

立法會
Legislative Council

LC Paper No. CB(2)2066/05-06
(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 24th meeting
held on Friday, 31 March 2006 at 8:30 am
in the Chamber of the Legislative Council Building**

Members present : Hon Andrew CHENG Kar-foo (Chairman)
Hon Albert CHAN Wai-yip (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon Martin LEE Chu-ming, SC, JP
Hon Fred LI Wah-ming, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon LI Kwok-ying, MH
Hon Alan LEONG Kah-kit, SC
Dr Hon KWOK Ka-ki
Hon WONG Ting-kwong, BBS
Hon Albert Jinghan CHENG
Hon KWONG Chi-kin

Members absent : Hon LEE Cheuk-yan
Dr Hon YEUNG Sum
Hon Abraham SHEK Lai-him, JP
Dr Hon Joseph LEE Kok-long
Hon LEUNG Kwok-hung

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 Cindy LAI
Assistant Director of Health
(Special Health Service)

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

I. Meeting with the Administration

(LC Paper Nos. CB(2)1428/05-06(03) and CB(2)1567/05-06(01) to (02))

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

2. The Administration was urged to provide a Committee Stage amendment (CSA) on the definition of “indoor”.

3. The Administration was requested to provide a written response to the following information requested by members at the meeting -

- (a) what was the value of illicit cigarettes seized by the Customs and Excise Department during the past five years;

- (b) whether; and if so, when the Administration intended to raise tobacco duty;
- (c) whether there were ways to ascertain the exact boundaries of primary and secondary schools, post-secondary institutions and universities; if so, what they were;
- (d) whether the deeming provision under the existing section 14(2) was a rebuttable presumption or an irrebuttable presumption;
- (e) what was the existing number of non-tobacco products displaying the name/logo of a tobacco product in Hong Kong; and
- (f) how did overseas jurisdictions handle the advertising of non-tobacco product which included a tobacco brand and/or logo, whether for sale or otherwise.

4. The Administration was further requested to provide a written response to the following suggestions made by members at the meeting -

- (a) public transport carriers not carrying members of the public should still be subject to the smoking ban;
- (b) the size of the price board and price marker for tobacco products offered for sale in the premises proposed in the Bill should not apply to cigar products, having regard to the fact that the number and variation of cigar products greatly exceeded those of the cigarette products;
- (c) any object, other than a tobacco product, which included a tobacco brand and/or logo, whether for sale or otherwise, and displayed to the public, should be prohibited, to prevent tobacco companies from making use of such object to promote their tobacco products; alternatively, a time-limit should be imposed on the existence of such object, say, before the enactment of the Bill;
- (d) meaning of “public lift” referred to in Schedule 2 of the Smoking (Public Health) Ordinance (Cap. 371) should be spelt out to differentiate it from private lift;
- (e) enforceability of sections 3(3) and 5 of the Ordinance on those premises in which no one fell within the definition of “manager” under clause 4(c) should be explored; if not possible, consideration could be given to exempting domestic buildings from placing the “no smoking” signs in accordance with section 5 of the Ordinance;
- (f) the definition of “manager” under clause 4(c) should draw reference from the definition of “manager” under the Building Management

Ordinance (Cap. 344) to avoid imposing additional responsibilities on owners of the building;

- (g) to consider revising the drafting of the proposed amendment to the definition of “domestic premises” along the lines that it meant -
 - (i) “any premises constructed or intended to be used for habitation and actually being used for private dwelling”; or
 - (ii) “any premises the occupation permit of which are certified to be the same to be used for domestic purposes and does not form part of the common areas of the building of which the premises form part, and common areas should have the same meaning as defined in Cap. 344”; or
 - (iii) “any premises constructed or intended to be used as a separate unit of private dwelling”; and
- (h) to check with the Lands Department on whether the definition of “domestic premises” as defined in the Bill was in line with that in the Deeds of Mutual Covenant.

5. Assistant Legal Adviser 7 queried that if the Administration should decide to adopt the meaning of “manager” as drafted in the proposed CSA, whether a defendant alleged to have failed to comply with section 5 of the Ordinance could raise the defence that there was no way to ascertain where the management responsibility of the building ultimately lay. The Administration agreed to consider and provide a response in writing.

6. The Administration was also requested to ascertain the following, and provide a response in writing -

- (a) whether the policy intent that all staff quarters and student dormitories of primary and secondary schools located within the school boundaries must be smokefree was clearly reflected in the Bill; and
- (b) whether the fact that a residential care home for the elderly was located in a domestic building would not be treated as “domestic premises” and hence be exempted from the smoking ban.

7. The Chairman reminded members that the next meeting had been scheduled for 4 April 2006 at 8:30 am to continue discussion on the draft CSAs and the proposed fixed penalty system. At the request of the Chairman, the Administration agreed to provide a paper setting out the Administration’s latest position on the proposed fixed penalty system for smoking offence before the next meeting.

8. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 2
Legislative Council Secretariat
18 May 2006

**Proceedings of the 24th meeting of the
Bills Committee on
Smoking (Public Health) (Amendment) Bill 2005
on Friday, 31 March 2006 at 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
000000 – 000628	Chairman	Introduction	
000629 – 001248	Admin Ms Audrey EU	Administration's response to the issue of indoor raised at the meeting on 6 March 2006 (LC Paper No. CB(2)1428/05-06(03)) The Administration was urged to provide a Committee Stage amendment (CSA) on the definition of "indoor"	✓ (Admin to provide the CSA)
001249 – 012027	Mr Howard YOUNG Admin Ms Audrey EU Ms Emily LAU Ms LI Kwok-ying Mr WONG Ting-kwong Mr Tommy CHEUNG Dr KWOK Ka-ki Mr Martin LER ALA7 Chairman	The Administration was requested to provide the following information - (a) what was the value of illicit cigarettes seized by the Customs and Excise Department during the past five years; and (b) whether; and if so, when the Administration intended to raise tobacco duty	✓ (Admin to provide a written response)
012028 – 012616	Admin	Administration's response to issues raised at the meetings on 20 and 27 February 2006 (LC Paper No. CB(2)1567/05-06(01))	
012617 – 021503	Dr KWOK Ka-ki Admin Mr Tommy CHEUNG ALA7 Chairman Ms Audrey EU Mr LI Kwok-ying Ms Emily LAU Mr WONG Ting-kwong	The Administration was requested to provide the following information - (a) whether there were ways to ascertain the exact boundaries of primary and secondary schools, post-secondary institutions and universities; if so, what they were; (b) whether the deeming provision under the existing section 14(2) was a rebuttable presumption or an irrebuttable presumption; (c) what was the existing number of non-tobacco products displaying the name/logo of a tobacco product in Hong Kong; and (d) how did overseas jurisdictions handle the advertising of non-tobacco product which included a tobacco brand and/or logo, whether for sale or otherwise.	✓ (Admin to provide a written response)

Time marker	Speaker	Subjects	Action required
		<p>The Administration was also requested to consider the following -</p> <ul style="list-style-type: none"> (a) public transport carriers not carrying members of the public should still be subject to the smoking ban; (b) the size of the price board and price marker for tobacco products offered for sale in the premises proposed in the Bill should not apply to cigar products, having regard to the fact that the number and variation of cigar products greatly exceeded those of the cigarette products; and (c) any object, other than a tobacco product, which included a tobacco brand and/or logo, whether for sale or otherwise, and displayed to the public, should be prohibited, to prevent tobacco companies from making use of such object to promote their tobacco products; alternatively, a time-limit should be imposed on the existence of such object, say, before the enactment of the Bill. 	<p style="text-align: center;">✓ (Admin to provide a written response)</p>
021504 – 023143		Break	
023144 – 041257	<p>Admin ALA7 Mr Tommy CHEUNG Mr Albert CHAN Ms Audrey EU Mr Martin LEE Dr KWOK Ka-ki Mr Alan LEONG Mr Vincent FANG</p>	<p>Draft CSAs provided by the Administration (LC Paper No. CB(2)1567/05-06(02))</p> <p>The Administration was requested to consider the following -</p> <ul style="list-style-type: none"> (a) meaning of “public lift” referred to in Schedule 2 of the Smoking (Public Health) Ordinance (Cap. 371) should be spelt out to differentiate it from private lift; (b) enforceability of sections 3(3) and 5 of the Ordinance on those premises in which no one fell within the definition of “manager” under clause 4(c) should be explored; if not possible, consideration could be given to exempting domestic buildings from placing the “no smoking” signs in accordance with section 5 of the Ordinance; (c) the definition of “manager” under clause 4(c) should draw reference from the definition of “manager” under the Building Management Ordinance (Cap. 344) to avoid imposing additional responsibilities on owners of the building; (d) the drafting of the proposed amendment to the definition of “domestic premises” should be revised along the lines that it meant - 	<p style="text-align: center;">✓ (Admin to provide a written response)</p>

Time marker	Speaker	Subjects	Action required
		<p>(i) “any premises constructed or intended to be used for habitation and actually being used for private dwelling”; or</p> <p>(ii) “any premises the occupation permit of which are certified to be the same to be used for domestic purposes and does not form part of the common areas of the building of which the premises form part, and common areas should have the same meaning as defined in Cap. 344”; or</p> <p>(iii) “any premises constructed or intended to be used as a separate unit of private dwelling”; and</p> <p>(e) to check with the Lands Department on whether the definition of “domestic premises” as defined in the Bill was in line with that in the Deeds of Mutual Covenant.</p> <p>ALA7 queried that if the Administration should decide to adopt the meaning of “manager” as drafted in the proposed CSA, whether a defendant alleged to have failed to comply with section 5 of the Ordinance could raise the defence that there was no way to ascertain where the management responsibility of the building ultimately lay.</p> <p>The Administration was also requested to ascertain the following, and provide a response in writing -</p> <p>(a) whether the policy intent that all staff quarters and student dormitories of primary and secondary schools located within the school boundaries must be smokefree was clearly reflected in the Bill; and</p> <p>(b) whether the fact that a residential care home for the elderly was located in a domestic building would not be treated as “domestic premises” and hence be exempted from the smoking ban.</p>	<p>✓ (Admin to provide a written response)</p> <p>✓ (Admin to provide a written response)</p>
041258 – 041356	Chairman Admin	Closing remarks	