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**Paper for the House Committee meeting on 15 April 2016**

**Report of the Subcommittee on Smoking (Public Health) Ordinance  
(Amendment of Schedule 2) Order 2015**

**Purpose**

This paper reports on the deliberations of the Subcommittee on Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2015.

**Background**

2. The Smoking (Public Health) Ordinance (Cap. 371) ("the Ordinance") and its subsidiary legislation provide the legal framework on tobacco control for restricting the use, sale and promotion of tobacco products in Hong Kong. The Ordinance was amended in October 2006 to, inter alia, extend the statutory smoking ban to cover most indoor working places and public places as well as some outdoor places. Part 1 of Schedule 2 to the Ordinance specifies a number of designated statutory no smoking areas ("NSAs"). Since December 2010, smoking ban has been extended to public transport facilities<sup>1</sup> by phases. As stipulated in section 7(1) of the Ordinance, any person who smokes or carries a lighted cigarette, cigar or pipe in a NSA commits an offence and is liable on summary conviction to a fine of \$5,000. The manager of an NSA is empowered under section 3(3) of the Ordinance to

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<sup>1</sup> Section 3(1AB) of the Ordinance empowers the Director of Health to, by notice published in the Gazette, designate as NSA the whole or a part of (a) any area that consists of the termini of two or more modes of public transport and is used for effecting and facilitating interchange between them; or (b) any bus terminus of more than one specified route as defined in section 2 of the Public Bus Services Ordinance (Cap. 230). These areas are generally referred to as public transport interchanges and bus termini.

take actions to stop the person from smoking in NSA. Further, a public officer may issue a fixed penalty notice of \$1,500 under section 3 of the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) in place of prosecution.

3. According to the Administration, the Tobacco Control Office ("TCO") of the Department of Health ("DH") has in recent years received complaints and suggestions for imposing smoking ban at bus interchanges where passengers using the facilities are mainly for interchange into other bus routes. Having regard to the physical configuration of these public facilities, the pedestrian flow and enforcement issues, the Administration proposes to extend smoking ban to eight bus interchanges located at the tunnel portal areas in order to protect commuters from second-hand smoke.

### **Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2015 (L.N. 237 of 2015)**

4. On 11 December 2015, the Administration published in the Gazette the Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2015 ("the Amendment Order"). The Amendment Order is made by the Secretary for Food and Health under section 16A of the Ordinance to amend Schedule 2 to the Ordinance by designating the boarding areas and some adjoining waiting areas and facilities of the following eight bus interchanges located at the tunnel portal areas ("the eight bus interchanges") as NSAs:<sup>2</sup>

- (a) Lion Rock Tunnel Bus Interchange;
- (b) Cross-Harbour Tunnel Bus Interchange;
- (c) Eastern Harbour Crossing Bus Interchange;
- (d) Shing Mun Tunnels Bus Interchange;
- (e) Tate's Cairn Tunnel Bus Interchange;
- (f) Western Harbour Tunnel Bus Interchange;
- (g) Tai Lam Tunnel Bus Interchange; and

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<sup>2</sup> The exact boundaries of the new NSAs are delineated on respective plans signed by the Secretary for Food and Health and deposited in the Land Registry, and were published in the Gazette on 11 December 2015 (G.N. 9501).

- (h) Tsing Sha Highway Bus Interchange (between Sha Tin Heights and Eagle's Nest Tunnel).

5. The Amendment Order was tabled before the Legislative Council at its meeting of 16 December 2015 for negative vetting. It has come into operation on 31 March 2016.

### **The Subcommittee**

6. At the House Committee meeting on 18 December 2015, Members agreed to form a subcommittee to study the Amendment Order. The membership list of the Subcommittee is in **Appendix I**.

7. Under the chairmanship of Mr SIN Chung-kai, the Subcommittee has held five meetings with the Administration. The Subcommittee has received oral presentation from 10 organizations and six individuals at one of these meetings. A list of the organizations and individuals which/who have given views to the Subcommittee is in **Appendix II**. The Subcommittee has also conducted a site visit to the Bus-Bus Interchanges on Tuen Mun Road, the Shing Mun Tunnels Bus Interchange and the Cross-Harbour Tunnel Bus Interchange on 1 February 2016.

8. To allow more time for the Subcommittee to study the Amendment Order, the Subcommittee agreed that the Chairman should move a motion before the expiry of the 28 days' scrutiny period (i.e. the Council meeting of 13 January 2016) to extend the scrutiny period of the subsidiary legislation to 3 February 2016. However, the motion was not dealt with at the Council meeting of 13 January 2016 before the adjournment of the meeting. As such, the period for amending the Amendment Order expired at the Council meeting of 13 January 2016.

### **Deliberations of the Subcommittee**

#### Rationale for the legislative proposal

9. Members in general agree that extending smoking ban to other public transport facilities could help protect public health. Considering that the passenger flow at some of the eight bus interchanges is relatively not high, members including the Chairman, Mr Albert CHAN, Dr KWOK Ka-ki and Dr Helena WONG have enquired about the rationale of the Administration

for prioritizing the designation of the eight Bus Interchanges, but not other bus interchanges with heavy flow of passengers (such as the Bus-Bus Interchanges on Tuen Mun Road) and bus stops located at other tunnel portal areas, as NSAs.

10. The Administration has advised that a progressive and multi-pronged approach has been adopted on tobacco control. On the implementation of smoking ban at public transport facilities, a total of 239 public transport interchanges or bus termini have been designated as NSAs so far. At present, eight out of the 16 tunnels in Hong Kong have bus interchanges located at the tunnel portal areas. The number of bus routes passing by these bus interchanges ranged from six to 30. Crowd of passengers are observed at these bus interchanges during different times of the day, in particular during peak traffic hours. In the past few years, TCO has received a number of smoking-related complaints, as well as suggestions for imposing smoking ban at the eight bus interchanges. As a further step to protect public health, the Administration proposes to extend the smoking ban to the eight bus interchanges, which serves as an initial step for testing the feasibility of expanding NSAs to other public facilities.

11. The Subcommittee has requested the Administration to elaborate on the timetable for extending smoking ban to other bus stops. According to the Administration, it would review the smoking ban at the eight bus interchanges after 12 months of implementation and consider the way forward for further expanding NSAs to other facilities or areas, including other bus stops.

#### Boundaries of the new NSAs

12. The Subcommittee notes that the boundaries of the new NSAs would cover the boarding and waiting areas of the eight bus interchanges, as well as the areas that passengers would pass by in the course of accessing and interchanging among different bus routes. Smokers could smoke outside the boundaries of the NSAs where smoking is not prohibited, with the exception of the Shing Mun Tunnels Bus Interchange as available space is limited.

13. A majority of members are of the strong view that the Administration has failed to safeguard the interests of smokers in formulating the proposed smoking ban at some of the eight bus interchanges. This could be evidenced by the case of the Shing Mun Tunnels Bus Interchange where smokers have no place to smoke after a long bus journey. This apart, those areas at the Cross-Harbour Tunnel Bus Interchange where smokers could smoke are far from the boarding and waiting areas of the Bus Interchange.

14. During the site visit on 1 February 2016, the Chairman and Mr Albert CHAN have requested the Food and Health Bureau ("FHB"), which is in charge of the Amendment Order, to explore the feasibility to provide areas where smoking is not prohibited at the Shing Mun Tunnels Bus Interchange. They suggest that an area behind the advertisement panels and a slope located along the edge of the Bus Interchange could be options for consideration. As regards the Cross-Harbour Tunnel Bus Interchange, these members have enquired about the feasibility to allow smokers to smoke at areas closer to the boarding and waiting areas of the Bus Interchange, such as curtailing the NSAs to allow more space around and under the stairs adjoining the elevated walkway for smoking, and converting the flower bed along the edge of the low ramps of the NSAs at the Kowloon-bound of the Bus Interchange into an area with no prohibition on smoking.

15. FHB, having sought the advice from the Civil Engineering and Development Department ("CEDD") and the Transport Department ("TD"), has explained that space currently available at the Shing Mun Tunnels Bus Interchange is limited. There would soon be some changes to the physical configuration of the Bus Interchange as shelter extension works are being carried out at the Bus Interchange by the Kowloon Motor Bus Company Limited to cater for the increasing volume of commuters during peak traffic hours. It is expected that the works would be completed in the first half of 2016. Any improvement measures could be considered in the light of the outcome of the review to be conducted after 12 months of implementation of the smoking ban and the advice of the relevant Government departments. According to CEDD, there is a need to assess the effect on slope stability if there is any modification of the slope or construction of any structure on the slope located in the vicinity of the Bus Interchange. TD has advised that for the sake of road safety, any proposal involving removal or reprovisioning of the railings and beam barriers currently put in place to prevent vehicles from falling from the slope is subject to technical assessment.

16. As regards the Cross-Harbour Tunnel Bus Interchange, FHB has advised that it is common that queues of commuters would extend from the ground level bus stations to the elevated walkways during peak traffic hours. According to TD, a passenger elevator would be built by the Highways Department to connect the elevated walkway outside of the Hung Hom Station with the Hong Kong-bound Bus Interchange. The area has been fenced off in March 2016. It is expected that the construction works would be completed in late 2017.

17. FHB has stressed that it had taken into account the pedestrian flow and the physical configuration (including the area for waiting, queuing and boarding) of the eight bus interchanges, as well as enforceability of the smoking ban in deciding the boundary of new NSAs. Areas with no smoking prohibition are provided for in the bus interchanges concerned where circumstances permit. Any proposal to change the boundaries of the proposed new NSAs has to ensure that sufficient protection from second-hand smoke would be provided for commuters in queue and passing by.

18. Many members do not subscribe to the Administration's explanations. Given that smoking is not legally prohibited, they remain their view that the Administration should, in formulation of its tobacco control measures, strike a proper balance between protecting non-smokers from second-hand smoke and safeguarding the interests of smokers.

### Smoking rooms

19. Mr Alan LEONG has suggested that, taking into account the interest of smokers and the policy objective of the Amendment Order which is to protect non-smokers from exposure to second-hand smoke, the Administration should set up separately ventilated smoking rooms in the vicinity of the eight bus interchanges to segregate smokers and non-smokers. The suggestion is supported by the Chairman and Mr Albert CHAN.

20. The Administration, however, takes the view that the provision of smoking rooms in the vicinity of the eight bus interchanges might in turn encourage people to smoke, which is contrary to its tobacco control policy of discouraging smoking. In addition, scientific evidence to substantiate the effectiveness of smoking room in separating smokers and non-smokers is still lacking in the international community. It would be technically impossible to prevent the second-hand smoke from leaking out when smokers move in and out of a smoking room, as well as prevent the smoke released from the ventilation outlet of a smoking room from flowing towards the queuing area of the bus interchanges concerned.

21. Mr Alan LEONG criticizes the Administration for applying the same rationale it adopted during the previous legislative exercise to provide for protection against second-hand smoking in indoor public places on the present case. In the present case, the eight bus interchanges are located in an outdoor environment, which is largely different in nature from the case of setting up smoking rooms in indoor areas.

### The coming into operation of the Amendment Order

22. The Subcommittee notes that as the period for amending the Amendment Order has expired at the Council meeting of 13 January 2016, it is technically not feasible for the Subcommittee or any Member to amend the Amendment Order. Some members are concerned that the designation of the eight bus interchanges as NSAs, which, according to the Administration, is an initial step for testing the feasibility of further expanding NSAs to other public facilities, would set a precedent for the Administration to further deprive the right of smokers who are the minority. Taking into account the far-reaching implications involved, they have requested the Administration to address members' concerns and defer the commencement date of the Amendment Order to a later date.

23. The Legal Adviser to the Subcommittee has advised that an order could take effect from the date of publication in the Gazette of such order. Hence, the Administration could, if it so wished, at any time before 31 March 2016 publish another order in the Gazette to the effect that the commencement date of the Amendment Order would be deferred to a later date.

24. The Administration assures members that it will take into account members' views and suggestions in reviewing this initiative 12 months after its implementation on 31 March 2016. Mr Albert CHAN expresses strong dissatisfaction with the Administration's decision to rush through the implementation of the smoking ban at the eight bus interchanges which, in his view, was tantamount to Executive hegemony. The Subcommittee has requested the Administration to revert to the Panel on Health Services on the outcome of the review.

### Publicity

25. Members have enquired about whether facilities such as cigarette butt containers for the convenience of smokers and panels to separate smokers and non-smokers would be provided at the new NSAs. They have also requested the Administration to step up publicity to promote compliance by members of the public and tourists with the new smoking ban.

26. The Administration has informed the Subcommittee that the Food and Environmental Hygiene Department and the venue managers concerned would place litter bins with ashtray and/or cigarette butt containers at areas outside the boundary of the new NSAs after taking the settings of the areas concerned into account. TCO has displayed signs, publicity materials, and other demarcations including markings on the ground as appropriate to

indicate clearly and visibly the boundaries of the NSA at the eight bus interchanges, having regard to their respective physical settings. The plans showing the boundaries of the NSAs have been posted at prominent locations such as the main entrances and exits. TCO has also displayed no-smoking signs at conspicuous locations within the NSAs of the bus interchanges to remind the public of the smoking ban. In addition, smoke free ambassadors would distribute publicity materials on site before the proposed smoking ban takes effect. A set of television and radio Announcement in the Public Interest has been produced to publicize the new smoking ban.

27. Dr KWOK Ka-ki considers that health warnings and information on smoking cessation services should be displayed at the eight bus interchanges. The Administration has advised that DH's smoking cessation hotline would be showed on the public litter containers.

### Enforcement

28. Members are concerned about the measures to be put in place by the Administration to ensure effective enforcement of the smoking ban at the new NSAs. In particular, Dr Helena WONG has expressed concern about whether there would be adequate manpower to enforce the smoking ban at the footbridge connecting the Cross-Harbour Tunnel Bus Interchange and the podium of the Hong Kong Polytechnic University in order to avoid the circumstances whereby some smokers would try to smoke in the campus of the University which is also a designated NSA under the Ordinance.

29. The Administration has advised the Subcommittee that TCO would undertake enforcement actions at the new NSAs through inspection and prosecution of persons who contravene the smoking ban. In the meantime, DH is reviewing the manpower of TCO and considering measures to strengthen the effectiveness of TCO's enforcement at NSAs throughout the territory.

### **Referral to the Panel on Health Services**

30. The Subcommittee has agreed to refer the outcome of the review of the implementation of the smoking ban at the eight bus interchanges to be conducted by the Administration in 2017 (paragraph 24 refers) to the Panel on Health Services for follow up.



**Advice sought**

31. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2  
Legislative Council Secretariat  
13 April 2016

**Subcommittee on Smoking (Public Health) Ordinance  
(Amendment of Schedule 2) Order 2015**

**Membership list**

<b>Chairman</b>	Hon SIN Chung-kai, SBS, JP
<b>Members</b>	Hon WONG Ting-kwong, SBS, JP Hon Alan LEONG Kah-kit, SC Hon Albert CHAN Wai-yip Hon James TIEN Pei-chun, GBS, JP Dr Hon KWOK Ka-ki Hon KWOK Wai-keung Dr Hon Helena WONG Pik-wan  (Total : 8 members)
<b>Clerk</b>	Ms Maisie LAM
<b>Legal Adviser</b>	Mr Alvin CHUI
<b>Date</b>	5 January 2016

**Subcommittee on Smoking (Public Health) Ordinance  
(Amendment of Schedule 2) Order 2015**

A. Organizations and individuals which/who have made oral representation to the Subcommittee

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1. Coalition of Hong Kong Newspaper and Magazine Merchants
2. Hong Kong Council on Smoking and Health
3. Hong Kong Smokers' Rights Concern Group
4. I Smoke Alliance
5. Momentum 107
6. School of Nursing, The University of Hong Kong
7. School of Public Health, The University of Hong Kong
8. Serving Through Intelligence
9. The Association of Ma On Shan Neighbourhood
10. United Christian Nethersole Community Health Service
11. Dr CHU Kwok-lun
12. Miss Nicole LAM Kei-kwan
13. Mr LEE Hing-lim
14. Mr Michael MAK Kwok-fung
15. Ms Yolanda NG Yuen-ting, Wan Chai District Council Member
16. Ms Scarlett PONG Oi-lan, JP, Sha Tin District Council Member

B. Organizations and individuals which/who have provided written submissions to the Subcommittee only

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1. Asian Consultancy on Tobacco Control
2. Education Affairs Department, Po Leung Kuk
3. JC School of Public Health and Primary Care, The Chinese University of Hong Kong
4. Pok Oi Hospital
5. Quit-Winners Club
6. Smokerism
7. The Association of LCK Neighbourhood
8. The Hong Kong College of Mental Health Nursing
9. The Lok Sin Tong Benevolent Society, Kowloon
10. The Yuen Yuen V-Learn Women Centre
11. Tung Wah Group of Hospitals Integrated Centre on Smoking Cessation
12. Miss LEE Ka-kwan
13. LEUNG Choi-yin
14. Kirk LEUNG
15. LI Ching-man
16. Mr LIN Kam-cheung
17. Mrs LUK
18. NG Yuen-tung
19. Candy TONG

20. Fanny WONG

21. 陳玉琴

22. 陳偉雄先生