

立法會
Legislative Council

LC Paper No. CB(2)1517/17-18(03)

Ref : CB2/SS/9/17

**Subcommittee on Smoking (Public Health) Ordinance
(Amendment of Schedule 2) Order 2018**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2018 ("the Amendment Order") and gives a brief account of the discussion by the Panel on Health Services ("the Panel") on the legislative proposal.

Background

2. The Smoking (Public Health) Ordinance (Cap. 371) ("the Ordinance") and its subsidiary legislation provide legal framework on tobacco control for restricting the use, sale and promotion of tobacco products in Hong Kong. The Ordinance was amended in October 2006 to, inter alia, extend the statutory smoking ban to cover most indoor working places and public places as well as some outdoor places. Part 1 of Schedule 2 to the Ordinance specifies a number of designated no smoking areas ("NSAs"). The manager of a NSA may take enforcement action to stop smoking in NSA. As stipulated in section 7(1) of the Ordinance, any person who smokes or carries a lighted cigarette, cigar or pipe in a NSA commits an offence and is liable on summary conviction to a fine of \$5,000. A public officer may issue a fixed penalty notice of \$1,500 under section 3 of the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) in place of prosecution.

3. Since 1 September 2009, smoking ban has been extended to public transport facilities¹ by phases. Separately, there are 11 bus interchanges that

¹ Public transport facilities refer to those areas identified as fulfilling the criteria as set out in section 3(1AB) of the Ordinance: (a) 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) any bus terminus of more than one specified route as defined in section 2 of the Public Bus Services Ordinance (Cap. 230).

lead to expressways or tunnels. The boarding areas and some adjoining waiting areas and facilities of the eight bus interchanges located at the tunnel portal areas ("the eight bus interchanges") have been designated as NSAs² since the Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2015 came into operation on 31 March 2016.

4. The Administration has pledged to review the implementation of the above initiative after 12 months and consider the timing to further extend NSAs to other public facilities. In this connection, a survey, conducted by the Tobacco Control Office ("TCO"), was carried out during April to May 2017 to evaluate the designation of NSAs at the eight bus interchanges ("the survey"). According to the Administration, the vast majority of the respondents to the telephone and face-to-face interviews supported further expansion of NSAs to include additional areas such as other bus interchanges and bus stops.

The Amendment Order

5. On 11 May 2018, the Administration published in the Gazette the Amendment Order. The Amendment Order is made by the Secretary for Food and Health under section 16A of the Ordinance to amend Schedule 2 to the Ordinance by designating the boarding areas and some adjoining waiting areas and facilities of the following remaining three bus interchanges that lead to expressways or tunnels ("the three bus interchanges") as NSAs:

- (a) Aberdeen Tunnel Bus Interchange;
- (b) Lantau Toll Plaza Bus Interchange; and
- (c) Tuen Mun Road Bus Interchange.

6. The Amendment Order was tabled before the Legislative Council ("LegCo") at its meeting on 16 May 2018 and is subject to the negative vetting procedure. It will come into operation on 31 August 2018.

² The eight bus interchanges include (a) Cross-Harbour Tunnel Bus Interchange; (b) Lion Rock Tunnel Bus Interchange; (c) Shing Mun Tunnels Bus Interchange; (d) Eastern Harbour Crossing Bus Interchange; (e) Western Harbour Tunnel Bus Interchange; (f) Tate's Cairn Tunnel Bus Interchange; (g) Tai Lam Tunnel Bus Interchange; and (h) Tsing Sha Highway Bus Interchange (between Sha Tin Heights and Eagle's Nest Tunnel). The plans delineating the actual boundaries of these NSAs are deposited in the Land Registry and posted on the Tobacco Control Office's website for inspection by the public.

Deliberations of the Panel

7. The Panel was briefed on the Administration's legislative proposal to extend the smoking ban to the three bus interchanges at its meeting on 24 April 2018. The major views and concerns of members on the legislative proposal are summarized in the following paragraphs.

8. Members generally expressed support for the legislative proposal in order to provide further protection against passive smoking in public places. On the reason for designating the three bus interchanges as NSAs, the Administration advised that there were about 26 to 71 bus routes at each of these bus interchanges for passenger interchange. The extension of the smoking ban to the eight bus interchanges was an initial step for testing the feasibility of expanding NSAs to other public facilities. More than 93% of the respondents to the survey supported further expansion of NSAs to include additional areas such as other bus interchanges and bus stops. This reinforced the suggestions to further extend the smoking ban at public facilities that the Administration had received from time to time.

9. Members noted with concern that only 49.8% of the respondents to the survey were aware that the eight bus interchanges had been designated as NSAs. The Administration advised that when examined by the interview mode, over 47% of the respondents in telephone interviews and nearly 70% of those in face-to-face interviews conducted at these bus interchanges were aware that the bus interchanges at tunnel portal areas had been designated as NSAs. The Administration further advised that TCO had displayed signs, publicity materials, plans and other demarcations on the ground as appropriate to indicate the boundaries of NSAs at each bus interchange. In addition, no-smoking signs were displayed at conspicuous locations within the NSAs of the bus interchanges to remind the public of the smoking ban.

10. Members called on the Administration to ensure that there was adequate manpower to enforce smoking ban at the bus interchanges designated as NSAs. The Administration advised that there was a designated team under TCO to handle complaints and conduct inspections at the eight bus interchanges. Over 1 700 inspections were carried out from March 2016 to October 2017, and over 1 600 fixed penalty notices or summons were issued. It would review the manpower of TCO and consider measures to strengthen the effectiveness of TCO's enforcement as and when appropriate.

11. Question was raised as to whether the use of electronic cigarettes and heat-not-burn tobacco products in designated NSAs would constitute an offence. The Administration advised that under section 2 of the Ordinance, smoke meant inhaling and expelling the smoke of tobacco or other substance. TCO had

issued fixed penalty notices to offenders who smoked electronic cigarettes or heat-not-burn tobacco products in NSAs.

Relevant papers

12. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
4 June 2018

**Relevant papers on the Smoking (Public Health) Ordinance
(Amendment of Schedule 2) Order 2018**

Committee	Date of meeting	Paper
Panel on Health Services	24.4.2018 (Item VI)	<u>Agenda</u>

Council Business Division 2
Legislative Council Secretariat
4 June 2018