

# 立法會 *Legislative Council*

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## **Panel on Health Services**

### **Background brief prepared by the Legislative Council Secretariat for the meeting on 24 April 2018**

#### **Smoking ban at bus interchanges located at the tunnel portal areas**

#### **Purpose**

This paper provides background information and summarizes the concerns of the members of the Panel on Health Services ("the Panel") and the Subcommittee on Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2015 ("the Subcommittee") on the designation of eight bus interchanges located at the tunnel portal areas ("the eight bus interchanges") as statutory no smoking areas ("NSAs").

#### **Background**

2. The Smoking (Public Health) Ordinance (Cap. 371) ("the Ordinance") and its subsidiary legislations 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 NSAs. The manager of a NSA may take enforcement action to stop smoking in the NSA. 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. 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. Since 1 September 2009, smoking ban has been extended to public transport facilities<sup>1</sup> by phases. On 31 March 2016, the Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2015 ("the Amendment Order") came into operation. The boarding areas and some adjoining waiting areas and facilities of the following eight bus interchanges located at the tunnel portal areas have been designated as NSAs:<sup>2</sup>

- (a) Cross-Harbour Tunnel Bus Interchange;
- (b) Lion Rock Tunnel Bus Interchange;
- (c) Shing Mun Tunnels Bus Interchange;
- (d) Eastern Harbour Crossing Bus Interchange;
- (e) Western Harbour Tunnel Bus Interchange;
- (f) Tate's Cairn Tunnel Bus Interchange;
- (g) Tai Lam Tunnel Bus Interchange; and
- (h) Tsing Sha Highway Bus Interchange (between Sha Tin Heights and Eagle's Nest Tunnel).

### **Deliberations of the Panel and the Subcommittee**

4. The Panel discussed the legislative proposals which included, among others, the designation of the eight bus interchanges as NSAs at its meeting on 18 May 2015 and received views from deputations on the legislative proposals on 6 July 2015. The Subcommittee was formed in December 2015 to study the Amendment Order which was subject to negative vetting by the Legislative Council. The deliberations and concerns of members are summarized in the following paragraphs.

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<sup>1</sup> 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).

<sup>2</sup> The actual boundaries of these 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).

### Rationale for extending smoking ban to bus interchanges

5. Members generally expressed support for extending smoking ban to the eight bus interchanges and the adjoining facilities to provide protection against second-hand smoking. Considering that the passenger flow at some of the eight bus interchanges was relatively not high, members were concerned about the rationale 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. There were views that the Administration should conduct studies to explore into the expansion of the smoking ban to cover the queuing areas of bus stops and minibus stops in order to provide further protection against second-hand smoking in public places, or impose smoking ban at bus stops during peak hours.

6. The Administration advised that a progressive and multi-pronged approach had been adopted on tobacco control. Its strategy for expanding NSAs was to take a gradual and step-by-step approach. Priority was accorded to prohibiting smoking at bus interchanges located within the tunnel portal areas. Eight out of the 16 tunnels in Hong Kong had 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 were observed at these bus interchanges during different times of the day, in particular during peak traffic hours. In the past few years, the Tobacco Control Office ("TCO") of the Department of Health ("DH") had received a number of smoking-related complaints, as well as suggestions for imposing smoking ban at the eight bus interchanges.

7. On members' request for the provision of a timetable for extending smoking ban to other bus stops, the Administration advised that 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.

### Boundaries of the new NSAs

8. Members noted 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 NSAs where smoking was not prohibited, with the exception of the Shing Mun Tunnels Bus Interchange as available space was limited. Many members were of the strong view that the Administration had failed to safeguard the interests of

smokers in formulating the proposed smoking ban at some of the eight bus interchanges. For instance, there was no place for smokers to smoke after a long bus journey at the Shing Mun Tunnels Bus Interchange and the areas at the Cross-Harbour Tunnel Bus Interchange where smokers could smoke were far from the boarding and waiting areas of the Bus Interchange. They requested the Administration to explore the feasibility to provide areas where smoking was not prohibited at these two Bus Interchanges.

9. The Administration advised that it had taken into account the pedestrian flow and physical configuration 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 were provided for the bus interchanges concerned where circumstances permit. Many members remained their view that since smoking was not legally prohibited, 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

10. Some members suggested that, taking into account the interest of smokers and the policy objective of the Amendment Order which was 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.

11. In the Administration's view, the provision of smoking rooms in the vicinity of the eight bus interchanges might in turn encourage people to smoke, which was 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 was 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.

#### Publicity

12. Question was raised 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. There was a view that health warnings and information on smoking cessation services should be displayed at the eight

bus interchanges. The Administration should also step up publicity to promote compliance by members of the public and tourists with the new smoking ban at the eight bus interchanges.

13. Members were advised that that litter bins with ashtray and/or cigarette butt containers would be placed at areas outside the boundary of the new NSAs after taking the settings of the areas concerned into account. DH's smoking cessation hotline would be showed on public litter containers. TCO would display signs, publicity materials, and other demarcations including markings on the ground as appropriate to indicate clearly and visibly the boundaries of NSA at the eight bus interchanges, having regard to their respective physical settings. The plans showing the boundaries of NSAs were posted at prominent locations such as the main entrances and exits. TCO would also display no-smoking signs at conspicuous locations within 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 smoking ban took effect. A set of television and radio Announcement in the Public Interest had been produced to publicize the new smoking ban.

### Enforcement

14. Members were concerned about the measures to be put in place by the Administration to ensure effective enforcement of the smoking ban at the new NSAs. Concern was also raised about the adequacy of manpower in TCO to carry out frontline enforcement duties. The Administration advised that TCO would undertake enforcement actions at the new NSAs through inspection and prosecution of persons who contravened the smoking ban. In the meantime, DH was reviewing the manpower of TCO and considering measures to strengthen the effectiveness of TCO's enforcement at NSAs throughout the territory.

### **Recent developments**

15. On 1 February 2018, the Office of The Ombudsman announced the direct investigation report on "The Mechanism of the Food and Health Bureau and the Department of Health for Handling Smoking Offences".<sup>3</sup> According to the report, TCO had an establishment of 89 law enforcement officers, with an actual strength at 79, to handle about 18 000 to 22 000 complaints and conduct about

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<sup>3</sup> The executive summary of the report and the full report (Chinese version only) can be accessed at the website of the Office of The Ombudsman at [http://ofomb.ombudsman.hk/abc/files/DI369\\_ES\\_E-1\\_2\\_2018.pdf](http://ofomb.ombudsman.hk/abc/files/DI369_ES_E-1_2_2018.pdf) and [http://ofomb.ombudsman.hk/abc/files/DI369\\_full\\_TC-1\\_2\\_2018.pdf](http://ofomb.ombudsman.hk/abc/files/DI369_full_TC-1_2_2018.pdf) respectively.

27 000 to 30 000 surprise inspections on average in each of the last five years. The Office considered that the Food and Health Bureau ("FHB") and TCO had various inadequacies in the enforcement against smoking offences. The Ombudsman recommended, among others, that DH should step up night-time enforcement actions; review the existing manpower of TCO; strengthen communication with complainants for reported smoking offences; tighten up the timeframe for conducting the first inspection, which was currently stipulated to be within 21 days of receipt of complaint in TCO's internal guideline; setting priorities for different locations; encourage eye-witnesses to testify against the smoking offenders; and enhance the role of plain-clothes officers in taking enforcement actions. The above apart, FHB should consider introducing legislative amendments to impose criminal liabilities on those venue managers who acquiesced to or condone illegal smoking on their premises, and mandate performance of tobacco control duties by venue managers.

16. FHB and DH have made the following responses to The Ombudsman's recommendations:

- (a) TCO has established a task force with retired police officers since December 2017 to strengthen the enforcement actions, especially during night-time or public holidays;
- (b) TCO has implemented measures to alleviate manpower wastage, such as conducting regular internal meetings for reviewing work conditions of frontline staff, and offering regular training to frontline staff to facilitate their enforcement duties;
- (c) TCO will continue to enhance operation planning and, where possible, further shorten the lead time before the first inspection for complaint cases;
- (d) TCO will encourage witnesses to provide sufficient evidence against offenders, which serve as the key to successful prosecution; and
- (e) TCO will enhance the role of Tobacco Control Inspectors in plain-clothes for certain operations.

17. On 22 March 2018, DH announced that results of the latest Thematic Household Survey conducted from June to September 2017 by the Census and Statistics Department<sup>4</sup> revealed that the overall prevalence of smokers in Hong

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<sup>4</sup> The Thematic Household Survey Report No. 64 can be accessed at the website of the Census and Statistics Department at <https://www.statistics.gov.hk/pub/B11302642018XXXXB0100.pdf>.

Kong had slightly decreased. The percentage of daily cigarette smokers aged 15 and above in the local population in 2017 was 10%, while the relevant percentage was 10.5% in 2015. Daily cigarette smoking prevalence among teenagers aged between 15 and 19 had also decreased from 1.1% in 2015 to 1% in 2017.

### **Relevant papers**

18. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2  
Legislative Council Secretariat  
18 April 2018

## Appendix

### Relevant papers on the Smoking ban at bus interchanges located at the tunnel portal areas

Committee	Date of meeting	Paper
Panel on Health Services	18.5.2015 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a> <a href="#">CB(2)1808/14-15(01)</a>
	6.7.2015 (Item I)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Subcommittee on Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2015	-	<a href="#">Report</a>

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