

立法會
Legislative Council

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seen by the Administration)

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

Minutes of the first meeting
held on Tuesday, 9 May 2017, at 8:30 am
in Conference Room 2B of the Legislative Council Complex

- Members present** :
- Dr Hon KWOK Ka-ki (Chairman)
 - 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 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
 - Dr Hon Fernando CHEUNG Chiu-hung
 - Dr Hon Helena WONG Pik-wan
 - Hon IP Kin-yuen
 - Hon Andrew WAN Siu-kin
 - Dr Hon Junius HO Kwan-yiu, JP
 - Hon SHIU Ka-fai
 - Dr Hon Pierre CHAN
 - Hon HUI Chi-fung
 - Hon KWONG Chun-yu
 - Hon Jeremy TAM Man-ho
- Members absent** :
- Hon LEUNG Kwok-hung
 - Hon CHU Hoi-dick
 - Hon YUNG Hoi-yan
 - Hon LAU Kwok-fan, MH

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

Public Officers : Miss Amy YUEN Wai-yin
attending Deputy Secretary for Food and Health (Health) 2
Food and Health Bureau

Dr Jeff LEE Pui-man
Head (Tobacco Control Office)
Department of Health

Ms Phyllis POON Hon-ying
Senior Government Counsel
Department of Justice

Clerk in : Ms Maisie LAM
attendance Chief Council Secretary (2) 5

Staff in : Miss Rachel DAI
attendance Assistant Legal Adviser 2

Ms Priscilla LAU
Council Secretary (2) 5

Miss Maggie CHIU
Legislative Assistant (2) 5

Action

I. Election of Chairman

Dr KWOK Ka-ki was elected Chairman of the Subcommittee.

2. Members agreed that there was no need to elect a Deputy Chairman.

II. Meeting with the Administration

[File Ref.: L.N. 66 of 2017, Legislative Council Brief issued by the Food and Health Bureau and the Department of Health in April 2017, LC Paper Nos. LS58/16-17, CB(2)1340/16-17(02) to (05)]

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

Action

Amendments to be proposed by members

4. Dr Junius HO indicated his intention to propose amendments to the Smoking (Public Health) (Notices) (Amendment) Order 2017 ("the Amendment Order") in relation to the coverage of health warning on the two largest surfaces of the packet and retail container of tobacco products.

Follow-up actions required of the Administration

Admin

5. The Subcommittee requested the Administration to:

- (a) provide a list of participants from the tobacco industry attending the briefing organized by the Administration in November 2016 on technical issues relating to the implementation of the proposed amendments to the requirements of the health warning and indication of tar and nicotine yields on packet or retail container of tobacco products;
- (b) provide information about the details of, including the financial resources and manpower involved for, the publicity and public education activities to be carried out by the Administration to raise the public's awareness of the harmful effects of smoking before and six months after the coming into operation of the Amendment Order (i.e. from 21 April 2017 to 20 April 2018), as well as one year after the expiry of the six-month transitional period for sale of tobacco products with pre-amendment health warnings (i.e. from 21 April 2018 to 20 April 2019); and
- (c) advise whether the Administration would introduce plain packaging for tobacco products; and if so, the timetable for such; and if not, the reason(s) for not doing so.

Invitation of public views

6. Members agreed to receive views from the public on the Amendment Order. In line with usual practice, a general notice would be posted on the Legislative Council website and invitation letters would be issued to the 18 District Councils for the purpose.

Extension of scrutiny period

7. Members agreed that the Chairman would give notice to move a proposed resolution at the Council meeting of 17 May 2017 to extend the scrutiny period of the Amendment Order, so as to allow more time for the

Action

Subcommittee to study the Amendment Order. Members noted that if the proposed resolution for extending the scrutiny period of the Amendment Order was not be dealt with at the Council meeting of 17 May 2017, it would then be dealt with at the Council meeting of 24 May 2017. If the proposed resolution was passed at the Council meeting, the period for amending the Amendment Order would be extended to the Council meeting of 14 June 2017; otherwise, the period for amending the Amendment Order would expire at the Council meeting of 24 May 2017.

(Post-meeting note: At the Council meeting of 24 May 2017, the resolution to extend the scrutiny period of the Amendment Order to the Council meeting of 14 June 2017 was passed.)

Date of future meetings

8. Members agreed that the next two meetings of the Subcommittee would be held on 16 May 2017 at 2:30 pm and 23 May 2017 at 2:45 pm to meet with the Administration and to receive views from the public respectively.

III. Any other business

9. There being no other business, the meeting ended at 10:37 am.

Council Business Division 2
Legislative Council Secretariat
2 January 2018

**Proceedings of the first meeting of
the Subcommittee on Smoking (Public Health) (Notices)
(Amendment) Order 2017
held on Tuesday, 9 May 2017, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Election of Chairman</i>			
000058 - 000857	Mr Tommy CHEUNG Mr YIU Si-wing Mr CHAN Han-pan Mr Charles MOK Dr Fernando CHEUNG	Election of Chairman	
<i>Agenda item II: Meeting with the Administration</i>			
000858 - 000923	Chairman	Opening remarks	
000924 - 001027	Admin	Briefing by the Administration on the Smoking (Public Health) (Notices) (Amendment) Order 2017 ("the Amendment Order").	
001028 - 001506	Chairman Mr WONG Ting-kwong Admin	<p>Mr WONG Ting-kwong's view that the sealing for soft pack cigarette packets, which might be in paper form, should be allowed to overlay part of the area of the health warnings which were required to cover at least 85% of the two largest surfaces of the packet or retail container of the tobacco products under the Amendment Order, so as to address the operational concern of the tobacco industry. In his view, this would not undermine the effectiveness of the health warning.</p> <p>The Administration's advice that transparent seal was already used on soft pack cigarette packets in the market. The trade might also consider making the seal blend in with the design of the remaining space (i.e. 15% of the two largest surfaces) for displaying the brand name. Mr WONG Ting-kwong remarked that change of sealing materials would incur cost to the trade.</p>	
001507 - 002102	Chairman Mr SHIU Ka-fai Admin	<p>Mr SHIU Ka-fai expressed dissatisfaction that the Administration did not take heed of the views expressed in the motion passed by the Panel on Health Services on 20 March 2017, which urged the Government to reduce the coverage of the health warnings on the retail containers of cigars to 60% of the front surface and 90% of the back surface of the containers ("the motion on cigars"). Given that the Administration's current proposal of requiring the health warning to cover 100% of one of the two largest surfaces and 70% of the other largest surfaces of the retail containers of cigars could not address the trade's concern that the authenticity seals of the products would largely be covered by the health warnings, he urged the Administration to make reference to the practice of overseas jurisdictions.</p> <p>The Administration's advice that apart from the two largest surfaces of the retail container of cigars, the cigar industry could still make use of the other surfaces of the container for display of brand names and authenticity seals. In the Administration's</p>	

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		view, the proposal under the Amendment Order was appropriate and it already provided greater flexibility to the cigar trade.	
002103 - 003959	Chairman Ms Alice MAK Clerk Admin Mr YIU Si-wing Mr CHAN Han-pan	<p>In response to Ms Alice MAK's enquiry, the Clerk's elaboration about the legislative timetable of the Amendment Order.</p> <p>To tackle the technical issue that the health warnings would be obscured by the seal of soft pack cigarettes if it was not in transparent form, Mr CHAN Han-pan urged the Administration to design a new version of the 12 forms of health warning for soft pack cigarettes; and Ms Alice MAK suggested that the Administration should either allow the seal of soft pack cigarettes to partially obscure the health warnings or lower the increase in the coverage of health warning for soft pack cigarettes.</p> <p>The Administration's advice that:</p> <p>(a) the proposed new paragraph 3(8) of the Smoking (Public Health) (Notice) Order (Cap. 371B) ("the Order") provided, among others, that the health warning should not be obscured by any part of the lid of the packet or container when it was 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. Any amendments to cater for the case of soft pack cigarettes would require the introduction of a clear definition of what constituted soft pack cigarettes and the taking into account of the varied sizes of the seals for such packets; and</p> <p>(b) the Amendment Order sought to remove the existing requirement that the top side of the health warning had to be no more than 12 millimeters from the top of the surface on which the health warning appeared. In effect, the health warnings could be positioned at the lower part of the packet such that space would be available on the top 15% of the two largest surfaces of the packet for accommodating the trade mark and the seal.</p> <p>Mr CHAN han-pan's enquiry about the proposed adaptation period and Mr YIU Si-wing's enquiry as to whether there was consensus amongst the trade on the proposed adaptation period. Ms Alice MAK was of the view that the adaptation period should be further extended to provide more time for the tobacco trade to prepare and implement the new requirements.</p> <p>The Administration's advice that to its understanding, there should be no great technical difficulties for the trade to comply with the new health warning requirements. To allow more time for the trade to get through existing stock, the adaptation period had already been extended from six months as originally proposed at an earlier time to 12 months upon gazettal of the Amendment Order on 21 April 2017. While the Amendment Order would come into operation on 21 October 2017, sale of tobacco products carrying the present form of health warnings would be allowed until 21 April 2018 (i.e. 12 months from the date of gazettal).</p>	

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		Mr YIU Si-wing's request for the Administration to provide in writing information about the details of, including the financial resources and manpower involved for, the publicity and public education activities to be carried out by the Administration to raise the public's awareness of the harmful effects of smoking.	Admin
004000 - 004804	Chairman Mr CHAN Chi-chuen Admin	<p>On Mr CHAN Chi-chuen's remark that the explanation given by the Administration on the proposed 12-month adaptation period had not taken into account that the Amendment Order could be amended by Members before the expiry of the scrutiny period, the Administration advised that the tobacco industry would still have sufficient time to get through their existing stock should there be any such amendments.</p> <p>On Mr CHAN Chi-chuen's enquiry about whether the Administration would introduce plain packaging for tobacco products in the future and his view that if so, local statistics should be provided to justify the proposal, the Administration advised that it would evaluate in due course after implementation of the legislative proposals the planning for further measures, including the introduction of plain packaging. According to the studies conducted by the Hong Kong Council on Smoking and Health and The University of Hong Kong ("HKU"), packets and retail containers of tobacco products were useful means of disseminating the messages on the harm of tobacco use and smoking cessation.</p> <p>Sharing the cigar trade's concern and making reference to the practice in other jurisdictions (such as Thailand) where the coverage of health warning was different for the case of cigars, Mr CHAN Chi-chuen considered that the coverage of the health warnings on the largest surface on the front and back of a retail container of cigars should respectively be reduced from 70% as proposed to 60%, and from 100% as proposed to 90%. In response, the Administration advised that as a reference, retail containers of cigars as well as other tobacco products were all subject to the plain packaging requirements in Australia.</p>	
004805 - 005324	Chairman Dr Junius HO Admin	<p>Dr Junius HO's enquiry as to whether the Administration would consider reducing the increase in the coverage of health warning from at least 85% to at least 70% of the two largest surfaces of the packet or retail container of tobacco products in order to addressing the tobacco trade's concern over the seal of soft pack cigarettes; and the Administration's response that the current proposal, which had been put forth in May 2015, had wide support from the healthcare sector and the education sector.</p> <p>On Dr Junius HO's suggestion that the tobacco trade should be allowed to carry out the design work of some, say, two, of the 12 forms of health warnings, the Administration advised that according to the Guidelines of Article 5.3 of the World Health Organization Framework Convention on Tobacco Control ("WTO FCTC"), the interests of tobacco industry were in direct conflict with the goals of public health. The tobacco industry should not be a partner in any initiative linked to setting or implementing public health policies. Dr Junius HO's view that engaging the trade to design the forms of health warning would not contravene Article 5.3 of the above Guidelines.</p>	

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005325 - 010827	Chairman Mr SHIU Ka-fai Admin Mr WONG Ting-kwong	<p>Mr SHIU Ka-fai's reiteration that the Administration should take heed of the motion on cigars; and his view that in line with the relevant guidelines promulgated by the World Health Organization ("WHO"), the indication of tar and nicotine yields should be removed from the surface of cigarette packets and retail containers so as to avoid creating misleading perception that one product was less harmful than another.</p> <p>Mr WONG Ting-kwong's concern about the impact of the legislative proposals on the livelihood of the tobacco industry workers; and his view that the provision of free or low-priced smoking cessation services would be more effective than increasing the coverage of health warning to at least 85% of the two largest surfaces of the packet or retail container of tobacco products in encouraging smokers to quit smoking.</p> <p>Mr SHIU Ka-fai and Mr WONG Ting-kwong's concern about the Administration's counting of the 12-month adaptation period began from the date on which the Amendment Order was published in the Gazette. While the Administration had already provided the tobacco trade with an electronic archive version of the new forms of health warning upon gazettal of the Amendment Order, it was unreasonable to expect that the trade would start to modify the packaging of their products during the scrutiny period of the Amendment Bill as Members might propose resolutions to amend the proposed forms of health warning.</p> <p>The Administration's reiteration that retail containers of cigars were subject to the same plain packaging requirements as other tobacco products for example in Australia and that there should be adequate time for the tobacco trade to get through their stock during the proposed adaptation period which would end on 21 April 2018; and its advice that:</p> <p>(a) Article 10 of WTO FCTC required 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 might produce. The indication of tar and nicotine yields appearing on a packet or retail containers of cigarettes would help to remind smokers that smoking contain hazardous substances; and</p> <p>(b) apart from the smoking cessation services provided by the Hospital Authority, a range of free community-based smoking cessation services, which included counselling and consultations by doctors or Chinese medicine practitioners and targeted services to smokers among ethnic minorities, were being provided by non-governmental organizations.</p>	
010828 - 011324	Chairman Mr HUI Chi-fung Admin	<p>Mr HUI Chi-fung's expression of support for the Amendment Order. In response to Mr HUI Chi-fung's enquiry about the effectiveness of the legislative proposals in reducing smoking prevalence and exposure to second-hand smoke, the Administration advised that overseas experience and studies indicated that the effects of health warning and messages in discouraging tobacco consumption increased with their prominence. For example, the combination of plain packaging</p>	

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		and enlarged graphic health warnings had reduced smoking prevalence in Australia by 0.55% during the period of December 2012 to September 2015. Separately, the enlarged health warnings would help encourage smokers to quit smoking, and in turn reduce non-smokers' exposure to second-hand smoke.	
011325 - 012435	Chairman Mr SHIU Ka-fai Admin	<p>Relaying the concern of some tobacco trade over the legislative proposals, Mr SHIU Ka-fai opined that the 12-month adaptation period was not adequate for members of the trade, including a local manufacturer of soft pack cigarettes, to modify the packaging and sealing, as the case might be, of their products.</p> <p>The Chairman's request for the Administration to provide a list of participants from the tobacco industry attending the briefing organized by the Administration in November 2016 on technical issues relating to the implementation of the proposed amendments to the requirements of the health warning and indication of tar and nicotine yields on packet or retail container of tobacco products.</p> <p>On Mr SHIU Ka-fai's concern that the new forms of health warning, which were designed in portrait orientation, would be highly distorted if they were to be printed on those retail containers in horizontal packaging and in the shape of a cuboid, the Administration advised that possible distortion of the health warning image could be reduced by proper orientation of the image on the containers concerned or displaying the same health warning twice in an adjoining manner.</p>	Admin
012436 - 013119	Chairman Mr CHAN Han-pan Admin	The Administration's reiteration of its response to the suggestion of Mr CHAN Han-pan that a new version of the 12 forms of health warning should be provided for cigarette packets with seal.	
013120 - 014032	Chairman Mr Jeremy TAM Admin	<p>Mr Jeremy TAM's expression of support for the legislative proposals and his view 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; and the Chairman's enquiry as to whether traders could select any of the 12 forms of health warning for displaying on the packets and retail containers of their tobacco products.</p> <p>The Administration's advice that it had 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. Under the Amendment Order, each form of the health warning had to appear on the packets and retail containers of each brand of cigarette, cigar, pipe tobacco or cigarette tobacco with equal frequency during any continuous period of 24 months.</p> <p>Mr Jeremy TAM's concern about the image distortion issues as raised by Mr SHIU Ka-fai and the Administration's response in this regard.</p>	

Time marker	Speaker	Subject(s)/Discussion	Action required
014033 - 014640	Chairman Dr Fernando CHEUNG Admin	Dr Fernando CHEUNG's expression of support for the Amendment Order. In response to Dr CHEUNG's enquiry, the Administration advised that it would commission a study to evaluate the effect of the legislative proposal on public health. It was expected the study would take about two years to complete.	
014641 - 015150	Chairman Dr Pierre CHAN Admin	Pointing out that smoking was the main cause of many diseases, Dr Pierre CHAN enquired about whether a target had been set on the effectiveness of the legislative proposals in lowering the local smoking prevalence and the economic burden of tobacco use to the society. The Administration's elaboration about the respective reduction in smoking prevalence in Australia and Canada following the introduction of plain packaging and an increase in the coverage of health warning on tobacco products. According to a study conducted by HKU, a total of 6 751 deaths 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.	
015151 - 015527	Chairman Dr Junius HO ALA2	Dr Junius HO's indication of his intention to propose amendments to the Amendment Order concerning the coverage of the health warning. In response to his enquiry, the Legal Adviser to the Subcommittee advised that according to the Rules of Procedure, a Member may move a motion to amend an item of subsidiary legislation, and in considering the admissibility of a proposed amendment, the President would consider, among other things, whether the object or effect of the proposed amendment might be to dispose of or charge any part of the revenue or other public moneys of Hong Kong (i.e. whether it might have charging effect).	
015528 - 020105	Chairman Mr SHIU Ka-fai Admin	Further discussion on possible distortion of the health warning image when printed on retail containers in landscape orientation.	
<i>Agenda item III: Any other business</i>			
020106 - 020748	Chairman Mr Paul TSE Dr Fernando CHEUNG Admin	Extension of the scrutiny period of the Amendment Order Date and arrangement of the next two meetings Dr Fernando CHEUNG's request for the Administration to advise in writing about whether it would introduce plain packaging for tobacco products; and in response to Mr Paul TSE's enquiry, the Administration's elaboration on the 12-month adaptation period and its response to the motion on cigar.	Admin
020749 - 020802	Chairman	Closing remarks	