

立法會
Legislative Council

LC Paper No. CB(2)1784/05-06

(These minutes have been
seen by the Administration)

Ref : CB2/BC/11/04

**Bills Committee on
Smoking (Public Health) (Amendment) Bill 2005**

**Minutes of the 22nd meeting
held on Monday, 6 March 2006 at 9:05 am
in Conference Room A of the Legislative Council Building**

- Members present** :
- Hon Andrew CHENG Kar-foo (Chairman)
 - Hon Albert CHAN Wai-yip (Deputy Chairman)
 - Hon LEE Cheuk-yan
 - Hon Fred LI Wah-ming, JP
 - Dr Hon YEUNG Sum
 - Hon LI Fung-ying, BBS, JP
 - Hon Tommy CHEUNG Yu-yan, JP
 - Hon Audrey EU Yuet-mee, SC, JP
 - Hon Vincent FANG Kang, JP
 - Dr Hon Joseph LEE Kok-long
 - Hon LEUNG Kwok-hung
 - Dr Hon KWOK Ka-ki
 - Hon WONG Ting-kwong, BBS
 - Hon Albert Jinghan CHENG
 - Hon KWONG Chi-kin
- Members absent** :
- Hon James TIEN Pei-chun, GBS, JP
 - Hon Martin LEE Chu-ming, SC, JP
 - Hon Howard YOUNG, SBS, JP
 - Hon Emily LAU Wai-hing, JP
 - Hon Abraham SHEK Lai-him, JP
 - Hon LI Kwok-ying, MH
 - Hon Alan LEONG Kah-kit, SC
- Public Officers attending** :
- Mrs Ingrid YEUNG
 - Deputy Secretary for Health, Welfare and Food (Health)

Ms Julina CHAN
Principal Assistant Secretary for Health, Welfare and Food
(Health)

Dr LAM Ping-yan, JP
Director of Health

Dr T H LEUNG, JP
Deputy Director of Health

Dr Cindy LAI
Assistant Director of Health
(Special Health Service)

Mr CHEUNG Wing-leung
Senior Government Counsel
Department of Justice

Miss Shandy LIU
Senior Government Counsel
Department of Justice

Mr Alan CHONG Ka-ning
Government Counsel
Department of Justice

Clerk in attendance : Ms Doris CHAN
Chief Council Secretary (2) 4

Staff in attendance : Miss Monna LAI
Assistant Legal Adviser 7

Miss Mary SO
Senior Council Secretary (2) 8

Miss Maggie CHIU
Legislative Assistant (2) 4

The Chairman advised members of the following agreements reached with the Administration, prior to the start of the meeting -

Meeting on 20 March 2006

The Administration agreed to provide the following papers two days prior to the meeting -

- (a) draft guidelines to help managers and the public understand the meaning of “indoor” referred to in clause 5 of the Bill; and
- (b) written responses on -
 - (i) making premises provided as sleeping accommodation by any employer to his employees a no smoking area, if the premises were shared by two employees or above;
 - (ii) specifying in the definition of “public market” in clause 4(h) that it covered all markets, irrespective of their operators/managers;
 - (iii) whether premises used for habitation, but also used for commercial activities on a part-time basis, such as running a private kitchen, also fell under the definition of “domestic premises” in clause 4(h);
 - (iv) aborting the proposed adoption of grandfathering and notation approach in allowing the use of a trade mark on the packet or retail container containing any of the prohibited words that cigarettes contained therein were less harmful to health than others; if not; whether the proposed grandfathering provision could be made retrospective; and
 - (v) information on whether; and if so, which overseas jurisdiction(s) adopted the proposed grandfathering and notation approach.

Meeting on 31 March 2006

The Administration agreed to -

- (a) provide a paper on the feasibility of introducing a fixed penalty system for persons found smoking in statutory no smoking area two days prior to the meeting; and
- (b) invite representatives from the Hong Kong Police Force, Housing Department, Leisure and Cultural Services Department, Agriculture, Fisheries and Conservation Department and other relevant departments to attend the discussion of this item.

Meetings in April 2006

The Administration agreed to provide written responses on -

- (a) imposing a smoking ban on the outdoor areas of all specified educational establishment and post-secondary schools;
- (b) specifying in the Bill that certain areas of the nightclub premises must be designated no smoking areas during the transitional period; and
- (c) whether the removal of the owner, occupier or lessee who smoked in the common area of his/her building from that common area by the manager of the building provided under section 3(3)(c) would be in breach of the Bills of Rights, the Basic Law and other legislation, as the private property rights of the owner, occupier or lessee in enjoying the common parts of his/her building would be affected.

2. The Administration also agreed to -

- (a) consider revising “大致上” in the Chinese text of the definition of “indoor” under clause 4 of the Bill to make it more in line with the meaning of the word “substantially” in the English text of the same; and
- (b) provide as many draft Committee Stage amendments as practicable, before 20 March 2006.

I. Clause-by-clause examination of the Bill

(The Bill, marked-up copy of the Bill, LC Paper Nos. CB(2)1195/05-06(01) and CB(2)1283/05-06(01))

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

4. The Administration was requested to provide written responses to the following issues raised by members at the meeting -

- (a) to consider engaging the Food and Environmental Hygiene Department and other Government departments to monitor compliance of tobacco control measures, such as placing in a prominent position in each no smoking area a sufficient number of no smoking signs in Chinese and English by managers of statutory no smoking areas, during the early implementation of smoking ban in all indoor areas of restaurants and eateries;
- (b) whether; and if so; which existing legislation had provision similar to new section 15F and the rationale for such provision;

- (c) whether; and if so, which existing legislation allowed an authorised public officer to enter any place at any time in which the officer concerned reasonably suspected that a relevant offence was likely to be committed as in new section 15G(1)(a);
- (d) whether; and if so; which existing legislation did not hold an authorised public officer personally liable for certain acts and omissions if the officer concerned did the act or omitted to do the act in the honest belief and the penalties for willfully obstructed the officer concerned in exercising his duties;
- (e) to consider adding “reasonable” to “the honest belief” in new section 15H(1); and
- (f) which overseas jurisdictions used six or more forms of pictorial and graphic health warnings, and the details of these health warnings.

Dates of next meetings

5. As the Bills Committee had largely completed clause-by-clause examination of the Bill, members agreed to cancel the meetings scheduled for 8, 24 and 27 March 2006. The Bills Committee would next meet on the following dates -

- (a) 20 March 2006 from 10:45 am to 12:45 pm; and
- (b) 31 March 2006 from 8:30 am to 12:45 pm.

6. There being no other business, the meeting ended at 12:50 pm.

Council Business Division 2
Legislative Council Secretariat
21 April 2006

**Proceedings of the 22nd meeting of the
Bills Committee on
Smoking (Public Health) (Amendment) Bill 2005
on Monday, 6 March 2006 at 9:05 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
000000 – 005700	Chairman Administration Mr Tommy CHEUNG Mr WONG Ting-kwong Dr KWOK Ka-ki	<p>Continued discussion on the publicity and enforcement plan for implementing the tobacco control measures set out in the Bill (LC Paper No. CB(2)1283/05-06(01))</p> <p>The Police, Housing Department, Leisure and Cultural Services Department, and Agriculture, Fisheries and Conservation Department should be invited to attend the discussion of introducing a fixed penalty system for persons found smoking in statutory no smoking area, including parks and country parks in the event that they be designated as no smoking areas, at the meeting on 31 March 2006</p> <p>Public consultation should be conducted on the introduction of a fixed penalty system for persons found smoking in statutory no smoking area</p> <p>The Administration was requested to consider engaging the Food and Environmental Hygiene Department and other Government departments to monitor compliance of tobacco control measures, such as placing in a prominent position in each no smoking area a sufficient number of no smoking signs in Chinese and English, by managers of statutory no smoking areas, during the early implementation of smoking ban in all indoor workplaces.</p> <p>The Administration was also requested to provide guidelines on complying with the tobacco control measures and carrying out the enforcement work for use by managers of statutory no smoking area</p>	<p>✓ (Admin to provide a written response)</p> <p>✓ (Admin to provide the guidelines)</p>

Time marker	Speaker	Subjects	Action required
005701 – 013133	Chairman Administration Mr Tommy CHEUNG ALA7 Ms Audrey EU	<p><u>Continued clause-by-clause examination of the Bill</u></p> <p>Clause 18 – Part IVB added (Provisions Relating to Inspectors)</p> <hr/> <p>The Administration was requested to provide information on the following prior to the meeting on 31 March 2006 -</p> <p>(a) whether; and if so; which existing legislation had provision similar to new section 15F and the rationale for such provision;</p> <p>(b) whether; and if so, which existing legislation allowed an authorised public officer to enter any place at any time in which the officer concerned reasonably suspected that a relevant offence was likely to be committed as in new section 15G(1)(a); and</p> <p>(c) whether; and if so; which existing legislation did not hold an authorised public officer personally liable for certain acts and omissions if the officer concerned did the act or omitted to do the act in the honest belief and the penalties for willfully obstructed the officer concerned in exercising his duties.</p> <p>The Administration was also requested to consider adding “reasonable” to “the honest belief” in new section 15H(1).</p>	<p>✓ (Admin to provide a written response)</p> <p>✓ (Admin to provide a written response)</p>
013134 – 013322	Administration	<u>Clause 19 – Regulations and Orders</u>	
013323 – 013607	Ms Audrey EU	Use of the phrase “in the honest belief” appeared 17 times in the Bilingual Laws Information System	
013608 – 014634	Chairman Mr Tommy CHEUNG Administration Dr YEUNG Sum	<u>Clause 20 – Designated no smoking areas</u>	
014635 – 020259		10-minute break	
020300 – 020451	Administration	<p><u>Clause 21 – Scheduled 3 repealed</u></p> <p>Clause 22 – Premises specified under section 3(1B) <u>that may be designated as no smoking areas</u></p> <p><u>Clause 23 – Tar groups</u></p>	

Time marker	Speaker	Subjects	Action required
020452 – 020827	Administration Mr Albert CHAN	<p><u>Clause 24 – Determination by the Government Chemist</u></p> <p><u>Clause 25 – Determination by the proprietor of the brand</u></p> <p><u>Clause 26 – Minor variations between past and present determinations</u></p> <p><u>Clause 27 – Notification of retail sales</u></p>	
020828 – 021359	Administration	<p><u>Clause 28 – Tobacco advertisements in printed publications</u></p> <p><u>Clause 29 – Additional provisions applying to tar group designations</u></p> <p><u>Clause 30 – Exemption of certain advertisements from Part IV of the Ordinance</u></p> <p><u>Clause 31 – Health warnings on tobacco advertisements in printed publications</u></p>	
021400 – 030404	Administration Chairman Mr Tommy CHEUNG ALA7 Mr Vincent FANG Ms LI Fung-ying	<p><u>Clause 32 – Paragraph substituted</u></p> <p><u>Clause 33 – Paragraphs substituted</u></p>	
030405 – 030200	Administration Mr Albert CHAN Mr LEUNG Kwok-hung Mr Tommy CHEUNG Mr Vincent FANG	<p><u>Clause 34 – Restaurant signs</u></p> <p><u>Clause 35 – Tobacco advertisements on display</u></p> <p>Whether sale of tobacco products in restaurants would be allowed after the enactment of the Bill</p>	
030201 – 034100	Administration Mr Albert CHAN Mr LEUNG Kwok-hung Mr Vincent FANG Mr Tommy CHEUNG Chairman	<p><u>Clause 36 – Schedule amended</u></p> <p>– The Administration was requested to provide information on which overseas jurisdictions used six or more forms of pictorial and graphic health warnings and the details of these health warnings</p>	<p>✓ (Admin to provide a written response)</p>
034101 – 034330	Chairman Mr Tommy CHEUNG	Dates of next meetings	