

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

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Bills Committee on Dutiable Commodities (Amendment) Bill 2017

Minutes of meeting
held on Tuesday, 21 November 2017, at 8:45 am
in Conference Room 2A of the Legislative Council Complex

- Members present** : Hon YIU Si-wing, BBS (Chairman)
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon Paul TSE Wai-chun, JP
Dr Hon KWOK Ka-ki
Dr Hon Junius HO Kwan-yiu, JP
Hon SHIU Ka-fai
Hon KWONG Chun-yu
- Member absent** : Hon Holden CHOW Ho-ding
- Public Officers attending** : Item I
Miss Amy YUEN Wai-yin
Deputy Secretary for Food and Health (Health) 2

Dr Tina CHAN Siu-mui
Assistant Director of Health (Special Health Services)

Dr Jeff LEE Pui-man
Head (Tobacco Control Office)
Department of Health

Mr Gilbert MO Sik-keung
Deputy Law Draftsman I
Department of Justice

Miss Queenie WU Chung-yi
Government Counsel
Department of Justice

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

Staff in attendance : Miss Joyce CHAN
Assistant Legal Adviser 1

Ms Wendy LO
Senior Council Secretary (2) 2

Miss Cally LAI
Legislative Assistant (2) 2

Action

I. Meeting with the Administration

(LC Paper Nos. CB(3)658/16-17, CB(2)308/17-18(01) to (04), CB(2)347/17-18(01), CB(2)1911/16-17(02) to (03) and CB(2)1927/16-17(01))

The Bills Committee deliberated (index of proceedings attached at **Annex A**).

2. The Bills Committee completed clause-by-clause examination of the Dutiable Commodities (Amendment) Bill 2017 ("the Bill") and considered the draft Committee stage amendments ("CSAs") proposed by the Administration.

Follow-up actions required of the Administration

3. The Administration was requested to provide written response to issues raised by members at the meeting and the finalized version of the full set of its proposed CSAs to the Bill (see **Annex B**).

II. Any other business

Date of next meeting

4. The Bills Committee noted that the Administration's written response to outstanding issues would be circulated to members as and when it was available. Members were invited to forward their draft CSAs to the Clerk so that their proposed CSAs might be considered by the Bills Committee. The Chairman advised that a further meeting might be held, subject to any views members might have on the Administration's response and the proposed CSAs to be received.

5. There being no other business, the meeting ended at 10:57 am.

(Post-meeting note: On the instruction of the Chairman, the next meeting of the Bills Committee was scheduled for Wednesday, 17 January 2018 from 9:00 am to 10:30 am to consider the Administration's response and the draft CSAs proposed respectively by the Administration and Dr KWOK Ka-ki.)

**Proceedings of meeting of the
Bills Committee on Dutiable Commodities (Amendment) Bill 2017
on Tuesday, 21 November 2017, at 8:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action Required
001244 - 001359	Chairman	The Chairman's opening remarks	
001400 - 002110	Chairman Admin	Administration's briefing on its response to issues raised by members at the meeting on 1 November 2017 (LC Paper No. CB(2)308/17-18(02)).	
002111 - 002233	Chairman Admin	<p>The Bills Committee continued clause-by-clause examination of the Dutiable Commodities (Amendment) Bill 2017 ("the Bill"), with the aid of the Blue Bill (LC Paper No. CB(3)658/16-17) and the marked-up copy of the relevant provisions to be amended by the Bill prepared by the Legal Service Division (LC Paper No. CB(2)1911/16-17(02)).</p> <p><u>The proposed regulation 45 of the Dutiable Commodities (Liquor) Regulations (Cap. 109B) ("the Regulations")</u> (Obstruction of inspectors etc. prohibited)</p>	
002234 - 002752	Chairman Admin ALA1	<p><u>The proposed regulation 46 of the Regulations (Disposal of property seized by inspectors)</u></p> <p>In response to the enquiry of the Legal Adviser to the Bills Committee ("the Legal Adviser"), the Administration advised that the term "property" under the proposed regulation 46 would have the same meaning as provided under section 2 of the Criminal Procedure Ordinance (Cap. 221), and the Administration took the view that the definition was wide enough to cover "documents or records" as referred to in the proposed regulation 44.</p>	
002753 - 003035	Chairman Admin ALA1	<p><u>The proposed regulation 47 of the Regulations (Protection of inspectors)</u></p> <p>Schedule (Contents of the prescribed notice)</p>	
003036 - 004017	Chairman Admin ALA1	Administration's briefing on its draft Committee Stage amendments ("CSAs") to the Bill (Annex to LC Paper No. CB(2)308/17-18(02)).	
004018 - 005440	Chairman Prof Joseph LEE	Members noted that the Administration proposed to move CSAs to add a new regulation 44A to the	

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	Admin	<p>effect that if satisfied by information on oath by an inspector that there were reasonable grounds for suspecting that there was within a domestic premises (a definition of "domestic premises" was provided under the proposed CSAs) anything that was or was likely to be evidence of an offence under the new Part 5 of the Regulations, a magistrate might issue a search warrant in respect of the domestic premises. Inspectors of the Department of Health ("DH") might then enter and search the domestic premises and exercise their powers as set out under the proposed regulation 44(1)(b) to (i) within the domestic premises. Prof LEE's expression of concern about the proportionality and necessity of the proposed new regulation 44A.</p> <p>The Administration's response that the proposed regulation 44A provided a power to enter, search and collect evidence of an offence under the new Part 5 within domestic premises. This power could only be exercised upon the inspectors obtaining prior judicial authorization by a magistrate, who would only issue a search warrant upon being satisfied that there were reasonable grounds for suspecting that there was or likely to be evidence of an offence under the new Part 5 in the domestic premises. The Administration's view that empowering an inspector to enter and search domestic premises with the authority of a warrant issued by a magistrate was reasonable and proportionate because it struck a fair balance between the detection and investigation of an offence under the new Part 5 and the protection of privacy in domestic premises.</p> <p>The Administration was requested to consider whether amendments should be made to the Bill in respect of the powers of inspectors, given members' concern over the proposed regulation 44A.</p>	<p>Admin (para. 2 of Annex B refers)</p>
005441 - 005639	Chairman Mr SHIU Ka-fai Admin	<p>In response to Mr SHIU Ka-fai's enquiry, the Administration advised that the term "distribution point" (a defined term proposed by the Administration to replace the term "public place" under the proposed regulation 44(1)(a)) would cover commercial/industrial premises used for the sale or supply of intoxicating liquor.</p>	

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005640 - 013109	Chairman Prof Joseph LEE Mr SHIU Ka-fai Mr Paul TSE ALA1 Admin	<p>Noting that the Administration intended to move CSAs to the proposed new regulation 44(1)(a) such that inspectors appointed by the Secretary for Food and Health pursuant to the proposed regulation 43(1) might "at any reasonable time enter and inspect an area in a distribution point as the inspector considers necessary to ascertain whether this Part (i.e. the new Part 5 of the regulations) is complied with", Prof Joseph LEE, Mr SHIU Ka-fai and Mr Paul TSE expressed concern that under the proposed regulation 44(1), inspectors were not required to have reasonable suspicion that an offence under the new Part 5 had been committed before they could exercise the powers as set out under the proposed regulation 44(1)(d) to (i). They queried whether the scope of the powers given to inspectors pursuant to the proposed regulations 44(1)(a) to (i) was too wide. Prof LEE considered it more appropriate for inspectors to enter and inspect an area in a distribution point during business hours.</p> <p>The Administration's response that:</p> <p>(a) in order to ensure effective enforcement, it was necessary to provide the inspectors with sufficient powers to ascertain compliance with the statutory requirements;</p> <p>(b) the proposed regulations 44(1)(a) to (i) set out the powers of inspectors. Given that inspectors had to carry out routine inspections of distribution points to ascertain whether the requirements in the new Part 5 were complied with (e.g. to check whether the prescribed notice was displayed at a distribution point), the power as set out in the proposed regulation 44(1)(a) was intended to enable the inspectors to enter and inspect a distribution point at any reasonable time. In the course of such inspection, the inspector might come across evidence of an offence under the new Part 5. Under the proposed regulations 44(1)(b) to (i), the inspector would be empowered to seize what appeared to be evidence of an offence and to exercise other ancillary powers, such as taking samples, making copies of documents and requesting for information; and</p> <p>(c) similar powers could be found under the Smoking (Public Health) Ordinance</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(Cap. 371) ("SPHO"). Upon the receipt of a complaint on smoking offence from the public, the Tobacco Control Office ("TCO") under DH would contact the complainant for information and inspect the locations concerned to collect evidence in accordance with established procedures. Where there was sufficient evidence, TCO would take prosecution action. If private premises (e.g. private clubs) were involved, TCO would contact and obtain the consent of the owner/operator concerned before conducting the inspection. The Administration would make reference to the enforcement work of TCO in carrying out inspections to distribution points of intoxicating liquor.</p> <p>Notwithstanding the Administration's clarifications, the Administration was requested to consider (a) members' concern that the scope of the powers given to inspectors pursuant to the proposed regulations 44(1)(a) to (i) was too wide; (b) members' suggestion to further amend the proposed regulation 44(1) in order to clarify the circumstances under which the inspectors would exercise their powers; and (c) giving examples to illustrate how the inspectors would in actual operation exercise such powers.</p> <p>As the Administration had advised that it would propose further CSAs to the Bill to rectify certain editorial errors, members requested the Administration to provide the finalized version of its proposed CSAs to the Bills Committee for timely consideration by members.</p>	<p>Admin (para. 1(a) of Annex B refers)</p> <p>Admin (para. 5 of Annex B refers)</p>
013110 - 013800	Chairman Dr KWOK Ka-ki Admin	<p>Dr KWOK Ka-ki's view that inspectors should be given adequate powers to ensure that there was compliance with the statutory requirements, such powers should include the power to enter and inspect a distribution point (including private premises) at any reasonable time to carry out routine inspections.</p> <p>Dr KWOK's enquiry and the Administration's response regarding the routine inspections carried out by TCO to exercise control on tobacco products under SPHO. At Dr KWOK's request, the Administration undertook to provide the number of inspections conducted by TCO in relation to domestic/private premises in the past</p>	<p>Admin (para. 3 of Annex B refers)</p>

Time marker	Speaker	Subject(s)	Action Required
		two years, and to advise on whether any practical difficulties had been encountered by frontline staff in conducting the inspections.	
013801 - 014902	Chairman Mr Paul TSE Mr SHIU Ka-fai Admin	<p>Referring to section 15G(2) of SPHO, Mr Paul TSE and Mr SHIU Ka-fai pointed out that inspectors of TCO were not allowed to enter any domestic premises to enforce the tobacco control legislation. They expressed concern about the proportionality and necessity of the proposed new regulation 44A, which provided inspectors with the power to enter domestic premises.</p> <p>The Administration's explanations on the various issues that arose from the drafting of SPHO and the Bill. The Administration reiterated that in proposing to empower inspectors authorized by search warrants issued by magistrates to enter and search domestic premises, it had given due consideration to the need to balance between the detection and investigation of an offence under the new Part 5 of the Regulations on the one hand and the need to protect individual privacy in domestic premises on the other.</p> <p>Mr SHIU requested the Administration to give examples of similar provisions in other ordinances (e.g. SPHO) which empowered public officers to enter public places/non-domestic premises for routine checking.</p>	Admin (para. 1(b) of Annex B refers)
014903 - 015423	Chairman Dr KWOK Ka-ki Admin	In response to Dr KWOK Ka-ki's enquiry, the Administration stressed that the power under regulation 44A could only be exercised upon the inspectors obtaining prior judicial authorization by a magistrate, who would only issue a search warrant upon being satisfied that there were reasonable grounds for suspecting that there was or likely to be evidence of an offence under the new Part 5 in the domestic premises.	
015424 - 021022	Chairman Dr KWOK Ka-ki Admin	<p>Extension of the meeting.</p> <p>Dr KWOK Ka-ki's elaboration on his proposed CSAs to the Bill (LC Paper No. CB(2)308/17-18(04)), and the Administration's response to the draft CSAs proposed by Dr KWOK (LC Paper No. CB(2)347/17-18(02)).</p> <p>Having considered the Administration's response, Dr KWOK indicated that he might amend his</p>	

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		CSAs for further consideration by the Bills Committee.	
021023 - 021602	Chairman Paul TSE Dr KWOK Ka-ki ALA1 Admin	<p>Mr Paul TSE's enquiry as to whether Dr KWOK Ka-ki's proposed CSA to add at the end of the prescribed notice a warning statement "Alcohol causes lifelong harm to people" was relevant to the subject matter of the Bill. The Legal Adviser advised members on the relevant rules under the Rules of Procedure regarding the admissibility of amendments to Bills proposed by Members and reminded members that the admissibility of proposed amendments to Bills would be decided by the President in accordance with the relevant principles.</p> <p>The Administration was requested to consider whether Dr KWOK's proposed CSA to the prescribed notice was relevant to the subject matter of the Bill.</p>	Admin (para. 4 of Annex B refers)
021603 - 021633	Chairman	<p>The Chairman advised that a further meeting might be held, subject to any views members might have on the Administration's response to outstanding issues and the proposed CSAs to be received.</p> <p>The Chairman's closing remarks.</p>	

Bills Committee on Dutiable Commodities (Amendment) Bill 2017**List of follow-up actions arising from the discussion
at the meeting on 21 November 2017**

Members noted that the Administration intended to move Committee stage amendments ("CSAs") to the proposed new regulation 44(1)(a) of the Dutiable Commodities (Liquor) Regulations (Cap. 109B) ("the Regulations") such that inspectors appointed by the Secretary for Food and Health pursuant to the proposed regulation 43(1) ("inspectors") might "at any reasonable time enter and inspect an area in a distribution point as the inspector considers necessary to ascertain whether this Part (i.e. Part 5) is complied with". Some members expressed concern that it was not expressly stipulated under the proposed regulation 44(1) that inspectors should have reasonable suspicion that an offence under the new Part 5 of the Regulations had been committed before they could exercise the powers as set out under the proposed regulation 44(1)(d) to (i). The Administration was requested to:

- (a) consider (i) members' concern that the powers given to inspectors pursuant to the aforesaid provisions were too wide; (ii) members' suggestion to further amend the proposed regulation 44(1) in order to clarify the circumstances under which the inspectors would exercise their powers; and (iii) giving examples to illustrate how the inspectors would in actual operation exercise such powers; and
- (b) give examples of similar provisions in other ordinances (e.g. the Smoking (Public Health) Ordinance (Cap. 371)) which empowered public officers to enter public places/non-domestic premises for routine checking.

2. The Administration also proposed to move CSAs to add a new regulation 44A to the effect that if satisfied by information on oath that there were reasonable grounds for suspecting that there was in the premises anything that was or was likely to be evidence of an offence under Part 5 of the Regulations, a magistrate might issue a search warrant in respect of the domestic premises. Inspectors might then enter and search the domestic premises and exercise their powers as set out under the proposed regulation 44(1)(b) to (i) within the domestic premises. Concern was raised about the proportionality and necessity of the proposed new regulation 44A, which provided inspectors with the power to enter domestic premises. The Administration was requested to consider whether amendments should be made to the Bill in respect of the powers of inspectors, given members' concerns over the proposed regulations 44 and 44A.

3. The Administration was also requested to provide the number of inspections conducted by the Tobacco Control Office of the Department of Health in relation to domestic/private premises in the past two years, and to advise on whether any practical difficulties had been encountered by frontline staff in conducting the inspections.

4. In relation to Dr KWOK Ka-ki's proposed CSAs, in particular, the proposed CSA to the prescribed notice, i.e. to add at the end of the prescribed notice the following words: "Alcohol causes lifelong harm to people" ("酒精害人，影響健康"), the Administration was requested to consider in particular, whether the proposed CSA was relevant to the subject matter of the Bill.

5. As the Administration advised that it would propose further CSAs to the Bill to rectify certain editorial errors, members requested the Administration to provide the finalized version of its proposed CSAs to the Bills Committee for timely consideration by members.