

立法會
Legislative Council

LC Paper No. CB(2)1566/16-17

Ref : CB2/SS/4/16

Paper for the House Committee

**Report of the Subcommittee on Smoking (Public Health) (Notices)
(Amendment) Order 2017**

Purpose

This paper reports on the deliberations of the Subcommittee on Smoking (Public Health) (Notices) (Amendment) Order 2017 ("the Subcommittee").

Background

2. According to the World Health Organization ("WHO"), well-designed health warnings and messages on tobacco product packages have been shown to be a cost-effective means to increase public awareness of the harmful effects of tobacco use and to be effective in reducing tobacco consumption. Article 11.1(b) of WHO Framework Convention on Tobacco Control ("FCTC")¹ requires each Party to adopt and implement effective measures to ensure that each unit packet and package of tobacco products and any outside packaging and labelling used in the retail sale of such products carry health warnings and may include other appropriate messages. These warnings and messages shall be rotating; shall be large, clear, visible and legible; should be 50% or more, but no less than 30%, of the principal display areas; and may be in the form of or include pictures or pictograms.

3. The Smoking (Public Health) Ordinance (Cap. 371) ("the Ordinance") with its subsidiary legislation provide the legal framework on tobacco control

¹ WHO FCTC entered into force in 2005. Parties are obliged to take a number of steps to reduce demand and supply for tobacco products. China is one of the signatories to and has ratified WHO FCTC. In the notification dated 11 October 2005 of the People's Republic of China to the Secretary General of the United Nations, it is stated that FCTC has been made applicable to Hong Kong.

for restricting the use, sale and promotion of tobacco products in Hong Kong. Under sections 8 and 9 of the Ordinance, health warnings and the tar and nicotine yields in prescribed form and manner are required to be shown on the packets or retail containers, as the case may be, of cigarettes,² cigar, pipe tobacco and cigarette tobacco. According to paragraphs 3, 4A and 4AA of the Smoking (Public Health) (Notices) Order (Cap. 371B) ("the Order") as amended in 2006, the health warning shall be in one of the six prescribed forms as set out in the Schedule to the Order and shall appear on the two largest surfaces of the packet or the retail container concerned. Each form of the health warning must appear on the packets and/or retail containers of each brand of the tobacco product concerned with equal frequency during any continuous period of 12 months. Other than the case of retail container containing one cigar,³ the health warning concerned shall be of a size that covers at least 50% of the area of the surface on which it appears. Separately, section 8 of the Ordinance and paragraph 3 of the Order provide that the packets or retail containers of cigarettes should bear in the prescribed form and manner as set out in the Schedule to the Order the tar and nicotine yields which shall appear on the two largest surfaces of the packet or retail container concerned.

Smoking (Public Health) (Notices) (Amendment) Order 2017 (L.N. 66 of 2017)

4. On 21 April 2017, the Administration published in the Gazette the Smoking (Public Health) (Notices) (Amendment) Order 2017 ("the Amendment Order"). The Amendment Order is made by the Secretary for Food and Health under section 18(2) of the Ordinance to amend the prescribed forms (including specifications) of the health warning and indication of tar and nicotine yields on packets or retail containers of tobacco products as specified in the Order. Major amendments are as follows:

- (a) the Chinese version and English version of the same health warning shall cover at least 85% of the two largest surfaces of a packet or retail container of cigarettes, and a retailer container of pipe tobacco or cigarette tobacco. For a retailer container of cigar (other than retail container containing one cigar), the Chinese version of the health warning shall cover at least 70% of

² Applies to any packet of cigarettes containing 20 or more cigarettes and any retail container of cigarette packets containing any number of cigarettes.

³ For a retail container containing one cigar, both the Chinese and English versions of the health warning, which shall be of a width of 7 cm and a length of 3 cm, must appear on the largest surface of the container.

the area of the largest surface on the front of the container whereas the English version of the same warning shall cover 100% of the area of the largest surface on the back of the container. If a packet or retail container of the above tobacco products is in the shape of a cylindrical drum, the Chinese version of the health warning shall cover at least 85% of the area of the curved surface of the drum whereas the English version of the same warning shall cover at least 50% of the area of the top surface of the lid of the drum;

- (b) the six forms of health warnings are to be replaced by 12 new forms of health warnings. Two new messages "QUIT SMOKING FOR FUTURE GENERATIONS" and "QUITLINE 1833 183" are to be included in the new prescribed forms of health warnings. Each form of the health warning must appear on the packets and/or retail containers of each brand of the tobacco product concerned with equal frequency during any continuous period of 24 months; and
- (c) the indication of tar and nicotine yields should be separately printed on a surface of a cigarette packet or retail container other than the surface bearing the health warning.

5. The Amendment Order was tabled before the Legislative Council at its meeting of 26 April 2017 and is subject to the negative vetting procedure.

The Subcommittee

6. At the House Committee meeting on 28 April 2017, Members agreed to form a subcommittee to study the Amendment Order. The membership list of the Subcommittee is in **Appendix I**.

7. Under the chairmanship of Dr Hon KWOK Ka-ki, the Subcommittee has held five meetings with the Administration. The Subcommittee has received oral representations from 83 deputations at one of these meetings. A list of the organizations and individuals which/who have given views to the Subcommittee is in **Appendix II**.

8. To allow more time for the Subcommittee to study the Amendment Order, a motion was moved by the Chairman of the Subcommittee at the Council meeting of 24 May 2017 to extend the scrutiny period of the Amendment Order to the Council meeting of 14 June 2017.

Deliberations of the Subcommittee

Coverage of health warning

Rationale for increasing the coverage of health warning

9. Members are in general supportive of the policy direction on tobacco control in order to safeguard public health. However, they have expressed diverse views on the increase in the coverage of the health warning. Some members including Mr WONG Ting-kwong, Mr Paul TSE, Dr Junius HO, Mr SHIU Ka-fai and Mr LAU Kwok-fun have expressed reservation about drastically increasing the area of the health warning from covering at least 50% at present to at least 85% of the two largest surfaces of the packet or retail container of the tobacco products concerned. They are concerned that the proposal might intensify the trade of counterfeit and illicit tobacco products due to the limited space left on the packets and retail containers for trademarks and branding. They cast doubt on the marginal effectiveness of the proposal to lower the already very low local smoking prevalence which stood at 10.5% in 2015. Given that the prevalence of smoking and circumstances in Hong Kong are different from that of other jurisdictions, these members consider that strong supporting evidence, in particular local statistics and evidence-based analysis, should be provided to justify the amendments. Mr Paul TSE is of particular concern that the legislative proposal is formulated in the absence of regulatory impact assessment to assess the economic impact of the proposal on the affected sectors.

10. Considering that packaging is a prominent form of tobacco promotion and taking into account that tobacco use is the leading preventable cause of various cardiovascular and respiratory diseases, Dr Fernando CHEUNG, Dr Pierre CHAN, Mr HUI Chi-fung and Mr Jeremy TAM support the legislative proposal. These members note that according to a study conducted by the University of Hong Kong ("HKU"), illicit cigarette consumption in Hong Kong should range from 8.2% to 15.4% of total cigarette consumption in 2012, which is similar to the global average. On the whole, there is no sign of deterioration of the situation of illicit cigarette activities. In the global context, WHO has been advocating for plain packaging of tobacco products.⁴ Australia has been implementing plain packaging since 2012. France and the United Kingdom have each passed

⁴ According to paragraph 46 of the Guidelines of Article 11 of FCTC, "plain packaging" is defined as "measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standard colour and font style".

plain packaging laws, which have respectively come into force in May 2016. New Zealand has passed the legislation to introduce a plain packaging regime for tobacco products whereas Canada is planning to introduce a plain packaging legislation. These members have requested the Administration to advise on the timetable for introducing plain packaging in Hong Kong to further reduce the appeal of tobacco products with a view to reducing tobacco consumption for the sake of public health. The Chairman has pointed out that while the overall smoking prevalence of Hong Kong has dropped to 10.5% in 2015, the smoking prevalence of male daily cigarette smokers, which stood at 18.6% in 2015, could not be regarded as low.

11. According to the Administration, its 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. It adopts a progressive and multi-pronged approach comprising legislation, enforcement, publicity, education, smoking cessation services and taxation. In the Administration's view, the current proposal is moderate and appropriate for the local context, and in line with its progressive tobacco control strategy. According to empirical evidence from WHO and overseas experience, the effects of health warning and messages in discouraging tobacco consumption increased with their prominence. Studies carried out after the implementation of pictorial health warnings in Brazil, Canada, Singapore and Thailand consistently showed that health warnings significantly increase people's awareness or knowledge of the harm of tobacco use. There is also no solid evidence suggesting that increasing the coverage of health warnings would lead to intensification of illicit cigarette trade.

12. In the Administration's view, packets and retail containers of cigarettes and other tobacco products, of which local daily smokers accessed on average 13 times a day, are the most direct means of communicating the harms of tobacco use and the source for cessation help. A school-based survey conducted by HKU in 2014-2015 indicated that secondary school students found health warning a meaningful way to communicate the risks of smoking and deter them from picking up smoking. The Administration has assured the Subcommittee that it would keep in view the local situation, commission a scientific study to evaluate the effect of the legislative proposal on public health and consider the way forward, including the introduction of plain packaging. It is expected that the study would take about two years to complete. Given that the full effect of the new requirements on health warning is expected to be realized over time, Dr Fernando CHEUNG has requested the Administration to consider engaging the academia to conduct a tracking survey to assess how effective the new requirements have been in achieving relevant public health objectives.

The case of soft pack cigarettes

13. The Amendment Order seeks to remove the requirement currently specified under existing paragraph 3(4)(c) of the Order that for health warning on packet or retail container of cigarettes, the top side of the area containing the Chinese or English version of the health warning shall be no more than 12 millimetres from the top of the surface on which that version appears. In effect, this allows the health warning to be positioned at the lower part of a cigarette packet or retail container such that space would be available on the top of the two largest surfaces and the sides of the packet or retail container for accommodating the trademark and the brand name. Separately, the proposed new paragraph 3(8) of the Order provides, among others, that the health warning appearing on packet or retail container of cigarettes must not be obscured by any part of the lid of the packet or container when it is closed; an affixture to the packet or container; the wrapping of the packet or container; an affixture to that wrapping; or anything contained in that wrapping.

14. Some members including Mr WONG Ting-kwong, Mr CHAN Han-pan, Ms Alice MAK, Mr SHIU Ka-fai and Mr Jeremy TAM have pointed out that for packet of cigarettes made of soft material and which does not have a lid, a seal would be affixed to the top part of the two largest surfaces of the packet and the surface that adjoins the top of these two surfaces to protect the cigarettes and prevent them from falling out of the packet after it is first opened. While some brands have been using transparent seals on these cigarette packets, some domestic brands are still using non-transparent seals. In the case of the latter, the seal would practically obscure the top part of each of the health warnings which are required to appear on, and cover at least 85% of, the two largest surfaces of the packet. It is technically impracticable for the local company concerned to, within the 12-month adaptation period,⁵ modify their packaging and use transparent seals on the packets in order to meet the requirements under the proposed new paragraph 3(4) and (8) of the Order.

15. The Administration has advised that transparent seals are already used on soft pack cigarette packets in the market, and their use should not be an insurmountable hurdle for the trade. These members, however, remain of the view that the Administration should address the technical concerns raised by the trade by either extending the adaptation period for allowing the packets of soft pack cigarettes putting to sale in Hong Kong to carry the

⁵ Please see paragraphs 35 to 39 below for details.

present form or the new form of health warnings, or allowing the seal to partially obscure the top part of each of the health warnings appearing on the two largest surfaces of the packet. After consideration, the Administration has proposed to amend the Amendment Order by resolution to provide for a new definition of "specified seal", a new version of the 12 forms of health warning prescribed in the new Part 2 of the Schedule to the Order (i.e. Version C) to cater for specified cigarette packets with seals, and provisions concerning the size and positioning restrictions for the specified seal.

16. Mr CHAN Chi-chuen and Dr Fernando CHEUNG, however, are concerned that with the amendments, the area of the health warning so obscured by the specified seal, which is required to be not exceeding 23 mm in width and 14 mm in length, would at most account for about 5% of the total area of the health warning. This would go against the Administration's intention of requiring the area of the health warning to be of a size that covers at least 85% of each of the two largest surfaces of a packet of cigarettes.

The case of cigars

17. Under the proposed new paragraph 4A(5) of the Order, the Chinese version of the health warning on a retailer container of cigar (other than retail container containing one cigar) shall cover at least 70% of the area of the largest surface on the front of the container whereas the English version of the same warning shall cover 100% of the area of the largest surface on the back of the container. Some members including Mr Paul TSE, Mr SHIU Ka-fai and Mr Jeremy TAM are concerned that there are more than 800 different variations of retail container packaging for cigars currently imported and put on sale in the local market. Since the health warning has to be affixed to the container manually on the local market, it may be technically impracticable for the local agents to ensure that the English version of the health warning would exactly cover 100% of the area of the largest surface on the back of the container without any slight deviations arising from the manual procedures.

18. The Administration has advised that in the enforcement of the new requirement, the law enforcement agencies will consider whether prosecution is warranted on a case-by-case basis. If the alleged contravention is considered to be of a trivial or technical nature and that it may not be in the public interest to prosecute the offender, prosecution will not be taken by the law enforcement agencies.

19. Mr Paul TSE and Mr SHIU Ka-fai are of the view that given the size of the retail containers of cigars which is much greater than that of the

packets of cigarettes, a health warning which covers 60% of the area of the largest surface on the front of the container would be suffice to communicate the harmful effects of tobacco use clearly on the one hand, and on the other hand achieve a more proper balance amongst protecting public health, upholding consumers' right to information about authenticity of the products and implementation technicality. Mr SHIU Ka-fai is particularly concerned that when comparing to a retail container of cigars having a cube shape, there will not be much space left on a retail container of cigars having a cuboid shape for the display of seals and marks of authenticity and other necessary labels. The proposal could make counterfeiting of cigar packaging easier, resulting in an increase in the availability of counterfeited cigars. He has pointed out that while Thailand has required cigarette packets to bear a health warning which covers at least 85% of both the largest surfaces of a packet, a retail container of cigars is only required to bear a health warning which covers 50% of both the largest surfaces of a container.

20. In the Administration's opinion, the tobacco trade could affix the authenticity seals and necessary labels on the side with the health warning covering at least 70% of the surface, as well as the four lateral surfaces of the retail container. In Australia, the plain packaging requirement is applicable to cigar boxes or retail containers for retail in Australia. Its current proposal of requiring the health warning to cover at least 70% of the area of the largest surface on the front of the retail container and 100% of the area of the largest surface on the back of the retail container, which amounts to 170% in total, in general equals to the total percentage that the area of the Chinese and English versions of the health warning appeared on a packet or a retailer container of other tobacco products should be accounted for.⁶

21. According to existing section 9 of the Ordinance, no person shall sell, offer for sale or possess for the purposes of sale any cigar, pipe tobacco or cigarette tobacco unless it is in a retail container that bears a health warning in the prescribed form and manner. Mr Tommy CHEUNG, Mr CHAN Chi-chuen and Mr SHIU Ka-fai have expressed concern as to whether it would constitute an offence if a person sells a single stick of cigar, which is packed with other sticks of cigar in a retail container that bears a health warning in the prescribed form and manner, individually.

⁶ Except for packet or retail container of cigarettes in the shape of a cylindrical drum, and retail container of cigar, pipe tobacco or cigarette tobacco in the shape of a cylindrical drum, which should bear a Chinese version of the health warning covering at least 85% of the area of the curved surface of the drum and an English version of the same warning covering at least 50% of the area of the top surface of the lid of the drum.

22. The Administration has explained to the Subcommittee that subject to the evidence available and the merits of each case, the practice of displaying cigars for sale in a retail container that bears a health warning in the prescribed form and manner is considered to have fulfilled the requirement of section 9 of the Ordinance. There has been no prosecution made under the Ordinance regarding the sale of a cigar which was packed with other cigars in a retail container with health warning in the prescribed form and manner.

Proposed amendments from members to the Amendment Order

23. Dr Junius HO and Mr SHIU Ka-fai remain concerned that the Administration's proposed expansion of the coverage of the health warning on packets and retail containers of tobacco products is too drastic as a next step to enhance tobacco control. Dr Junius HO has indicated his intention to amend, by resolution, the proposed new paragraphs 3(4)(e), 3(5)(b)(ii), 4A(5)(b)(ii), 4A(6)(b) and 4A(7)(b)(ii) of the Order to the effect that the coverage of the health warnings on the two largest surfaces of a packet or retail container of cigarettes and a retail container of pipe tobacco or cigarette tobacco will be reduced from 85% as proposed to 70%, that on the largest surface on the back of a retail container of cigars will be reduced from 100% as proposed to 70%, and that on the curved surface of the drum of a packet or retail container of the above tobacco products in the shape of a cylindrical drum will be reduced from 85% as proposed to 70%. Dr Junius HO takes the view that the merit of his proposal is that the coverage of the health warning would be of a uniform proportion for each of the largest surfaces of a packet or retail container of the tobacco products concerned, and could balance the interests of the different parties. In addition, the seals, if any, affixed to the packet of soft pack cigarettes would not obscure the health warnings in this circumstance. This would obviate the need for introducing separate amendments to cater for packets of cigarettes with seals.

24. Mr SHIU Ka-fai has also indicated that he intends to amend, by resolution, the proposed new paragraphs 3(4)(e), 3(5)(b)(ii), 4A(5)(a)(ii), 4A(5)(b)(ii), 4A(6)(b) and 4A(7)(b)(ii) of the Order such that the coverage of the health warnings on the two largest surfaces of a packet or retail container of cigarettes and a retail container of pipe tobacco or cigarette tobacco will be reduced from 85% as proposed to 65%, that on the largest surface on the front and back of a retail container of cigars will be reduced from 70% and 100% as respectively proposed to 65%, and that on the curved surface of the drum of a packet or retail container of the above tobacco products in the shape of a cylindrical drum will be reduced from 85% as proposed to 65%. Mr SHIU Ka-fai has explained that his proposal could ensure that there would be enough space left on the packets and retail containers concerned for the display of

trademarks and branding, and in the case of retail containers of cigars, the display of seals and marks of authenticity to protect the consumers' right to information.

25. The Administration objects to Dr Junius HO and Mr SHIU Ka-fai's proposed amendments on the ground that its current proposal of requiring a health warning to cover, generally speaking, 85% of the two largest surfaces of packets or retail containers of the tobacco products has taken into account the actual local situation, including the public expectation of a more stringent tobacco control measure first introduced in 2007, and the need to update and enlarge the health warning images with a view to sustaining and enhancing their impact. The Administration has stressed that international experience and evidence demonstrate that the effectiveness of graphic health warnings increases with their prominence. In many countries, more smokers reported getting information about the health risks of smoking from health warnings than most other means.

26. Dr Fernando CHEUNG takes the view that implementing the health warning requirements in its proposed form would result in Hong Kong lagging behind other jurisdictions which have already adopted or prepared to adopt plain packaging of tobacco products. To increase the noticeability and effectiveness of the health warnings to achieve an effect similar to plain packaging, Dr Fernando CHEUNG has indicated his intention to amend, by resolution, the proposed new paragraphs 3(4)(e), 3(5)(b)(ii), 4A(5)(a)(ii), 4A(6)(b) and 4A(7)(b)(ii) of the Order to the effect that the coverage of the health warnings on the two largest surfaces of a packet or retail container of cigarettes and a retail container of pipe tobacco or cigarette tobacco will be expanded from 85% as proposed to 90%, that on the curved surface of the drum of a packet or retail container of the above tobacco products in the shape of a cylindrical drum will be expanded from 85% as proposed to 90%, and that on the front of a retail container of cigars will be expanded from 70% as proposed to 75%.

27. The Administration has advised that its current proposal has been discussed at a number of meetings of the Panel on Health Services held in 2015, 2016 and 2017, with views of the trade and stakeholders collected through various channels and meetings since May 2015. Majority of the views received supported the proposal. The Administration would assess the effectiveness of the proposal after its implementation and monitor the local situation before considering the next step forward.

Design of the new forms of health warning with new messages

28. Under the Amendment Order, Parts II, IIA and IIB of the Schedule to the Order are replaced by the new Parts 2, 2A and 2B which prescribe 12 new forms of health warning with new messages. Mr Jeremy TAM has expressed concern that apart from Forms 1, 8 and 12, the other new forms of health warning might not be able to provoke a great emotional response to the health effects of tobacco use, so as to be effective in reducing tobacco consumption. Dr Junius HO has suggested that the tobacco industry should be allowed to carry out the design work of some forms of health warning.

29. The Administration has advised the Subcommittee that it has conducted a series of focus group studies to collect views on the design of the new forms of health warning, and made reference to overseas experience. The new forms of health warning are aimed at addressing different issues related to tobacco use, which include its harmful health effects, its impact on family members and the monetary penalty on smoking offence.

30. The Administration has further explained that in accordance with Article 5.3 of FCTC and its guidelines concerning the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry, the interests of tobacco industry are in direct conflict with the goals of public health. Hence, the tobacco industry should not be a partner in any initiative linked to setting or implementing public health policies. Since the design of the forms of health warning should align with the Administration's tobacco control policies and directives, there would be a conflict of interest for tobacco companies to design the forms of health warning. This is also in line with the Administration's existing policy to ban sponsorships by tobacco companies.

31. Members note that the Administration has provided the tobacco trade with a standardized electronic archive version of the health warning upon gazettal of the Amendment Order. Some members including Mr WONG Ting-kwong, Ms Alice MAK and Mr SHIU Ka-fai are gravely concerned that as reflected by the trade, the health warning images, which are of portrait orientation, would be highly distorted if they are to be printed on horizontal packaging, such as retail containers for 10 cigarette packets and some retail containers of cigars in the shape of a cuboid. This would certainly hinder the objective of communicating the health effects of tobacco use to the public. They have suggested that an additional set of health warnings in landscape orientation should be provided for in the Order.

32. The Administration has assured the Subcommittee that provided that the health warning and message are clearly visible, some distortion of the image would not be regarded as failing to meet the new requirements. Alternatively, same as the practice currently adopted by the trade for retail containers of cigarettes, cigar, pipe tobacco or cigarette tobacco in the shape of a cylindrical drum, the same health warning could be displayed on a retail container twice in an adjoining manner in order to meet the prescribed percentage. That said, the Administration has agreed to take on members' suggestion and proposed to amend, by resolution, the proposed new paragraphs 3(4)(a), 3(4)(d), 4A(4)(a) and 4A(6) of the Order, and the new Part 2 of the Schedule to the Order to the effect that the health warning on a packet and a retail container of cigarettes, and a retail container of cigar, pipe tobacco or cigarette tobacco (other than retail container containing one cigar) should be conform to either portrait orientation or landscape orientation (i.e. Version A or Version B) of one of the 12 new forms prescribed in the new Part 2 of the Schedule.

Indication of tar and nicotine yields

33. Under existing paragraph 3(2) of the Order, indication of tar and nicotine yields constitutes part of the prescribed forms of health warning to be printed on a cigarette packet and retail container. Members note that the proposed new paragraph 3(7) of the Order requires the indication of tar and nicotine yields, to be in either of the forms prescribed in the proposed new Part 2C of the Schedule to the Order, to appear separately on a surface of a cigarette packet and retail container other than the surfaces bearing the health warning. Mr SHIU Ka-fai is concerned that according to the guidelines published by WHO for implementing Article 11 of WTO FCTC, Parties should not require, among others, quantitative statements on tobacco product packaging and labelling about tobacco constituents and emissions that might imply that one brand was less harmful than another, such as the tar, nicotine and carbon monoxide figures. The new requirement goes against the above guidelines and makes information on the tar and nicotine yields of each cigarette product to stand out more clearly, which might in turn create misleading perception concerning the health risks of consuming one product as compared to another.

34. The Administration has advised that Article 10 of WTO FCTC requires each Party to, among others, implement effective measures for public disclosure of information about the toxic constituents of the tobacco products and the emissions that they may produce. The indication of tar and nicotine yields appearing on a packet or retainer container of cigarettes would

help to remind smokers that cigarettes contain substances that are hazardous to health.

Adaptation period

35. Section 1 of the Amendment Order provides that the Order as amended will come into operation on 21 October 2017. According to the proposed new paragraph 9 of the Order, sale of tobacco products carrying the present form or the new form of health warnings is allowed during the period of six months beginning on the above commencement date. From 21 April 2018 onwards, tobacco products put to sale in Hong Kong should only carry the new form of health warnings. The Administration has informed the Subcommittee that in the premises, there is a 12-month adaptation period beginning on the day on which the Amendment Order is published in the Gazette (i.e. 21 April 2017).

36. Some members including Mr WONG Ting-kwong, Mr CHAN Chi-chuen, Mr CHAN Han-pan, Ms Alice MAK and Mr SHIU Ka-fai have pointed out that it is unreasonable to expect that the trade would proceed to change the packaging of their products before the expiry of the period within which a resolution providing for the amendment of the Amendment Order may be passed in accordance with section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), as one cannot tell at this stage as to whether the Amendment Order would be amended. Given that the period for amending the Amendment Order would only expire at the Council meeting of 14 June 2017, the full adaptation period is less than 12 months. Mr SHIU Ka-fai goes further to suggest that sale of tobacco products with pre-amendment health warnings should be allowed during the 12 months after the day on which the Order as amended comes into operation.

37. The Administration has informed the Subcommittee that its original proposal is to provide an adaptation period of six months (counting from gazettal of the Amendment Order) for the tobacco trade to implement the new requirements. To facilitate the trade's understanding and preparation for the implementation of the proposed amendments, the Administration issued a letter to the trade setting out the detailed specifications of the proposed amendments in May 2016. Local agents and/or dealers of tobacco products and trade associations were invited to attend a briefing on the proposed amendments and the technical issues relating to the implementation of the proposals held in November 2016. In view of the concerns of the trade, the Administration has already extended the adaptation period from six months to 12 months upon gazettal of the Amendment Order.

38. These members maintain the view that the trade should be given sufficient time to change the packaging of their products for compliance with the new requirements and get through existing stock. With amendments being proposed by the Administration to the Amendment Order as set out in paragraphs 15 and 32 above, the Administration has agreed to amend, by resolution, the proposed new paragraph 9 of the Order to the effect that during the period between 21 December 2017 and 20 June 2018 (both dates inclusive), sale of tobacco products carrying the present form or the new form of health warnings is allowed. In so doing, the trade will have a full 12-month adaptation period following the expiry of the extended negative vetting period.

39. Members have enquired about whether manufacturers, wholesale distributors or retailers of the tobacco products concerned would be held liable for non-compliance with the new requirements. The Administration has advised that section 9 of the Ordinance provides that no person shall sell, offer for sale or possess for the purposes of sale any cigar, pipe tobacco or cigarette tobacco unless it is in a retail container that bears a health warning in the prescribed form and manner. It is the responsibility of the parties concerned to ensure that from 21 June 2018 onwards, all tobacco products that they offer for sale in Hong Kong meet the new requirements.

Smoking cessation services

40. The Administration has informed the Subcommittee that according to a study conducted by the School of Public Health of HKU on the estimated annual cost of tobacco-related diseases and mortality as well as productivity loss, a total of 6 751 deaths (aged 35 and above) in Hong Kong in 2011 were related to tobacco use (including second-hand smoke exposure). The total annual cost of active smoking and exposure to second-hand smoke in Hong Kong was \$5.5 billion in 2011.

41. Mr WONG Ting-kwong, Mr LEUNG Kwok-hung and Mr CHAN Chi-chuen have suggested that the Administration should use the tobacco duty revenue, which amounts to \$6.41 billion in 2016-2017, to finance the smoking cessation services and the related public health expenditure. This in turn could help reducing the health and economic burden of tobacco use to the society. In particular, Mr WONG Ting-kwong considers that smoking cessation services, including counselling and drug therapies, should be provided free of charge so as to incentivize more smokers to quit smoking. Mr YIU Si-wing has requested the Administration to step up publicity to enhance public understanding of the harmful effects of tobacco use and encourage smoking cessation.

42. The Administration has informed the Subcommittee that similar to other tax revenues, revenue from tobacco duty will be credited to the General Revenue Account. The Administration will make appropriate allocation of resources for tobacco control based on actual requirements for expenditure. The resources for smoking prevention and cessation related activities have been increasing over the years. In 2017-2018, \$135 million has been earmarked for the provisions of anti-smoking activities managed by the Tobacco Control Office of the Department of Health ("DH") and its subvented organizations. At present, where clinically necessary, Nicotine Replacement Therapies and other medications are prescribed by the smoking cessation clinics operated by the Hospital Authority. With the subvention of the Government, there are a number of free smoking cessation programmes operated by non-governmental organizations, such as the Tung Wah Group of Hospitals Integrated Centre on Smoking Cessation and Pok Oi Hospital's smoking cessation programme using acupuncture Chinese medicine. DH plans to launch a smoking cessation public-private partnership pilot program in the fourth quarter of 2017 to encourage, through private doctors, more smokers to quit smoking.

Proposed amendments

43. Apart from the amendments as elaborated in paragraphs 15, 32 and 38 above, the Administration has proposed some textual amendments to the Amendment Order. A full set of the Administration's proposed resolution to amend the Amendment Order is in **Appendix III**. The Administration intends to move the proposed resolution at the Council meeting of 14 June 2017 to give effect to the amendments.

44. The Subcommittee will not move any amendments to the Amendment Order.

Advice sought

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

**Subcommittee on Smoking (Public Health) (Notices) (Amendment)
Order 2017**

Membership list

Chairman Dr Hon KWOK Ka-ki

Members Hon Tommy CHEUNG Yu-yan, GBS, JP
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon YIU Si-wing, BBS
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon CHAN Han-pan, JP
Hon Alice MAK Mei-kuen, BBS, JP
Hon Dennis KWOK Wing-hang (since 16 May 2017)
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Dr Hon Junius HO Kwan-yiu, JP
Hon SHIU Ka-fai
Hon YUNG Hoi-yan
Dr Hon Pierre CHAN
Hon HUI Chi-fung
Hon LAU Kwok-fan, MH
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho

(Total : 25 members)

Clerk Ms Maisie LAM

Legal Adviser Miss Rachel DAI

Date 16 May 2017

**Subcommittee on Smoking (Public Health) (Notices)
(Amendment) Order 2017**

A. Organizations and individuals which/who have made oral representation to the Subcommittee

1. Auxiliary Medical Service Officers' Club Limited
2. British-American Tobacco Company (Hong Kong) Limited
3. Christian Family Service Centre
4. Cigar Time Limited
5. Cigraal Limited
6. Coalition of Hong Kong Newspaper and Magazine Merchants
7. Coalition on Tobacco Affairs Limited
8. Common Society
9. CTBAT International Co. Limited
10. Davidoff of Geneva Hong Kong Limited
11. District Councillor Office of Yolanda Ng
12. Eastern Worldwide Company Limited
13. Ever Fortune Tobacco Limited
14. Federation of Hong Kong Kowloon New Territories Hawker Associations
15. Federation of Parent Teacher Associations in Kwun Tong District Limited
16. Federation of PTA of Hong Kong Eastern District
17. Hong Kong Association of Youth Development
18. Hong Kong College of Community Medicine
19. Hong Kong Council on Smoking and Health
20. Hong Kong Newspaper Hawker Association
21. Hong Kong Tuberculosis, Chest & Heart Diseases Association
22. Hong Kong United Against Illicit Trade
23. Hong Kong Vape Association
24. I Smoke Alliance
25. i-education
26. Japan Tobacco (Hong Kong) Limited
27. Kwok Fung Consulting & Training Company Limited
28. Li Ka Shing Faculty of Medicine, The University of Hong Kong
29. Liberal Party Youth Committee
30. Life Education Activity Programme
31. Medical Service Department, The Lok Sin Tong Benevolent Society Kowloon
32. Ming Chuan Public Relations Consultant
33. Philip Morris Asia Limited
34. Po Leung Kuk

35. Pok Oi Hospital
36. School of Nursing, The University of Hong Kong
37. Sik Sik Yuen Social Services Committee
38. The Association of Hong Kong Professionals
39. The Civic Party
40. The Hong Kong Academy of Nursing
41. The Hong Kong Health Education & Health Promotion Foundation
42. The Hong Kong Institute of Family Education
43. The Hong Kong Society for Nursing Education Limited
44. The Jockey Club School of Public Health and Primary Care, The Chinese University of Hong Kong
45. The Joint Council of Parent-Teacher Associations of The Shatin District
46. The Lok Sin Tong Benevolent Society, Kowloon
47. The New Voice Club of HK
48. The Pacific Cigar Company Limited
49. The University of Hong Kong School of Public Health
50. Tobacco Association of Hong Kong Limited
51. Tsuen Wan Safe and Healthy Community Steering Committee
52. Tung Wah Group of Hospitals
53. United Christian Nethersole Community Health Service
54. United Christian Nethersole Community Health Service Jockey Club Tin Shui Wai Community Health Centre
55. United Christian Nethersole Community Health Service Jockey Club Wo Lok Community Health Centre
56. WISE Project
57. Women Quit
58. Wong Tai Sin District Healthy and Safe City
59. Youth Quitline
60. 本土行動
61. 自由黨港島東區支部
62. 香港東坡詩社
63. 無煙全關愛聯盟
64. Mr CHAU Hoi-kit
65. Miss CHEUNG Tan
66. Dr CHEUNG Tsz-yan
67. Mr CHU Kwok-wah
68. Mr CHU Pak-wah
69. Ms Sharmila Gurung
70. Miss HO Long-kwan
71. Ms Robin KWAN Oi-ping
72. Miss Katherine LAM Ka-wai

73. Miss Madeleine LAU Yi-lok
74. Mr Henry LEE Hing-lim
75. Mr Mason LEUNG Chin-ching
76. Mr LEUNG Hin-sing
77. Mrs LIANG Bao-rao
78. Mr LIU Kwai-sum
79. Mr LO Pui-wah
80. Mr MA Sai-keung
81. Mr Martin OEI
82. Mr Kevin K TSUI
83. Mr YEUNG Ho-chuen

B. Organizations and individuals which/who have provided written submissions to the Subcommittee only

1. AC & CO.
2. Asian Consultancy on Tobacco Control
3. ClearTheAir
4. Hertford Consulting Limited
5. HK Men's Health Society
6. Hong Kong & Kowloon Tobacco Trade Workers General Union
7. Hong Kong College of Mental Health Nursing
8. Hong Kong Federation of Tobacco Industries Limited
9. ITL Pacific (Hong Kong) Limited
10. Nan Yang Brothers Tobacco Co., Ltd.
11. Patients and Medical Professionals Rights Association
12. Prime Care HK 2017-2018
13. Quit Winners Club Limited
14. Richform Holdings Limited
15. SUTL Corporation (Hong Kong) Ltd.
16. The Hong Kong Anti-Cancer Society
17. The Hong Kong Medical Association
18. The Nethersole School of Nursing, Faculty of Medicine, The Chinese University of Hong Kong
19. uncensorship.org
20. Yuen Yuen Vlearn Women Centre
21. Ryan AU YEUNG Shiu-lun
22. Ms CHAN Wai-fung
23. Miss Mimi CHAU
24. Mr Earl CHAU Yin-lok
25. Miss Samantha CHENG Hoi-ning
26. Dr Derek CHEUNG Yee-tak
27. Miss CHIU Ip-ting

28. Miss CHUN Pui-chi
29. Mr FONG Man-tung
30. Prof Keiji Fukuda
31. Miss Nicole LAM Kei-kwan
32. Miss LAU Oi-ling
33. Ms LEE Ka-kwan
34. Mr Calvis LEE Kai-wan
35. Dr June LEUNG
36. Miss LEUNG Ying-ying
37. Mr Louis LO
38. Miss LO Yin-ting
39. Mr LUK Tzu-tsun
40. Mr Ranli MA
41. Mr Samson MAN Chi-sum
42. Mr James Middleton
43. Miss MOK Hoi-yan
44. Miss NG Siu-ting
45. Mr NGAI King-hang
46. Mr Henry TONG Sau-chai
47. Mr Rohit Kumar Verma
48. Miss WONG Chor-ming
49. Mr Talisman WONG Chung-sang
50. Ms WONG Sze-wing
51. Ms Madeline WONG Wei-fong
52. Miss Viveka XIA Wei
53. Miss YEUNG Wing-yi
54. Miss Zoe YIP
55. Miss YU Sik-tung
56. Miss YU Wing-tung
57. Mr Sam ZHANG
58. 區景良
59. 李兆富先生
60. 杜淦煒先生
61. 陳瑞熊先生
62. 31 members of the public who have submitted their views via Hong Kong Council on Smoking and Health

Interpretation and General Clauses Ordinance

Resolution of the Legislative Council

Smoking (Public Health) (Notices) (Amendment) Order 2017

Resolution made and passed by the Legislative Council under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) on June 2017.

Resolved that the Smoking (Public Health) (Notices) (Amendment) Order 2017, published in the Gazette as Legal Notice No. 66 of 2017 and laid on the table of the Legislative Council on 26 April 2017, be amended as set out in the Schedule.

Schedule

Amendments to Smoking (Public Health) (Notices) (Amendment) Order 2017

1. Section 1 amended (commencement)

Section 1—

Repeal

“October ”

Substitute

“December”.

2. Section 5 amended (paragraph 2A added)

(1) Section 5—

Renumber new paragraph 2A as paragraph 2A(1).

(2) Section 5, Chinese text, new paragraph 2A(1), definition of *surface*, paragraph (b)—

Repeal

“分。”

Substitute

“分；”.

(3) Section 5, new paragraph 2A(1)—

Add in alphabetical order

“*specified seal* (指明封條), in relation to a packet of cigarettes, means an affixture to the packet that is affixed to—

- (a) the top part of the 2 surfaces that bear the health warning; and

(b) the surface that adjoins the top of those 2 surfaces;”.

(4) Section 5, after new paragraph 2A(1)—

Add

“(2) For the purposes of paragraph 3, a packet is a specified packet with seal if—

- (a) the packet does not have a lid any part of which forms, when the lid is closed, part of a surface that bears the health warning;
- (b) the packet bears one specified seal that partially obscures any health warning appearing on any surface of the packet; and
- (c) the area of the warning so obscured does not exceed 23 mm in width and 14 mm in length.”.

3. Section 6 amended (paragraph 3 amended (health warning and indication of tar and nicotine yields on packet or retail container of cigarettes))

(1) Section 6, new paragraph 3(4)—

Repeal sub-subparagraph (a)

Substitute

“(a) it must conform to—

- (i) for a container and a packet other than a specified packet with seal—either version A or version B of one of the forms prescribed in Part 2 of the Schedule; and
- (ii) for a specified packet with seal—version C of one of the forms prescribed in Part 2 of the Schedule;”.

(2) Section 6, new paragraph 3(4)—

Repeal sub-subparagraph (d)

“(d) Subject to sub-subparagraph (a), the 2 surfaces must respectively bear the Chinese version and English version of version A, version B or version C of the same warning.”.

- (3) Section 6, new paragraph (3)(4)(e), after “each”—

Add

“Chinese or English”.

- (4) Section 6, after new paragraph 3(8)—

Add

“(8A) Subparagraph (8) is not contravened in relation to a specified packet with seal by reason only of the affixture of a specified seal to the packet.”.

4. Section 7 amended (paragraph 4A amended (health warning on retail container of cigar, pipe tobacco or cigarette tobacco (other than retail container containing one cigar)))

- (1) Section 7, new paragraph 4A(4)(a),—

Repeal

“be in”

Substitute

“conform to either version A or version B of”.

- (2) Section 7, new paragraph 4A(6)—

Repeal sub-subparagraph (a)

Substitute

“(a) subject to subparagraph (4)(a), the 2 surfaces bearing the warning must respectively bear the Chinese version and English version of version A or version B of the same warning.”.

- (3) Section 7, new paragraph 4A(6)(b), after “each”—

Add

“Chinese or English”.

5. Section 8 amended (paragraph 4AA amended (health warning on retail container containing one cigar))

Section 8, new paragraph 4AA(4)(a)—

Repeal

“be in”

Substitute

“conform to”.

6. Section 11 amended (new paragraph 9 added)

Section 11, new paragraph 9—

Repeal subparagraphs (1) and (2)

Substitute

“During the period between 21 December 2017 and 20 June 2018 (both dates inclusive), compliance with paragraph 3, 4A or 4AA as in force immediately before 21 December 2017 is, for the purposes of sections 8 and 9 of the Ordinance, taken to be compliance with paragraph 3, 4A or 4AA, as may be appropriate.”.

7. Section 12 amended (Schedule amended)

Section 12(1)—

Repeal new Part 2

Substitute

“Part 2

Forms of Health Warning on Packet of Cigarettes or Retail Containers of Tobacco Products (Not in Cylindrical Drum Shape, Not Containing One Cigar)

Form 1

Chinese Version of Version A



Chinese Version of Version B



Chinese Version of Version C



English Version of Version A



English Version of Version B



English Version of Version C



Form 2

Chinese Version of Version A



Chinese Version of Version B



Chinese Version of Version C



English Version of Version A



English Version of Version B



English Version of Version C



Form 3

Chinese Version of Version A



Chinese Version of Version B



Chinese Version of Version C



English Version of Version A



English Version of Version B



English Version of Version C



Form 4

Chinese Version of Version A



Chinese Version of Version B



Chinese Version of Version C



English Version of Version A



English Version of Version B



English Version of Version C



Form 5

Chinese Version of Version A



Chinese Version of Version B



Chinese Version of Version C



English Version of Version A



English Version of Version B



English Version of Version C



Form 6

Chinese Version of Version A



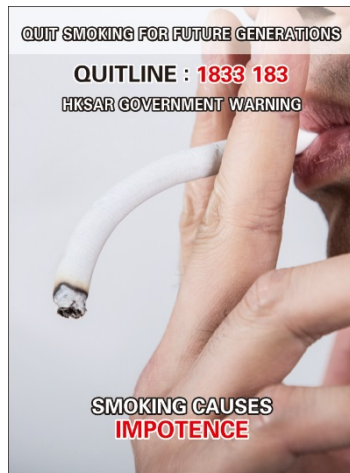
Chinese Version of Version B



Chinese Version of Version C



English Version of Version A



English Version of Version B



English Version of Version C



Form 7

Chinese Version of Version A



Chinese Version of Version B



Chinese Version of Version C



English Version of Version A



English Version of Version B



English Version of Version C



Form 8

Chinese Version of Version A



Chinese Version of Version B



Chinese Version of Version C



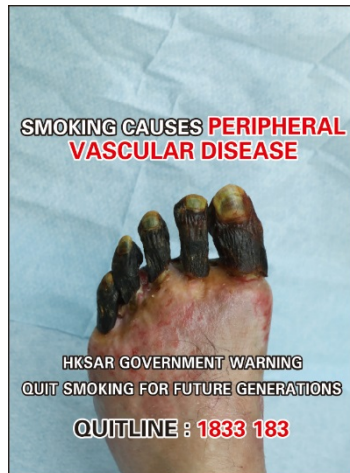
English Version of Version A



English Version of Version B



English Version of Version C



Form 9

Chinese Version of Version A



Chinese Version of Version B



Chinese Version of Version C



English Version of Version A



English Version of Version B



English Version of Version C



Form 10

Chinese Version of Version A



Chinese Version of Version B



Chinese Version of Version C



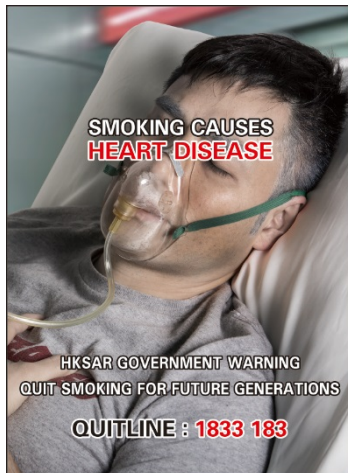
English Version of Version A



English Version of Version B



English Version of Version C



Form 11

Chinese Version of Version A



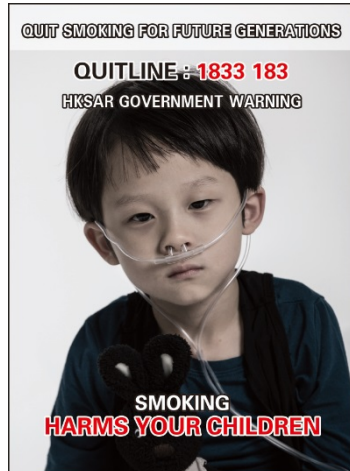
Chinese Version of Version B



Chinese Version of Version C



English Version of Version A



English Version of Version B



English Version of Version C

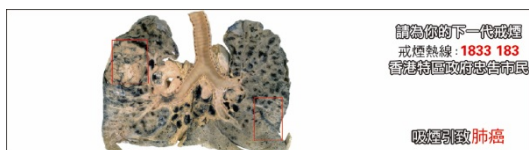


Form 12

Chinese Version of Version A



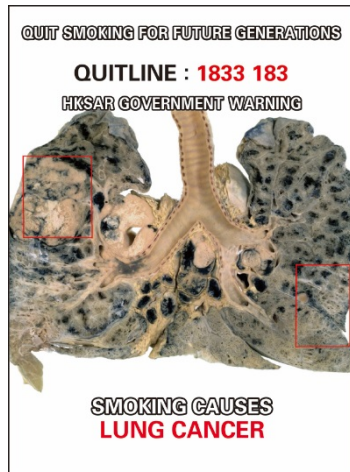
Chinese Version of Version B



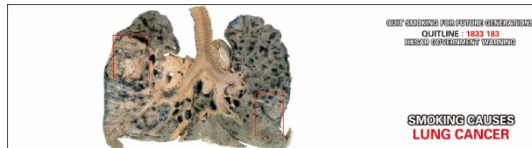
Chinese Version of Version C



English Version of Version A



English Version of Version B



English Version of Version C



Specifications—

1. Each form is rectangular in shape and surrounded by a black line as demarcation.
2. The characters, letters and numbers are surrounded by either a black line or white line.
3. For the Chinese version, the characters and numbers are printed in “中黑體” typeface. For the English version, the letters and numbers are printed in Univers Bold typeface.

4. The graphic, characters, letters and numbers are printed by 4-colour printing with a minimum resolution of 300 dpi.”.

Clerk to the Legislative Council

June 2017