

立法會
Legislative Council

LC Paper No. CB(2)845/17-18

(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 fifth meeting
held on Friday, 2 June 2017, at 8:30 am
in Conference Room 1 of the Legislative Council Complex**

- Members present** :
- Dr Hon KWOK Ka-ki (Chairman)
 - 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
 - Dr Hon Fernando CHEUNG Chiu-hung
 - Dr Hon Helena WONG Pik-wan
 - 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** :
- Hon Tommy CHEUNG Yu-yan, GBS, JP
 - Hon Dennis KWOK Wing-hang
 - 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 : Miss Amy YUEN Wai-yin
attending 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. 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(03), CB(2)1445/16-17(01), CB(2)1494/16-17(03), CB(2)1506/16-17(01), CB(2)1515/16-17(01) and CB(2)1535/16-17(01) to (03)]

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

Action

Draft amendments to the Smoking (Public Health) (Notices) (Amendment) Order 2017 ("the Amendment Order")

Draft amendments proposed by the Administration

2. Members considered the Administration's draft amendments to the Amendment Order which was tabled at the meeting (LC Paper No. CB(2)1535/16-17(01)). The draft amendments sought to:

- (a) provide for a new definition of "specified seal", a new version of the 12 forms of health warning prescribed in the proposed new Part 2 of the Schedule to the Smoking (Public Health) (Notices) Order (Cap. 371B) ("the Order") (i.e. version C), and provisions concerning the size and positioning restrictions for the specified seal so as to provide flexibility for affixing the seal of soft pack cigarettes;
- (b) provide for an additional set of the 12 forms of health warning prescribed in the proposed new Part 2 of the Schedule to the Order which was in landscape orientation (i.e. version B); and
- (c) extend the adaption period by two months such that sale of tobacco products carrying the present form or new form of health warnings would be allowed during the period between 21 December 2017 (instead of 21 October 2017 as originally proposed) and 20 June 2018 (instead of 20 April 2018 as originally proposed) (both dates inclusive); and from 21 June 2018 onwards (instead of 21 April 2018), tobacco products put to sale in Hong Kong should only carry the new form of health warnings.

Admin

3. Members were generally supportive of the draft amendments proposed by the Administration. The Administration was requested to improve the clarity of the proposed new paragraph 2A(2)(b) of the Order, so as to make it clear that the specified seal would be allowed to partially obscure the top part of each of the health warnings appearing on the two largest surfaces of the cigarette packet concerned.

Admin

4. The Administration undertook to provide to the Subcommittee its revised set of draft amendments by 5 June 2017 for onward circulation to members of the Subcommittee for consideration.

Action

Draft amendments proposed by members

5. Members noted that in the light of the Administration's draft amendments to the Amendment Order referred to in paragraph 2(a) and (c) above, Mr SHIU Ka-fai would withdraw his relevant draft amendments relating to the seal of soft pack cigarettes and the extension of the adaptation period (i.e. the proposed amendments to sections 6 and 11 of the Amendment Order as set out in LC Paper No. CB(2)1515/16-17(01)). Members then considered the following draft amendments proposed by Dr Junius HO, Mr SHIU Ka-fai and Dr Fernando CHEUNG respectively:

- (a) the draft amendments proposed by Dr Junius HO which sought to reduce 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 from 85% as proposed to 70%, that on the largest surface on the back of a retail container of cigars 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 from 85% as proposed to 70% [LC Paper No. CB(2)1445/16-17(01)];
- (b) the draft amendments proposed by Mr SHIU Ka-fai which sought to reduce 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 from 85% as proposed to 65%, that on the largest surface on the front and back of a retail container of cigars 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 from 85% as proposed to 65% [LC Paper No. CB(2)1515/16-17(01)]; and
- (c) the draft amendments proposed by Dr Fernando CHEUNG which sought to expand 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 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 from 85% as proposed to 90%, and that on the front of a retail container of cigars from 70% as proposed to 75% [LC Paper No. CB(2)1535/16-17(02)].

Action

6. Members noted the Administration's response to the above draft amendments [LC Paper Nos. CB(2)1494/16-17(03), CB(2)1506/16-17(01) and CB(2)1535/16-17(03)].

7. After deliberation, the Subcommittee had not come to any unanimous view on the draft amendments to the Amendment Order proposed by Dr Junius HO, Mr SHIU Ka-fai and Dr Fernando CHEUNG respectively. The Chairman said that while the Subcommittee would not move any amendments to the Amendment Order, individual members concerned could consider proposing the amendments in their own name.

Legislative timetable

8. Members noted that the Chairman would make a verbal report on the deliberations of the Subcommittee to the House Committee on 2 June 2017. The deadline for giving notice of amendment to the Amendment Order was 7 June 2017. The Chairman said that subject to any views members and the Legal Adviser to the Subcommittee might have on the revised set of draft amendments to be proposed by the Administration, he would decide whether a further meeting was necessary. Members agreed that if no further meeting needed to be held, the Subcommittee would complete scrutiny of the Amendment Order.

[Post-meeting note: The revised set of draft amendments proposed by the Administration, which had taken into account the views raised by members at the meeting and that of the Legal Adviser to the Subcommittee as set out in LC Paper Nos. CB(2)1561/16-17(01) and (02), was circulated vide LC Paper No. CB(2)1561/16-17(04) for members' consideration. No views from members had been received by the specified deadline on the revised set of draft amendments proposed by the Administration.]

II. Any other business

9. There being no other business, the meeting ended at 9:40 am.

**Proceedings of the fifth meeting of
the Subcommittee on Smoking (Public Health) (Notices)
(Amendment) Order 2017
held on Friday, 2 June 2017, at 8:30 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Meeting with the Administration</i>			
000626 - 000817	Chairman	Opening remarks	
000818 - 001106	Chairman Admin	Briefing by the Administration on its draft amendments to the Smoking (Public Health) (Notices) (Amendment) Order 2017 ("the Amendment Order") [LC Paper No. CB(2)1535/16-17(01)].	
001107 - 001257	Chairman Admin	In response to the Chairman's enquiry, the Administration advised that under its draft amendments, the health warning on a packet and a retail container of cigarettes, and a retail container of cigar, pipe tobacco or cigarette tobacco should 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 to the Smoking (Public Health) (Notices) Order (Cap. 371B) ("the Order"). 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.	
001258 - 001757	Chairman Mr SHIU Ka-fai Ms Alice MAK Mr WONG Ting-kwong	<p>Ms Alice MAK's expression of support for the draft amendments proposed by the Administration; and Mr SHIU Ka-fai's expression of appreciation to the efforts made by the Administration in working out its draft amendments to the Amendment Order so as to address as far as possible the various concerns raised by the tobacco trade.</p> <p>Mr WONG Ting-kwong's remarks that the Democratic Alliance for the Betterment and Progress of Hong Kong supported the Administration's draft amendments and would not support those draft amendments proposed by members.</p> <p>Mr SHIU Ka-fai advised that since the Administration's draft amendments had, among others, provided flexibility for affixing the seal of soft pack cigarettes and extended the adaptation period by two months, he might withdraw his relevant draft amendments relating to the seal of soft pack cigarettes and the extension of the adaptation period (i.e. the proposed amendments to sections 6 and 11 of the Amendment Order as set out in LC Paper No. CB(2)1515/16-17(01)). He would support Dr Junius HO's draft amendments as set out in LC Paper No. CB(2)1445/16-17(01).</p>	
001758 - 004749	Chairman Mr SHIU Ka-fai Admin Legal Adviser to the Subcommittee	In response to Mr SHIU Ka-fai's enquiry as to whether the proposed "specified seal" of a packet of cigarettes could partially obscure the top part of each of the health warnings appearing on the two largest surfaces of the packet, the Administration replied in the positive. At the suggestion of the	

Time marker	Speaker	Subject(s)/Discussion	Action required
	Mr CHAN Chi-chuen Ms Alice MAK Mr WONG Ting-kwong	<p>Chairman and Ms Alice MAK, the Administration undertook to consider improving the clarity of the proposed new paragraph 2A(2)(b) of the Order.</p> <p>Dr Fernando CHEUNG's concern that allowing about 5% of the area of the health warning to be obscured by the proposed "specified seal", which was required to be not exceeding 23 mm in width and 14 mm in length, would go against the Administration's legislative intent of requiring the area of the health warning to be of a size that covered at least 85% of each of the two largest surfaces of a packet of cigarettes. The Chairman was concerned that the proposal might create a loophole that might be exploited by manufacturers of other cigarette packets. Mr CHAN Chi-chuen raised concern that the fact that the health warning could be partially obscured showed that the size of the health warning would not affect its effectiveness.</p> <p>The Administration's advice that:</p> <p>(a) the draft amendments in relation to soft pack cigarettes, which currently accounted for around 5% of the cigarette market in Hong Kong, were made in response to the views of members and the technical concern of the tobacco trade. Specified cigarette packet with seal were referred to under the proposed new paragraph 2A(2)(a) of the Order as (i) a packet that did not have a lid that, when closed, formed part of a surface that bore the health warning; (ii) the packet bore one specified seal that partially obscured the health warning appearing on a surface of the packet; and (iii) the area of the warning so obscured did not exceed 23 mm in width and 14 mm in length; and</p> <p>(b) for those soft pack cigarettes using transparent seals or having the health warnings positioned at the lower part of the packets, the health warnings concerned would still cover at least 85% of the two largest surfaces of the packets. The stipulation would be clearly set out in the proposed new paragraph 3(8A) of the Order.</p> <p>In response to the Legal Adviser to the Subcommittee's enquiry, the Administration advised that versions B and C of the prescribed forms of the health warning would be same as the respective images set out in Annexes A and B to LC Paper No. CB(2)1535/16-17(01).</p> <p>In response to Mr SHIU Ka-fai and Ms Alice MAK's enquiries, the Administration advised that for retail containers of cigarettes, cigar, pipe tobacco or cigarette tobacco in the shape of a cylindrical drum, the current practice of displaying the same health warning on the retail container concerned twice in an adjourning manner in order to meet the prescribed percentage would prevail.</p>	Admin
004750 - 005600	Chairman Dr Junius HO Admin	Dr Junius HO's briefing on his draft amendments to the Amendment Order and the Administration's response as detailed in LC Paper Nos. CB(2)1445/16-17(01) and CB(2)1494/16-17(03).	

Time marker	Speaker	Subject(s)/Discussion	Action required
005601 - 010123	Chairman Mr YIU Si-wing Ms Alice MAK Mr Jeremy TAM Mr HUI Chi-fung	<p>Mr YIU Si-wing's expression of reservation to the respective draft amendments to the Amendment Order to be proposed by Dr Junius HO, Mr SHIU Ka-fai and Dr Fernando CHEUNG.</p> <p>Ms Alice MAK's advice that the Hong Kong Federation of Trade Unions supported the Administration's draft amendments and did not support members' draft amendments.</p> <p>Mr Jeremy TAM's advice that he did not support the draft amendments to be proposed by Dr Junius HO and Mr SHIU Ka-fai.</p> <p>Holding the view that the Administration should take steps to introduce plain packaging in Hong Kong as soon as possible after taking forward the current legislative proposals, Mr HUI Chi-fung said that he would not support the draft amendments to be proposed by the three members.</p> <p>The Chairman's conclusion that since no unanimous view was reached on the draft amendments proposed by Dr Junius HO, Mr SHIU Ka-fai and Dr Fernando CHEUNG, the individual members concerned could consider proposing the amendments in their own name. At the request of the Chairman, the Administration undertook to provide its revised set of draft amendments to the Subcommittee by 5 June 2017 for onward circulation to members of the Subcommittee for consideration.</p>	
010124 - 010607	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG's briefing on his draft amendments to the Amendment Order [LC Paper No. CB(2)1535/16-17(02)]; and his remarks that he would not support the draft amendments to be proposed by Dr Junius HO and Mr SHIU Ka-fai.</p> <p>The Administration's response to Dr Fernando CHEUNG's draft amendments as detailed in LC Paper No. CB(2)1535/16-17(03).</p>	
010608 - 010727	Chairman	The Chairman's advice that Mr SHIU Ka-fai had indicated that in the light of the draft amendments of the Administration, he would withdraw his draft amendments relating to the seal of soft pack cigarettes and the extension of the adaptation period.	
010728 - 011042	Chairman Dr Helena WONG Admin	Dr Helena WONG's expression of reservation about using a child's photo in one of the prescribed forms of health warning.	
<i>Agenda item II: Any other business</i>			
011043 - 011050	Chairman	Way forward	