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Paper for the House Committee meeting on 22 June 2018

**Report of the Subcommittee on Smoking (Public Health) Ordinance
(Amendment of Schedule 2) Order 2018**

Purpose

This paper reports on the deliberations of the Subcommittee on Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2018.

Background

2. The Smoking (Public Health) Ordinance (Cap. 371) ("the Ordinance") and its subsidiary legislation provide a 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 no smoking areas ("NSAs"). The manager of an NSA is empowered under section 3(3) of the Ordinance to take actions to stop any person from smoking in the designated NSA. As stipulated in section 7(1) of the Ordinance, any person who smokes or carries a lighted cigarette, cigar or pipe in a designated NSA commits an offence and is liable on summary conviction to a fine of \$5,000. A public officer may issue a fixed penalty notice ("FPN") of \$1,500 under section 3 of the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) in place of prosecution.

3. Since 1 September 2009, smoking ban has been extended to public transport facilities¹ ("PTFs") by phases. Separately, according to the Transport Department, there are 11 bus interchanges ("BIs") leading to expressways or

¹ Public transport facilities refer to those areas identified as fulfilling the criteria as set out in section 3(1AB) of the Ordinance: (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).

tunnels. The boarding areas and some adjoining waiting areas and facilities of the eight BIs located at tunnel portal areas have been designated as NSAs² since the Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2015 came into operation on 31 March 2016.

4. The Administration has pledged to review the implementation of the smoking ban at the eight BIs and consider the timing to further extend NSAs to other PTFs. A survey was conducted in April/May 2017 by the Department of Health to evaluate the designation of NSAs at the eight BIs at tunnel portal areas. According to the Administration, the vast majority of the respondents to the telephone and face-to-face interviews based on a structured and anonymous questionnaire supported further extension of NSAs to include additional areas such as other BIs and bus stops.

Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2018 (L.N. 81 of 2018)

5. The Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2018 ("the Amendment Order"), made by the Secretary for Food and Health under section 16A of the Ordinance, amends Part 1 of Schedule 2 to the Ordinance by designating the boarding areas and some adjoining waiting areas and facilities of the following three BIs that lead to expressways or tunnels as NSAs:

- (a) Aberdeen Tunnel Bus Interchange;
- (b) Lantau Toll Plaza Bus Interchange; and
- (c) Tuen Mun Road Bus Interchange (including Kowloon Bound and Tuen Mun Bound).

6. The Amendment Order was tabled before the Legislative Council at its meeting of 16 May 2018 and is subject to the negative vetting procedure. The Amendment Order will come into operation on 31 August 2018.

² The eight BIs include (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 Crossing Bus Interchange; (g) Tai Lam Tunnel Bus Interchange; and (h) Tsing Sha Highway Bus Interchange (between Sha Tin Heights and Eagle's Nest Tunnel). The plans delineating the exact boundaries of these NSAs are deposited in the Land Registry and posted on the Tobacco Control Office's website for inspection by the public.

The Subcommittee

7. At the House Committee meeting on 18 May 2018, Members formed a subcommittee to study the Amendment Order. The membership list of the Subcommittee is in the **Appendix**. Under the chairmanship of Dr Hon KWOK Ka-ki, the Subcommittee has held one meeting with the Administration.

8. With members' agreement, the Subcommittee Chairman has given notice to move a motion at the Council meeting of 13 June 2018 to extend the period for amending the Amendment Order to the Council meeting of 4 July 2018. However, the motion could not be dealt with at the Council meeting of 13 June 2018 before the adjournment of the meeting. As such, the period for amending the Amendment Order expired at the Council meeting of 13 June 2018.

Deliberations of the Subcommittee

Implementation of smoking ban

Provision of cigarette butt containers and/or litter bins with ashtray

9. All Subcommittee members are supportive of extending the smoking ban to the three BIs covered by the Amendment Order. The Chairman and Mr CHAN Chi-chuen opine that to facilitate the implementation of the smoking ban at these BIs, the relevant venue managers should provide cigarette butt containers and/or litter bins with ashtray at areas outside the boundaries of the designated NSAs, such that smokers could extinguish the lighted cigarette, cigar or pipe and dispose the cigarette butts properly before entering NSAs.

10. The Administration has advised that the Government's tobacco control policy seeks to safeguard public health by discouraging smoking, containing the proliferation of tobacco use and minimizing the impact of passive smoking on the public. The Tobacco Control Office ("TCO") will display site plans and other demarcations (including markings on the ground) as appropriate to indicate the boundaries of the designated NSAs at each BI. To avoid confusion over whether smoking is prohibited or not in those areas, TCO will advise venue managers not to provide cigarette butt containers and/or litter bins with ashtray in NSAs. It will be up to the venue managers concerned to consider whether and where, for the purpose of ensuring environmental hygiene, to place cigarette butt containers and/or litter bins with ashtray outside the boundaries of NSAs for smokers to properly dispose the cigarette butts before entering NSAs.

11. To follow up on the Subcommittee's suggestion, the Administration has subsequently informed the Subcommittee that the Food and Environmental

Hygiene Department and the operator of the Tsing Ma Control Area have been requested to relocate the litter bins with ashtray to areas outside the boundaries of the designated NSAs for smokers' proper disposal of cigarette butts before entering NSAs. TCO will follow up with the venue managers on the actual arrangement.

Smoking of electronic cigarettes in NSAs

12. The Administration's proposed way forward for regulating electronic cigarettes ("e-cigarettes") and heat-not-burn products is an issue of concern to some members, including the Chairman, Dr Helena WONG, Mr IP Kin-yuen and Mr SHIU Ka-fai. These members have reiterated their views in this respect already raised to the Subcommittee on Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2018³. They hope that the Administration will expeditiously regulate e-cigarettes/heat-not-burn products, and due regard be given to the recommendation of the World Health Organization, the trend and experience of regulating e-cigarettes in overseas jurisdictions as well as the relevant studies and research on the subject matter. An enquiry has been raised on whether smoking e-cigarettes and heat-not-burn products in NSAs is also an offence.

13. According to the Administration, under section 3(2) of the Ordinance, no person shall smoke or carry a lighted cigarette, cigar or pipe in an NSA; and "smoke" is defined under section 2 of the Ordinance as "inhaling and expelling the smoke of tobacco or other substance". As such, any person who smokes (including e-cigarettes) in a statutory NSA constitutes an offence. Noting that the Administration would brief the Panel on Health Services on the legislative proposal to regulate e-cigarettes and other new tobacco products at the Panel meeting on 19 June 2018, the Subcommittee has requested the Administration to provide the Panel with the results of laboratory tests conducted by the Administration on e-cigarettes and heat-not-burn products, including the detailed scientific analyses and assessment of the effect of the smoke of such substance on health.

Further extension of NSAs to other PTFs

14. The Chairman, Mr Andrew WAN and Mr LAU Kwok-fan have expressed concern about the impact of passive smoking on passengers waiting for buses at bus stops with high patronage flow. They have urged the Administration to extend NSAs to cover bus stops in order to provide further protection against

³ Members may refer to paragraphs 15 and 16 of the report of the Subcommittee on Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2018 (LC Paper No. CB(2)1437/17-18) for details.

passive smoking in public places. Suggestions have also been made that the Administration should for trial select certain bus stops with heavy patronage flow and designate them as NSAs, with priority accorded to those bus stops suggested by District Councils or located at places where the Air Quality Health Index persistently staying at a high level.

15. According to the Administration, TCO will continue to maintain close liaison with the Transport Department and other relevant government departments and conduct site inspections of NSAs in PTFs. The list of PTFs is regularly updated and boundaries of NSAs in PTFs are reviewed as and when necessary. In considering the designation of NSAs, the Administration will strike a proper balance between protecting non-smokers from passive smoking and the interests of smokers. It will also take into account the feasibility of drawing clear boundaries for NSAs and the enforceability of the smoking ban thereat.

16. Mr Andrew WAN has suggested the Administration using the shelter area of a bus stop or a zone measured by radius distance from the bus stop to decide the boundaries of NSAs. Echoing Mr WAN's view, Mr IP Kin-yuen has requested the Administration to make reference to the new smoking ban imposed by the Government of the Macao Special Administrative Region in that smoking (including smoking of e-cigarettes) is prohibited within 10 metres from all bus stops and taxi stands. The Administration has advised that it is in the course of conducting a feasibility study on extending the smoking ban to bus stops. It will make reference to the experiences of other countries/places, including Macao, with a view to formulating a set of clear and practicable criteria for determining the boundaries of NSAs at bus stops.

Publicity of the smoking ban

17. The Chairman considers that the Administration should strengthen the publicity on the ground, by arranging mobile broadcast of television and radio Announcements in the Public Interest ("APIs") and display of posters and signs against smoking within and outside the boundaries of NSAs at each BI as well as deploying smoke-free ambassadors to distribute publicity materials. Noting that some of the adjoining facilities of the three BIs currently under scrutiny by the Subcommittee (e.g. subways adjoining the Lantau Toll Plaza BI) are already statutory NSAs, the Chairman is of the view that the contents and channels of publicity on the smoking ban at these BIs should be coordinated to achieve maximum impact.

18. According to the Administration, TCO will arrange to broadcast television and radio APIs to publicize the new smoking ban at the three BIs before it takes effect. TCO will also arrange to display the no smoking signs (including banners and various forms of signs) at conspicuous locations within the designated NSAs

and other demarcations (including markings on the ground as appropriate) to indicate clearly and visibly the boundaries of NSAs at each BI, having regard to their physical settings. The plans showing the boundaries of NSAs will be posted at prominent locations such as main entrances and exits. In addition, TCO will deploy smoke-free ambassadors to distribute pamphlets at the three BIs to inform the public of the smoking ban within four weeks prior to its taking effect. However, due to technical difficulties, mobile broadcast of television and radio APIs will not be included in the present publicity campaign.

Enforcement plan at the three BIs

19. Members including the Chairman, Dr Helena WONG and Mr IP Kin-yuen have expressed concern about TCO's enforcement plan at NSAs of the three BIs after the Amendment Order has come into operation on 31 August 2018. They have enquired whether proactive inspections will be arranged at these NSAs to enhance the deterrent effect and, if yes, how frequent such inspections will be conducted. Information has also been sought on the number of prosecutions contravening the smoking ban at the eight BIs located at tunnel portal areas which have already been designated as NSAs since 2016.

20. The Administration has advised that drawing reference to the experience in designating NSAs at the eight BIs in 2016, TCO will step up enforcement by conducting surprise inspections at the newly designated NSAs of the three BIs after the Amendment Order has come into operation on 31 August 2018. To enhance the deterrent effect, TCO will arrange proactive inspection of the newly designated NSAs on a daily basis during the initial stage after the Amendment Order has come into force. TCO will review and adjust its inspection plan having regard to the actual situation. During the period between March 2016 and April 2018, TCO has conducted more than 2 000 inspections of the eight BIs located at tunnel portal areas and issued over 1 800 FPNs.

Advice Sought

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

**Subcommittee on Smoking (Public Health) Ordinance
(Amendment of Schedule 2) Order 2018**

Membership list

Chairman	Dr Hon KWOK Ka-ki
Members	Hon CHAN Chi-chuen Dr Hon Helena WONG Pik-wan Hon IP Kin-yuen Hon Andrew WAN Siu-kin Hon SHIU Ka-fai Hon LAU Kwok-fan, MH (Total : 7 members)
Clerk	Miss Josephine SO
Legal Adviser	Mr Alvin CHUI
Date	5 June 2018