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Paper for the House Committee

**Report of Subcommittee on Smoking (Public Health)
(Designation of No Smoking Areas) (Amendment) Notice 2018**

Purpose

This paper reports on the deliberations of the Subcommittee on Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2018 ("the Subcommittee").

Background

2. According to the Administration, it is the established policy of the Government to discourage smoking, contain the proliferation of tobacco use and protect the public from passive smoking with a view to protecting public health. The Smoking (Public Health) Ordinance (Cap. 371) and its subsidiary legislation provide a legislative framework for restricting the use, sale and promotion of tobacco products. Under Cap. 371, any person who smokes or carries a lighted cigarette, cigar or pipe in areas designated as no smoking areas ("NSAs") or in public transport carriers¹ commits an offence. Schedule 2 to Cap. 371 specifies a number of designated NSAs and exempt areas. Section 3(1AB) of Cap. 371 empowers the Director of Health ("DoH") to, by notice published in the Gazette, designate an area in a public transport facility ("PTF")² as an NSA if that area meets one of the following two criteria:

¹ According to section 2 of the Smoking (Public Health) Ordinance (Cap. 371), "public transport carrier" means any public bus, public light bus, taxi, train, light rail vehicle, car, tramcar or ferry vessel mentioned in Schedule 1 to Cap. 371.

² According to section 2 of the Smoking (Public Health) (Designation of No Smoking Areas) Notice (Cap. 371D), "public transport facility" means:

- (a) any area that consists of the termini of 2 or more modes of public transport and is used for effecting and facilitating interchange between them; or
- (b) any bus terminus of more than one specified route as defined in section 2 of the Public Bus Services Ordinance (Cap. 230).

- (a) it is the whole or a part of any area that consists of the termini of two or more modes of public transport and is used for effecting and facilitating interchange between them; or
- (b) it is the whole or a part of any bus terminus of more than one specified route as defined in section 2 of the Public Bus Services Ordinance (Cap. 230).³

3. Since 1 September 2009, DoH has designated NSAs in PTFs by phases for those areas identified as fulfilling the aforesaid criteria. The Tobacco Control Office ("TCO") has been conducting site visits regularly with a view to ensuring that the list of PTFs in the aforementioned subsidiary legislation is up-to-date in line with the actual situation. Subsequent to the last designation exercise in 2017, site visits and consultation with the Transport Department ("TD") revealed that five new PTFs were found to meet the criteria. Changes in location, physical features and settings on the ground necessitate amendments to the extent of NSAs designated in eight PTFs already listed in the Schedule to the Smoking (Public Health) (Designation of No Smoking Areas) Notice (Cap. 371D). In addition, two PTFs with designated NSAs, which have been listed in Cap. 371D, no longer meet the criteria owing to changes in transport arrangement and should therefore be removed from the list of PTFs.

Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2018

4. The Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2018 ("the Amendment Notice") was made by DoH to give effect to the changes to the list of PTFs as explained in paragraph 3 above. The Amendment Notice will come into operation on 31 July 2018.

The Subcommittee

5. At the House Committee meeting on 4 May 2018, Members formed a subcommittee to study the Amendment Notice tabled at the Legislative Council

³ According to section 2 of the Public Bus Services Ordinance (Cap. 230), "specified route" means a route specified in the Schedule of Routes order applying in the case of a grantee and any new route on which a public bus service is operated by that grantee in accordance with a requirement under section 14 or 15, or an approval under section 16A of Cap. 230.

meeting of 2 May 2018. The membership list of the Subcommittee is in the **Appendix**.

6. Under the chairmanship of Dr Hon KWOK Ka-ki, the Subcommittee has held one meeting with the Administration.

Deliberations of the Subcommittee

Designation of no smoking areas

7. Some members including Dr Hon KWOK Ka-ki and Dr Hon Helena WONG call on the Administration to strengthen the publicity, education and enforcement efforts at the five new PTFs which have been designated as NSAs. Hon SHIU Ka-fai suggests that TD or the bus company concerned should display signs at NSA of a PTF to show the location of the nearest place to smoke and its approximate distance from the NSA concerned.

8. The Administration has advised that TCO will arrange to display signs, publicity materials and other demarcations to indicate the boundaries of NSA in each PTF. If necessary, TCO will also send smoke free ambassadors to promote the implementation of the smoke ban on site before the commencement of the Amendment Notice. However, signs showing the nearest place to smoke may encourage people to smoke, which is contrary to the Administration's tobacco control policy to discourage smoking.

9. Noting that both the Yuen Long (East) Public Transport Interchange ("PTI") and the Ho Man Tin Estate PTI will be removed from the list of PTFs specified in the Schedule to Cap. 371D due to their closure, members enquire about the relocation of the affected bus stops and the proposed use of the sites where these PTIs are located.

10. According to the Administration, the bus stops of the Yuen Long (East) PTI have been closed to facilitate the works of a comprehensive residential and commercial property development project at Yuen Long Station since May 2017. Three bus routes have been relocated to the Yuen Long Station (North) PTI, which is a statutory no-smoking area. En-route stop of bus route 68F has been relocated to the bus platform adjacent to Long Lok Road. Closure of the Yuen Long (East) PTI is a permanent arrangement and the expected development project completion date is 2022. The bus stops of the Ho Man Tin Estate PTI have been closed to facilitate the re-development project of the Sheung Foo Street and Ho Man Tin area since July 2017. The affected bus stops have been relocated along Sheung Foo Street. At members'

request, the Administration has provided the plans of NSAs of the two removed PTIs and the plan showing the new locations of the affected bus stops.

11. Noting that the bus stops at the Ho Man Tin Estate PTI have been relocated to places which are not NSAs, some members including Dr Hon KWOK Ka-ki and Dr Hon Helena WONG are concerned about the impact of passive smoking on passengers waiting for buses at these places. Members also note that, in gist, section 3(1AB) of Cap. 371 only empowers DoH to designate an NSA which is the whole or a part of any area that consists of the termini of two or more modes of public transport or any bus terminus of more than one specified route. In this connection, these members urge the Administration to extend the scope of the smoking ban to cover bus stops in order to provide further protection against passive smoking in public places.

12. According to the Administration, TCO will continue to maintain close liaison with TD and other relevant government departments to conduct site inspections of NSAs. It will also update regularly the list of PTFs and review the boundaries of NSAs in PTFs as and when necessary. In addition, eight of the 11 bus interchanges leading to expressways or tunnels have been designated as NSAs and the Administration will designate the remaining three through the Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2018 which has been tabled at the Council meeting of 16 May 2018. In designating NSAs, the Administration will strike a proper balance between protecting non-smokers from passive smoking and the interests of smokers. It will also take into account the enforceability of the smoking ban in deciding the boundaries of new NSAs. The Administration will study the situation of the bus stops concerned and gauge the public's views before deciding the way forward.

Enforcement of the smoking ban at no smoking areas

13. Members note that the statistics compiled by the Administration on prosecutions of persons who have contravened the smoking ban at NSAs do not have a breakdown to show the numbers of prosecution arising from complaints against smoking in NSAs and from inspections respectively. Hon YIU Si-wing suggests that the Administration should have such a breakdown of statistics with a view to indicating the effectiveness of lodging such complaints. Some members including Hon CHAN Chi-chuen are concerned that the no smoking signs and markings on the ground to indicate the boundaries of NSAs in PTFs are unclear. The Administration is requested to make improvements in this regard. These members are also concerned that as smokers might not be aware that they are in NSAs due to the unclear signs and markings, they might smoke there and might be prosecuted as a result. These

members enquire whether an offender might appeal against conviction of smoking offence committed in an NSA and, if so, the number of successful appeals.

14. According to the Administration, the display of the signs, publicity materials, and other demarcations including markings on the ground as appropriate will indicate clearly and visibly to the public the boundaries of NSA in each PTF, having regard to their respective physical settings. The plans showing the boundaries of NSAs will be posted at prominent positions such as the main entrances and exits. All plans of NSAs of PTFs have been deposited in the Land Registry for inspection by the public and such plans will also be posted on TCO's website. A fixed-penalty notice ("FPN") of \$1,500 will be issued to an offender of smoking offence committed in an NSA. The person concerned might lodge an appeal which will be dealt with by a magistrate. The numbers of FPNs issued by TCO in 2017 for smoking offences and disputed cases under Cap. 371 and the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) are as follows:

FPNs issued for smoking offences in 2017		9 711
Disputed cases (as of 15 May 2018)	Convicted	15
	Pending hearing results	6
	Not convicted	6

Regulation of electronic cigarettes and heat-not-burn tobacco products

15. Some members including Dr Hon KWOK Ka-ki, Dr Hon Helena WONG and Hon SHIU Ka-fai call on the Administration to expeditiously regulate electronic cigarettes and heat-not-burn tobacco products, including their importation. In this connection, the Administration is requested to provide information on the number of prosecutions of persons who smoked the aforesaid substance in NSAs, as well as the testing results conducted by the Administration on such substance, including an analysis of the results and the effect of the smoke of such substance on health.

16. According to the Administration, it has suggested that the Panel on Health Services discuss the legislative proposal to regulate electronic cigarettes and other new tobacco products at its meeting in June 2018. The Administration will provide the relevant testing results of electronic cigarettes and heat-not-burn tobacco products to the Panel before the end of the 2017-2018 legislative session. As regards prosecution statistics, TCO issued 1 FPN in 2015, 4 FPNs in 2016, as well as 1 summons and 11 FPNs in 2017 to offenders who smoked electronic cigarettes in NSAs. TCO issued

2 summonses and 22 FPNs to offenders who smoked heat-not-burn tobacco products in NSAs in 2017.

Recommendation

17. The Subcommittee raises no objection to the Amendment Notice and will not propose any amendment to it.

Advice Sought

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

Council Business Division 2
Legislative Council Secretariat
23 May 2018

**Subcommittee on Smoking (Public Health)
(Designation of No Smoking Areas) (Amendment) Notice 2018**

Membership list

Chairman	Dr Hon KWOK Ka-ki
Members	Hon WONG Ting-kwong, GBS, JP Hon YIU Si-wing, BBS Hon CHAN Chi-chuen Dr Hon Helena WONG Pik-wan Hon SHIU Ka-fai Dr Hon Pierre CHAN Hon HUI Chi-fung (Total : 8 members)
Clerk	Mr Colin CHUI
Legal adviser	Miss Evelyn LEE