

立法會
Legislative Council

LC Paper No. CB(2)1940/18-19

(These minutes have been
seen by the Administration)

Ref : CB2/BC/4/18

Bills Committee on Smoking (Public Health) (Amendment) Bill 2019

**Minutes of the first meeting
held on Monday, 18 March 2019, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Members present :

Hon KWOK Wai-keung, JP (Chairman)
Dr Hon Elizabeth QUAT, BBS, JP (Deputy Chairman)
Hon LEUNG Yiu-chung
Hon Tommy CHEUNG Yu-yan, GBS, JP
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Frankie YICK Chi-ming, SBS, JP
Hon YIU Si-wing, BBS
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon HO Kai-ming
Hon SHIU Ka-fai
Hon SHIU Ka-chun
Dr Hon Pierre CHAN
Hon CHEUNG Kwok-kwan, JP

Hon LUK Chung-hung, JP
Hon Kenneth LAU Ip-keung, BBS, MH, JP
Dr Hon CHENG Chung-tai
Hon Jeremy TAM Man-ho
Hon AU Nok-hin

Member attending : Hon CHAN Han-pan, BBS, JP

Members absent : Hon MA Fung-kwok, SBS, JP
Hon Dennis KWOK Wing-hang
Dr Hon Fernando CHEUNG Chiu-hung
Hon HUI Chi-fung

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

Dr FUNG Ying
Head (Tobacco and Alcohol Control Office)
Department of Health

Dr Manny LAM
Senior Medical and Health Officer (Tobacco and
Alcohol Control Office)¹
Department of Health

Mr Ellis LAI
Assistant Commissioner (Intelligence and Investigation)
Customs and Excise Department

Mr Manuel NG
Senior Government Counsel
Department of Justice

Miss Celia HO
Government Counsel
Department of Justice

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

Staff in attendance : Ms Wendy KAN
Assistant Legal Adviser 6

Miss Kay CHU
Senior Council Secretary (2) 5

Miss Maggie CHIU
Legislative Assistant (2) 5

Action

I. Election of Chairman

Mr KWOK Wai-keung and Dr Elizabeth QUAT were elected Chairman and Deputy Chairman of the Bills Committee respectively.

II. Meeting with the Administration

[File Ref: FH CR 1/3231/19, LC Paper Nos. LS48/18-19, CB(2)966/18-19(02) to (03) and CB(3)397/18-19]

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

3. The Chairman reminded members that in accordance with Rule 83A of the Rules of Procedure, they should disclose the nature of any direct or indirect pecuniary interests relating to the Smoking (Public Health) (Amendment) Bill 2019 ("the Bill") before they spoke on the subject.

Admin

4. The Bills Committee requested the Administration to:

(a) in respect of the scientific evidence to support its legislative proposals to prohibit the import, manufacture or sale, or use in certain places, of prescribed alternative smoking products; and to restrict the giving, possession, advertising or promotion of the products, provide:

(i) a list of the international studies on health effects of such products, in particular electronic cigarettes, heat-not-burn ("HNB") products and herbal cigarettes, which the Administration had made reference to in formulating the proposals; and

Action

- (ii) the detailed results of the tests conducted by the Government Laboratory on these products (including the test of nicotine and tar yields of seven samples of HNB products conducted in 2017);
- (b) compare the pros and cons of its previous proposal to regulate electronic cigarettes and other new smoking products in a way similar to conventional smoking products as proposed in June 2018 versus the current proposal which was announced by the Chief Executive in October 2018, and explain the reasons for the above sudden change in the legislative direction for these products;
- (c) provide a response to a suggestion that the sale of HNB products to adults should be permitted with a statutory limit be set on the maximum nicotine content and tar yield of these products, so as not to deprive adult smokers of the right to switch from conventional cigarettes to those HNB products which had a lower level of harmful constituents in their aerosol; and
- (d) advise its views on some members' query on the admissibility of a proposed amendment to the long title (and other provisions) of the Bill to prohibit the import, manufacture or sale, or use in certain places, of prescribed smoking products; and to restrict the giving, possession, advertising or promotion of the products.

Invitation of public views

5. Members agreed that the Bills Committee should receive public views on the Bill at its second meeting to be scheduled. 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.

III. Any other business

6. The Chairman said that to facilitate the scheduling of the second meeting of the Bills Committee, the Clerk would ascertain members' availability by circulation of paper.

Action

(*Post-meeting note:* Having considered members' availability, the Chairman directed that the second meeting of the Bills Committee be scheduled for Saturday, 13 April 2019, at 9:00 am.)

7. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 2
Legislative Council Secretariat
26 September 2019

**Proceedings of the first meeting of
Bills Committee on Smoking (Public Health) (Amendment) Bill 2019
held on Monday, 18 March 2019, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Election of Chairman</i>			
000427 - 001349	Mr Paul TSE Ms Alice MAK Mr HO Kai-ming Mr KWOK Wai-keung Dr KWOK Ka-ki Mr Kenneth LEUNG Mr Jeremy TAM Dr Pierre CHAN	Election of Chairman	
001350 - 002309	Chairman Mr CHEUNG Kwok-kwan Mr WONG Ting-kwong Dr Elizabeth QUAT Dr KWOK Ka-ki Mr Jeremy TAM Dr Pierre CHAN	Election of Deputy Chairman	
<i>Agenda item II: Meeting with the Administration</i>			
002310 - 003020	Chairman Admin	Opening remarks Briefing by the Administration on the Smoking (Public Health) (Amendment) Bill 2019 ("the Bill")	
003021 - 003105	Chairman	The Chairman's reminder that members should disclose the nature of any direct or indirect pecuniary interests relating to the matter under discussion before they spoke on the matter.	
003106 - 003852	Chairman Ir Dr LO Wai-kwok Admin	<p>Ir Dr LO Wai-kwok expressed concern about whether heat-not-burn ("HNB") products should be subject to prohibition same as electronic cigarettes ("e-cigarettes"); and the rationale for cutting the local market supply but not prohibiting the use of prescribed alternative smoking products ("ASPs") under the Bill otherwise than in a no smoking area or public transport carrier.</p> <p>The Administration explained the difference between e-cigarettes and HNB products, and stressed that the international and local scientific evidence that ASPs were harmful to health, details of which were set out in Annex B to the Legislative Council ("LegCo") Brief [File Ref: FH CR 1/3231/19], had pointed to the need for prohibiting the import, manufacture or sale and restricting the giving, possession or promotion ("full ban") of these products. An aim of the proposed full ban was to make it difficult for potential consumers to get access to ASPs before they took root in Hong Kong, similar to what had been achieved with the ban of smokeless tobacco products under the Smokeless Tobacco Products (Prohibition) Regulations (Cap. 132BW).</p> <p>In reply to Ir Dr LO Wai-kwok's concern about the negative impact to be brought by the legislative proposals on incoming travellers who wished to bring ASPs into Hong Kong for their</p>	

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		<p>own use, say, as a smoking cessation aid, the Administration advised that if the Bill was passed, it would step up publicity to enhance travellers' awareness of the prohibition to import ASPs into Hong Kong. At the early stage of implementation, facilities might be provided at boundary control points for voluntary disposal of these products. The Administration's advice was that people should quit smoking by using methods that had been proven effective and safe.</p>	
003853 - 004607	<p>Chairman Mr CHAN Chi-chuen Admin</p>	<p>Mr CHAN Chi-chuen's remark that he objected to the Bill which, in his view, sought to impose a full ban on all future non-conventional tobacco products even they might be proven in the future to be less harmful than conventional cigarettes and tobacco products; and his request for the Administration to (a) explain why it made a sudden change from the proposal to regulate e-cigarettes and other new smoking products in a way similar to conventional tobacco products as proposed in June 2018 ("the June 2018 regulatory proposal") to the current proposal, and (b) provide the detailed results of the tests conducted by the Government Laboratory on the products concerned.</p>	<p>Admin</p>
004608 - 005121	<p>Chairman Mr YIU Si-wing Admin</p>	<p>Mr YIU Si-wing expressed support in principle for the Bill for the sake of public health; and suggested that (a) similar to the practice of Macau, incoming travellers should be allowed to bring prescribed ASPs into Hong Kong for their own use, and (b) exemption should be provided for the manufacture of prescribed ASPs which were solely for the purpose of export.</p> <p>The Administration's explanation that the new regime on the prohibitions and restrictions of prescribed ASPs had to be wide enough to avoid creating any loopholes.</p>	
005122 - 010959	<p>Chairman Dr Helena WONG Admin Mr SHIU Ka-fai Deputy Chairman</p>	<p>Dr Helena WONG's view that the Bills Committee should receive public views on the Bill; and her request for the Administration to provide a written response to her suggestion that the sale of HNB products to adults should be permitted with a statutory limit be set on the maximum nicotine content and tar yield of these products, so as not to deprive adult smokers of the right to switch from conventional cigarettes to those HNB products which had a lower level of harmful constituents in their aerosol.</p> <p>Mr SHIU Ka-fai's query about why conventional cigarettes and tobacco products and HNB products, both contained tobacco or nicotine, were not regulated on equal footing under the Bill; and his request for the Administration to provide in writing the detailed results of the test of nicotine and tar yields of seven samples of HNB products conducted by the Government Laboratory in 2017.</p> <p>[At 11:49 am, Dr Elizabeth QUAT, the Deputy Chairman, took the chair in the temporary absence of the Chairman.]</p> <p>The Administration's advice that the Bill was aimed at, among others, to ensure the achievement in tobacco control over the years would not be undermined and prevent the harm of prescribed ASPs from taking root; and its elaboration on the harmful, gateway and renormalization effects of HNB products,</p>	<p>Admin</p> <p>Admin</p>

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		<p>the misconception that cigarettes or other tobacco products with lower tar and nicotine yields and other harmful substances were less harmful, and the findings of studies in Japan and Italy that the use of HNB products was not only limited to smokers as set out in paragraphs 25 to 31 of Annex B to the LegCo Brief.</p>	
011000 - 011613	Deputy Chairman Mr AU Nok-hin Admin Chairman	<p>Referring to a study conducted by the Health Research Council of New Zealand which revealed that the use of e-cigarettes and HNB products by smokers of conventional cigarettes could help them reduce consumption of cigarettes, Mr AU Nok-hin cast doubt about the comprehensiveness of the scientific evidence that the Administration had made reference to in formulating the legislative proposals.</p> <p>Mr AU Nok-hin's concern about the admissibility of a proposed amendment to the long title (and other provisions) of the Bill to prohibit the import, manufacture or sale, or use in certain places, of prescribed smoking products; and to restrict the giving, possession, advertising or promotion of the products.</p> <p>[At 11:52 am, the Chairman re-took the chair.]</p>	
011614 - 012216	Chairman Mr LEUNG Yiu-chung Admin	<p>Mr LEUNG Yiu-chung's concern about the changes of the legislative direction of the Administration from proposing to impose a full ban on e-cigarettes in 2015 to the June 2018 regulatory proposal, and then back to a full ban proposal in October 2018; and his views that (a) the legislative proposal of not prohibiting the use of prescribed ASPs otherwise than in a no smoking area or public transport carrier would give rise to black market trade problem, and (b) the Administration should prohibit the sale of ASPs to persons under the age of 18 so as to protect the health of children and adolescents on the one hand, and on the other hand to allow adult smokers to have a choice of conventional cigarettes and ASPs.</p> <p>The Administration's advice that in formulating the legislative proposals, it had taken into account the recommendations of the World Health Organization, the increasing scientific evidence on the harmful effects of ASPs, the local consumption rate of e-cigarettes among students, and the promotion tactics of ASPs which targeted at youngsters and non-smokers. Enforcement actions would be taken against any illicit trade activities.</p>	
012217 - 012802	Chairman Mr Tommy CHEUNG	<p>Mr Tommy CHEUNG cast doubt about the effectiveness of the proposed full ban to prevent the taking up of ASPs by non-smokers, in particular those who were youngsters. To facilitate further deliberation, he suggested that both the Administration and members should provide for the Bills Committee's reference the relevant studies they had made reference to.</p>	
012803 - 013403	Chairman Admin	<p>Pointing out that the Administration had dragged its feet in formulating the legislative proposals since the policy direction in this regard was first proposed in 2015, the Chairman was concerned about the impact to be brought about by the legislative proposals on existing ASP users, potential local manufacturers of ASPs solely for the purpose of export, and licensed newspaper hawkers who sought to be allowed to sell APSs in the future.</p>	

Time marker	Speaker	Subject(s)/Discussion	Action required
		<p>The Administration's reiteration of the rationale for proposing a full ban on ASPs.</p>	
013404 - 013945	<p>Chairman Dr CHENG Chung-tai Admin</p>	<p>Dr CHENG Chung-tai declared that he was a non-smoker. Pointing out that it was not uncommon to impose age restriction in the laws of Hong Kong, such as prohibiting the sale and supply of cigarettes and intoxicating liquor to persons under the age of 18, he asked about the reason for imposing a full ban on prescribed ASPs but not prohibiting the sale of these products only to persons under the age of 18.</p> <p>The Administration's response that the purpose of the Bill was to discourage the use of ASPs through prohibiting supply as they were harmful to health and could bring about gateway and renormalization effects.</p>	
013946 - 014554	<p>Chairman Mr CHAN Chi-chuen Admin Mr Tommy CHEUNG ALA6</p>	<p>In response to Mr CHAN Chi-chuen's concern that the Bill, if passed, would ban all future ASPs to be emerged in the market, regardless of whether they were less harmful than conventional cigarettes or not, the Administration's advice that the Bill did not preclude the registration of a ASP used for cessation purpose with the Pharmacy and Poisons Board as a pharmaceutical product if they fell within the relevant definition under the Pharmacy and Poisons Ordinance (Cap. 138) and complied with the relevant requirements on safety, quality and efficacy.</p> <p>In reply to Mr CHAN Chi-chuen and Mr Tommy CHEUNG's enquiries about the admissibility of the proposed amendment to the Bill referred to by Mr AU Nok-hin in the earlier part of the meeting, the Legal Adviser to the Bills Committee advised that in considering the admissibility of an amendment proposed by an individual member to a bill, the President would consider, among others, whether an amendment to a bill was relevant to the subject matter of the bill as required under Rule 57(4)(a) of the Rules of Procedure. When considering the subject matter of the bill, the President would take into account the long title, the Explanatory Memorandum and provisions of the bill, the LegCo Brief on the bill and other relevant factors. In determining whether the amendment was relevant to the subject matter of a bill, the President would consider whether the amendment would have the effect of altering the subject matter of a bill or merely amending its details.</p> <p>In reply to the follow-up enquiry of Mr Tommy CHEUNG as to whether the proposed amendment would have a charging effect within the meaning of Rule 57(6) of the Rules of Procedure, the Legal Advisor to the Bills Committee advised that it was for the Administration to establish that there would be an increase in public expenditure of an amount which was not nominal or negligible as required under the Rule.</p> <p>Mr CHAN Chi-chuen's request for the Administration to advise in writing (a) its views on the admissibility of the proposed amendment to the Bill referred to by Mr AU Nok-hin; (b) the international studies on health effects of ASPs, in particular e-cigarettes, HNB products and herbal cigarettes, which it had</p>	<p>Admin</p>

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		made reference to in formulating the current ban proposal; and (c) the detailed results of the tests conducted by the Government Laboratory on the products concerned.	
014555 - 015035	Chairman Deputy Chairman Admin	The Deputy Chairman's concern over the promotion tactics of ASPs which mainly targeted at youngsters. While she tended to support the Bill for the protection of the health of children and adolescents, she was worried about the enforceability of the Bill in respect of the bringing into Hong Kong of ASPs by incoming travellers and the black market trade.	
015036 - 020417	Chairman Mr SHIU Ka-fai Admin Mr Tommy CHEUNG Mr AU Nok-hin	<p>Mr SHIU Ka-fai's views that in the absence of conclusive scientific evidence that HNB products were harmful than conventional cigarettes and other tobacco products and the fact that the legislative proposals would deprive adult smokers' right of consuming HNB products and other types of ASPs, he did not subscribe to the Administration's explanation that a full ban should be imposed on prescribed ASPs.</p> <p>The Administration's further elaboration on the harmful effects of HNB products as well as the findings of some studies on the nicotine and tar yields of these products as set out in paragraphs 25 to 27 of Annex B of the LegCo Brief.</p> <p>In reply to Mr SHIU Ka-fai's query about whether the Administration would conduct a public consultation exercise on the Bill, the Administration advised that it had received through various platforms views from members of the Panel on Health Services, relevant stakeholders and members of the public on the subject matter over the past few years.</p> <p>Members agreed that the Bills Committee should receive public views on the Bill at its second meeting to be scheduled.</p> <p>The Chairman's request for the Administration to provide in writing after the meeting a comparison of the pros and cons of the June 2018 regulatory proposal versus the current ban proposal as announced by the Chief Executive in October 2018. Mr Tommy CHEUNG also requested the Administration to explain the reasons for the above sudden change in the legislative direction.</p>	Admin
<i>Agenda item III: Any other business</i>			
020417 - 020426	Chairman	Date of next meeting	