protection Department and the Police, were currently vested with the authority to issue fixed penalty notices for public cleanliness offences. Amongst them, four departments, namely, LCSD, FEHD, HD and the Police, were proposed to be vested with powers to issue fixed penalty notices for smoking offence;
- (b) it would be complicated to change the prescribed form of the fixed penalty notices for public cleanliness offences to incorporate the fixed penalty for smoking offence, as the latter would be underpinned by a separate primary legislation and mechanism. Nevertheless, it would be possible for all enforcement departments for the FPS for smoking offence to use the same prescribed form of the fixed penalty notices for smoking offence; and

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- (c) summons for smoking offence would be issued for repeated offenders, the criteria for issuing such were yet to be finalised.

14. Mr Fred LI suggested that the Health, Welfare and Food Bureau should draw reference from the Fixed Penalty (Public Cleanliness Offences) Ordinance in formulating penalty for repeated offenders of smoking offence.

15. Dr KWOK Ka-ki welcomed the Administration's plan to introduce FPS for smoking offence. Dr KWOK further said that more resources should be allocated on education and publicity to raise public awareness about the harmful effects of smoking and improving the smoking cessation service, in view of the recent upsurge in the revenue from tobacco duty received by the Government.

16. DSHWF(H)2 responded that the fact that there had been an upsurge in the revenue from tobacco duty received by the Government recently did not necessarily mean that the number of smokers in Hong Kong had increased. It was also noted that a common phenomenon occurred in past years that tobacco duty surged before the announcement of next year's budget by the Financial Secretary, possibly because importers of tobacco products speculated increase in tobacco duty. There could be other reasons for the surge. DSHWF(H)2 assured members that the Administration would continue to closely monitor the smoking trend in Hong Kong, so as to better adjust its strategy on combating smoking, especially secondhand smoking.

17. ADH(SHS) said that since the passage of the amendments to the Ordinance in October 2006, the number of enquiries received by TCO smoking cessation hotline had increased by 100% to some 3 000 a month. Similarly, people patronising the clinics of Department of Health (DH) and the Hospital Authority for smoking cessation had also increased, for instance by about 60% at DH cessation clinic. Apart from providing assistance to help smokers to quit the addiction, ADH(SHS) said that TCO also provided training material for healthcare workers to promote the provision of smoking cessation service amongst them. Smoking cessation workshops for healthcare workers had also been conducted. TCO would continue its efforts in this regard to promote smoking cessation in the community.

18. Mr Fred LI noted from paragraph 10 of the Administration's paper that TCO had initiated investigation for most complaints and conducted inspections for over 70% of all the complaints. Mr LI asked why TCO had not conducted inspections to all the complaints received.

19. ADH(SHS) clarified that all complaints about smoking offence received through the TCO complaint hotline, email and fax would be followed up by TCO, but TCO had conducted inspections for over 70% of the complaints. In most cases, TCO was able to contact the complainants and investigate the

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complaints within five to 10 days upon receipt of the complaints. At the request of the Chairman, ADH(SHS) undertook to provide more information on the procedures and time taken by TCO in processing the complaints.

20. Mr Andrew CHENG noted from paragraph 11 of the Administration's paper that there were on average five operators handling the TCO complaint hotline daily from 9 am to 10 pm. Calls would be diverted to a message box for recording after 10 pm and when no operator was available. Mr CHENG asked whether consideration could be given to extending the TCO complaint hotline manned by operators to 1 or 2 am to better meet service demand for the hotline. DSHWF(H)2 agreed to consider Mr CHENG's suggestion. ADH(SHS) supplemented that staff of the hotline centre would provide follow up response to those complainants who reported to the TCO hotline after 10 pm the following day. Although the hotline manned by operators was from 9 am to 10 pm daily, unannounced inspections to statutory no smoking premises would be made at all hours where warranted.

21. Dr YEUNG Sum hoped that the Administration would provide more funding to TCO to recruit more staff, so as to enable the TCO hotline to be manned by operators round the clock and enable TCIs to conduct inspections for all of the complaints swiftly.

22. DSHWF(H)2 responded that the Administration had been and would continue to close monitor the manpower of TCO and the effectiveness of its strategy to combat smoking. ADH(SHS) supplemented that TCO constantly reviewed its work plan and procedures to ensure effective compliance monitoring, investigation and enforcement.

23. Noting that staff of LCSD, FEHD and HD would be involved to issue fixed penalty notice for smoking offence, Miss CHAN Yuen-han asked whether these staff had been consulted on taking up such additional duty.

24. DSHWF(H)2 responded that the paper reflected the initial views of the management of LCSD, FEHD and HD during the preliminary consultations on issuing fixed penalty notice for smoking offence. These departments had yet to decide which ranks of staff should be vested with the authority to issue the fixed penalty notice. DSHWF(H)2 however pointed out that staff consultation would be conducted by the respective departments on this in due course.

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25. In closing, the Chairman urged the Administration to expedite the legislation of the FPS for smoking offence, so that the legislation could come into force prior to the expiry of the current legislative term. The Chairman also urged the Administration to further increase the manpower of TCO to make the work of TCO more effective and efficient.

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II. Increase in the approved commitment for the Health and Health Services Research Fund

[LC Paper No. CB(2)1982/06-07(02)]

26. DSHWF(H)2 briefed members on the Administration's proposal to increase the approved commitment for the Health and Health Services Research Fund (HHSRF) by \$40 million from \$26 million to \$66 million, details of which were set out in the above Administration's paper.

27. Dr KWOK Ka-ki expressed support for the proposal, and hoped that priority for funding could be accorded to projects targetted at screening services, healthcare financing and mental health. Miss CHAN Yuen-han also hoped that priority for funding could be accorded to projects targetted at chronic diseases and infectious diseases such as hepatitis B.

28. DSHWF(H)2 responded that three thematic priorities, namely, public health, health services and Chinese medicine, had been developed by the Research Council of the HHSRF to guide the direction of research and decisions on fund allocation. Screening services for public health and mental health fell under the scope of the thematic priority of health services. Notwithstanding the aforesaid, all worthy proposals would be supported even if the focus of the projects was outside the scope of the thematic priorities of the Fund and/or there was insufficient funding. In the case where there was insufficient funding to support all worthy projects, the Administration would seek FC's support to increase the commitment of the Fund. DSHWF(H)2 pointed out that to be eligible for a grant, a proposed research project must have high scientific merit and potential for local application and benefit. Each application was subject to a two-tier peer review process. The first tier comprised vetting by one local and one overseas experts. The second tier comprised scrutiny by a Grant Review Board. If the application received positive assessment from peer review, it would be vetted by the Research Council of the Fund. The Research Council was established under the Fund to make final decision on the allocation of the Fund. It was chaired by the Secretary for Health, Welfare and Food. Members included representatives from DH, HA, academic institutions and private sector. DSHWF(H)2 further said that the success rate for applications to the Fund was around 20%.

29. Mr Andrew CHENG expressed support for the proposal, and urged the Administration to increase the Fund's commitment to \$50 million to take into account the effect of inflation over the next five years. DSHWF(H)2 agreed to consider Mr CHENG's suggestion.

30. At the request of the Chairman, DSHWF(H)2 undertook to provide information on the amount of funding granted to each approved project and whether there was any application which was worthy of support but could not be supported due to lack of fund.

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31. Ms Audrey EU expressed support for increasing the commitment to the HHSRF to \$50 million as suggested by Mr Andrew CHENG. Referring to paragraph 13 of the Administration's paper which set out the outputs and outcomes of HHSRF-funded research, Ms EU asked about the meaning of "observed" and "expected" and why the percentage that led to policy change by the HHSRF projects lagged behind that of overseas funds.

32. DSHWF(H)2 explained that observed outcomes were evaluated by a "payback framework", which was an internationally recognised methodology for measuring the outcome of health research activities developed by the Health Economics Research Group at Brunel University, UK, after the completion of the projects for some time, whereas expected outcomes were outcomes envisaged at the outset of the projects. DSHWF(H)2 further explained that the reason why the percentage expected/observed outcomes of the HHSRF projects that led to policy change was only 27.8%/35.4% was because not all projects were aimed at policy change.

33. In summing up, the Chairman said that members were supportive of the HHSRF and urged the Administration to give due consideration to further increase the commitment of the Fund to take into account the effect of inflation over the next five years.

III. Any other business

34. Members agreed to discuss the following items in July 2007 -

- (a) Shortage of medical staff in HA; and
- (b) Medical services in Tung Chung.

35. Members further agreed to hold a joint meeting with the Panel on Welfare Services to discuss the issue of the implications of the 2006 Starting Salaries Survey findings on the subvented organisations in the healthcare and welfare sectors in June 2007.

(Post-meeting note : The joint meeting was scheduled for 25 June 2007.)

36. There being no other business, the meeting ended at 12:45 pm.