

**立法會**  
**Legislative Council**

LC Paper No. CB(2)615/17-18

(These minutes have been  
seen by the Administration)

Ref : CB2/SS/4/16

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

**Minutes of the second meeting  
held on Tuesday, 16 May 2017, at 2:30 pm  
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 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  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon Andrew WAN Siu-kin  
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 Jeremy TAM Man-ho

**Members absent** :

Dr Hon Helena WONG Pik-wan  
Hon IP Kin-yuen  
Hon CHU Hoi-dick  
Hon KWONG Chun-yu

[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 :** Prof Sophia CHAN Siu-chee, JP  
**attending** Under Secretary for Food and Health

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

Dr Tina CHAN Siu-mui  
Assistant Director of Health (Special Health Services)  
Department of Health

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. Application for late membership**  
[LC Paper No. CB(2)1398/16-17(01)]

The Chairman referred to the application from Mr Dennis KWOK for late membership of the Subcommittee. The Subcommittee agreed that the application from Mr Dennis KWOK be accepted.

Action

**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 (03), and CB(2)1398/16-17(01) to (03)]

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

3. The Chairman reminded members that in accordance with Rule 83A of the Rules of Procedures, they should disclose the nature of any direct or indirect pecuniary interests relating to the Smoking (Public Health) (Notices) (Amendment) Order 2017 ("the Amendment Order") before they spoke on the subject.

Amendments to be proposed by members

4. Dr Junius HO indicated his intention to propose amendments to reduce the proposed increase in the coverage of the health warnings on packets and retail containers of tobacco products from 85% to 70% in order to address the tobacco trade's concern about the lack of space left for affixing the sealing and authenticity seals of the tobacco products.

Follow-up actions required of the Administration

Admin

5. The Subcommittee requested the Administration to:

(a) in respect of soft pack cigarettes,

(i) take steps to understand the technical concerns raised by the tobacco industry that it was not feasible to, within the 12-month adaptation period (i.e. from 21 April 2017 on which the Amendment Order was published in the Gazette to 20 April 2018), modify their packaging and use transparent seals on the packets in order to meet the proposed new requirement that a health warning had to cover at least 85% of the two largest surfaces of the packet on which it appeared, as well as the requirement that the health warning and indication of tar and nicotine yields appearing on a packet should not be obscured by any part of the lid of the packet when it was closed; an affixture to the packet; the wrapping of the packet; an affixture to that wrapping; or anything contained in that wrapping;

Action

- (ii) consider, in view of the above technical impracticability of the trade, extending the adaptation period for allowing the packets of soft pack cigarettes putting to sale in Hong Kong to carry the present form or the new form of health warnings; and
  - (iii) if an extension of the adaptation period would not be provided for and given the above technical impracticability of the trade, advise whether the enforcement authority would exercise discretion and not to prosecute cases whereby the soft pack cigarettes putting to sale carried a non-transparent seal which covered a small portion of the health warning (of a size covering at least 85% of the two largest surfaces of the packet concerned) after the expiry of the 12-month adaptation period;
- (b) address the concerns of the tobacco trade that the standardized electronic archive version of graphic health warnings provided by the Administration to the trade would result in serious image distortion when enlarged to meet the proposed new requirement that a health warning had to cover at least 85% of the two largest surfaces of the retail container of cigarette packets and cigars;
- (c) advise whether the printing of two or more copies of a prescribed health warning on each of the two largest surfaces of a packet or retail container of a tobacco product, the total size of which meeting the relevant percentage prescribed by the Amendment Order, would be considered as meeting the proposed new requirements in this regard; and
- (d) advise whether it would constitute an offence under section 9 of the Smoking (Public Health) Ordinance (Cap. 371) if a person sold a cigar, which was packed with other cigars in a retail container that bore a health warning in the prescribed form and manner, individually; and if so, the enforcement actions, including prosecution, taken in this regard in the past three years.

Action

**III. Any other business**

6. The Chairman reminded members that the next meeting of the Subcommittee would be held on 23 May 2017 at 2:45 pm to receive views from the public.

7. There being no other business, the meeting ended at 4:44 pm.

Council Business Division 2  
Legislative Council Secretariat  
2 January 2018

**Proceedings of the second meeting of  
the Subcommittee on Smoking (Public Health) (Notices)  
(Amendment) Order 2017  
held on Tuesday, 16 May 2017, at 2:30 pm  
in Conference Room 2B of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)/Discussion</b>	<b>Action required</b>
<i>Agenda item I: Application for late membership</i>			
000849 - 000914	Chairman	Mr Dennis KWOK's application for late membership	
<i>Agenda item II: Meeting with the Administration</i>			
000915 - 001233	Chairman Admin	Opening remarks  Briefing by the Administration on its response to the follow-up action arising from the discussion at the meeting on 9 May 2017 (LC Paper No. CB(2)1398/16-17(03)).	
001234 - 001249	Chairman	Requirement to disclose direct or indirect pecuniary interests on the matter under discussion by members.	
001250 - 002229	Chairman Mr LAU Kwok-fan Admin	Mr LAU Kwok-fan expressed his view that there was a lack of local statistical evidence to justify the proposal to increase the area of health warning from covering at least 50% to at least 85% of the two largest surfaces of the packet or retail container of the tobacco products concerned under the Smoking (Public Health) (Notices) (Amendment) Order 2017 ("Amendment Order"), and his doubt about the marginal effectiveness of the proposal to lower local smoking prevalence when comparing with other tobacco control measures.  The Administration's advice that empirical evidence from the World Health Organization ("WHO") and experience from Australia and Canada suggested that the effects of health warnings and messages in discouraging tobacco consumption increased with their prominence. Rotation of health warnings and messages and changes in their layout and design were important to maintain saliency and enhance impact. In addition, WHO had been advocating for plain packaging since 2012. Locally, a survey revealed that over 70% of respondents supported an increase in the coverage of health warnings.	
002230 - 002527	Chairman Dr Junius HO Admin	Dr Junius HO indicated that he would propose amendments to reduce the proposed increase in the coverage of the health warnings on packets and retail containers of tobacco products to 70% in order to address the tobacco trade's concern about the lack of space left for affixing the sealing and authenticity seals of the tobacco products.  The Administration's advice that the legislative proposal of increasing the area of the health warnings to cover at least 85% of the two largest surfaces of the packet or the retail container was moderate and appropriate for the local context.	

Time marker	Speaker	Subject(s)/Discussion	Action required
002528 - 003315	Chairman Mr Jeremy TAM Admin	<p>While expressing support for the Amendment Order, Mr Jeremy TAM asked whether there were any technical difficulties for traders of soft pack cigarettes to comply with the proposed 85% requirement; and whether the Administration would introduce further amendments to the Smoking (Public Health) (Notices) Order if technical problems arose from the implementation of the legislative proposals during the 12-month adaptation period, such as image distortion caused by adjusting the standardized forms of health warning for displaying on tobacco product packages in horizontal orientation and workmanship error that might result when affixing the health warning to cover 100% of the area of the largest surface on the back of a retail container of cigar.</p> <p>The Administration's advice that:</p> <ul style="list-style-type: none"> <li>(a) the Amendment Order sought to remove the current requirement that the top side of the health warning should be no more than 12 millimetres from the top edge of the cigarette packet and allow the health warning to be positioned at the lower part of the packet. The space at the top 15% of the surface might accommodate the sealing and trademark for soft pack. In addition, transparent seals were already used on soft pack cigarette packets in the market;</li> <li>(b) possible distortion of the health warning image could be reduced by proper orientation of the image on the packets and the same health warning could be displayed on a retail container twice in an adjoining manner in order to meet the prescribed percentage; and</li> <li>(c) the law enforcement agencies would consider whether prosecution was warranted on a case-by-case basis. When the alleged contravention was considered to be of a trivial or technical nature, prosecution might not be in the public interest. Generally speaking, law enforcement agencies would not prosecute cases where slight deviations from the requisite percentage had arisen from manual procedures.</li> </ul>	
003316 - 004905	Chairman Mr SHIU Ka-fai Admin Mr WONG Ting-kwong Ms Alice MAK	<p>In response to Mr SHIU Ka-fai's enquiry about the printing of health warning on the top surface of the lid of those tobacco product packets or retail containers in the shape of a cylindrical drum, the Administration advised that while the Chinese version of the health warning would be required to cover at least 85% of the area of the curved surface of the drum, the English version of the same warning would remain to cover only at least 50% of the area of the top surface of the lid of the drum.</p> <p>On Ms Alice MAK's concern over the image distortion problem arising from adjusting the standardized form of health warnings for printing on tobacco product packaging in horizontal orientation, the Administration advised that provided that the health warning and message were clearly visible, some distortion of the image would not be regarded as failing to meet the new requirements. The Chairman and Mr SHIU Ka-fai enquired as to whether the printing of two or more copies of a prescribed form of health warning on each of the two largest surfaces of a packet</p>	Admin

Time marker	Speaker	Subject(s)/Discussion	Action required
		<p>or retail container of a tobacco product, the total size of which meeting the relevant percentage prescribed by the Amendment Order, would be considered as meeting the new requirements.</p> <p>Regarding soft pack cigarettes, Ms Alice MAK considered that the Administration should strike a proper balance between protecting public health and minimizing the negative impact that might be brought about by its legislative proposals on workers of the local tobacco trade. Mr SHIU Ka-fai, Mr WONG Ting-kwong and Ms Alice MAK requested the Administration to:</p> <p>(a) take steps to understand the concern raised by the tobacco industry that it was not technically practicable to, within the 12-month adaptation period, modify their packaging and use transparent seals on the packets in order to meet the proposed new requirement that a health warning had to cover at least 85% of the two largest surfaces of the packet on which it appeared, as well as the requirement that the health warning and indication of tar and nicotine yields appearing on a packet could not be obscured by: any part of the lid of the packet when it was closed; an affixture to the packet; the wrapping of the packet; an affixture to that wrapping; or anything contained in that wrapping; and</p> <p>(b) advise whether it would, in view of the above technical impracticability of the trade, extend the adaptation period for allowing the packets of soft pack cigarettes putting to sale in Hong Kong to carry the present form or the new form of health warnings and, if not, whether the enforcement authority would, after the expiry of the adaptation period, exercise discretion and not to prosecute cases in which the soft pack cigarettes putting to sale carried a non-transparent seal covering a small portion of the health warning.</p>	Admin
004906 - 005538	Chairman Mr LEUNG Kwok-hung Admin	<p>Mr LEUNG Kwok-hung's various suggestions on measures to communicate the harms of tobacco use, including making use of the tobacco duty revenue exclusively for tobacco control; and his view that the level of efforts made by the Administration in addressing tobacco use vis-à-vis alcohol and unhealthy food consumption were not the same, albeit that all these habits were hazardous to health.</p> <p>The Administration's explanation that the carcinogen risk of tobacco smoking was higher than that of alcoholic beverages, albeit both were classified as Group 1 carcinogen to humans; and its advice that it would in due course introduce a bill into the Legislative Council to prohibit the sale and supply of intoxicating liquor to minors in the course of business.</p>	
005539 - 010922	Chairman Mr HUI Chi-fung Admin Dr Fernando CHEUNG	<p>Dr Fernando CHEUNG and Mr HUI Chi-fung's view that since WHO had been advocating for plain packaging of tobacco products and many countries had already implemented or prepared to implement plain packaging, the Administration should introduce plain packaging in Hong Kong so as to further reduce the appeal of tobacco products; and the Administration's</p>	



Time marker	Speaker	Subject(s)/Discussion	Action required
		<p>advice that it would evaluate in due course the planning for further measures, including the introduction of plain packaging, after implementation of the legislative proposals.</p> <p>Mr HUI Chi-fung's expression of support for the Amendment Order in order to safeguard the health of the future generations; and his enquiry as to whether the Administration would increase its funding to enhance other tobacco control measures.</p> <p>The Administration's advice that the provision for smoking cessation and related services in the past five years had increased from less than \$10 million in 2009 to over \$60 million in 2016. It would also launch a pilot public-private partnership programme to test a new mode of smoking cessation service supported by family physicians, review of the implementation of the smoking ban at the eight bus interchanges located at the tunnel portal areas, and step up patrol and enforcement actions in statutory no-smoking areas.</p>	
010923 - 011540	Chairman Mr Jeremy TAM Admin	<p>Mr Jeremy TAM's enquiries about the display of the health warnings on retail containers of cigars having a cube shape; and the respective amount of tobacco duty revenue and the resources allocated for smoking prevention and cessation related activities.</p> <p>The Administration's advice that:</p> <p>(a) the Chinese version of the health warning would be required to 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 would be required to cover 100% of the area of the largest surface on the back of the container. For a retail container having a cube shape, the two versions of the same health warning could appear on any two surfaces; and</p> <p>(b) the tobacco duty revenue amounted to \$6.53 billion in 2015-2016. The expenditure on enforcement as well as health education and promotion of smoking cessation managed by the Tobacco Control Office ("TCO") of the Department of Health was \$79.5 million in 2016-2017. It should be noted that the smoking cessation services formed an integral part of HA's overall service provision and the expenditure for which could not be separately identified.</p>	
011541 - 013400	Chairman Mr Tommy CHEUNG Admin Mr SHIU Ka-fai Mr CHAN Chi-chuen	<p>Given the low smoking prevalence in Hong Kong, Mr Tommy CHEUNG's expression of objection to the legislative proposal of requiring the health warning to cover at least 85% of the area of the two largest surfaces of the packet or retail container of the tobacco products.</p> <p>Mr SHIU Ka-fai's view that the proposed 12-month adaptation period was not adequate for the tobacco trade to take steps to comply with the proposed new requirements, and it was not reasonable that the counting of the 12-month adaptation period commenced from gazettal of the Amendment Order.</p>	

Time marker	Speaker	Subject(s)/Discussion	Action required
		The Administration's undertaking to provide written responses to Mr Tommy CHEUNG and Mr SHIU Ka-fai's enquiry as to whether it would constitute an offence if a person sold a cigar, which was originally packed with other cigars in a retail container that bore a health warning in the prescribed form and manner, as an individual item not contained in a retail container; and Mr CHAN Chi-chuen's follow-up enquiry as to whether any enforcement actions, including prosecution, had been taken in this regard.	<b>Admin</b>
013401 - 014338	Chairman Mr Paul TSE Admin Dr Pierre CHAN	<p>Mr Paul TSE's enquiry as to the reason why, having regard to overseas practice and the need to achieve a proper balance amongst protecting public health, upholding consumers' right to information about authenticity of the products and implementation technicality, the suggestion that the health warning on a retailer container of cigar should only be required to cover at least 60% of the area of the largest surface on the front of the container whereas the English version of the same warning to cover 90% of the area of the largest surface on the back of the container could not be considered.</p> <p>The Administration's explanation that the current legislative proposal had already taken into account the technical concerns expressed by the cigar trade; and its reiteration that law enforcement agencies in general would not prosecute cases where slight deviations from the requisite percentage had arisen from manual procedures.</p> <p>In response to Dr Pierre CHAN's enquiry, the Administration advised that the plain packaging requirement adopted in some overseas countries (such as Australia) was applicable to retailer containers of cigar. Separately, there was no solid evidence suggesting that increasing the coverage of health warning would lead to intensification of illicit trade of tobacco products.</p>	
014339 - 014625	Chairman Mr HUI Chi-fung Admin	Mr HUI Chi-fung's suggestion that the messages to be included in the new prescribed forms of health warnings should include the harm caused by second-hand smoke exposure.	
014626 - 014936	Chairman Mr WONG Ting-kwong Admin	Mr WONG Ting-kwong's view that the Administration should step up its effort in promoting the free smoking cessation services provided by the non-governmental organizations under the subvention of TCO.	
014937 - 015525	Chairman Mr Tommy CHEUNG Admin	Mr Tommy CHEUNG's reiteration of his concern over the individual sale of one cigar, which was originally packed with other cigars in a retail container that bore a health warning in the prescribed form and manner.	
015526 - 020122	Chairman Ms Alice MAK Admin	Ms Alice MAK's reiteration of her concerns over the image distortion problem arising from adjusting the standardized form of health warnings for printing on tobacco product packaging in horizontal orientation, and the inadequacy of the proposed 12-month adaptation period for manufacturers of soft pack cigarettes to take steps to comply with the proposed new requirements.	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)/Discussion</b>	<b>Action required</b>
020123 - 020814	Chairman Mr SHIU Ka-fai Admin	<p>Mr SHIU Ka-fai's view that the indication of tar and nicotine yields should be included in the proposed new forms of health warning; and his concerns over the counting of the 12-month adaptation period which began from the date on which the Amendment Order was published in the Gazette as well as the effectiveness of the legislative proposal of requiring the health warning to cover at least 85% of the two largest surfaces of the packet or retail container of the tobacco products concerned in lowering smoking prevalence in Hong Kong.</p> <p>The Administration's advice that the 12-month adaptation period was adequate for the tobacco trade to get through existing stock until 21 April 2018; and it would evaluate the effect of the legislative proposal on public health after its implementation.</p>	
020815 - 021530	Chairman Mr Jeremy TAM Admin	<p>Mr Jeremy TAM's enquiry about whether manufacturers, wholesale distributors or retailer of the tobacco products concerned would be held liable for the sale of tobacco products with pre-amendment health warnings after the adaptation period.</p> <p>The Administration's advice that the Smoking (Public Health) Ordinance (Cap. 371) provided 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 was the responsibility of the parties concerned to ensure that from 21 April 2018 onwards, all tobacco products that they offered for sale in Hong Kong met the new requirements.</p>	
<i>Agenda item III: Any other business</i>			
021531 - 021539	Chairman	<p>Date of next meeting</p> <p>Closing remarks</p>	