

立法會
Legislative Council

LC Paper No. CB(2)158/19-20
(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 sixth meeting
held on Tuesday, 25 June 2019, at 10:45 am
in Conference Room 3 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 YIU Si-wing, BBS
Hon MA Fung-kwok, SBS, JP
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 Dennis KWOK Wing-hang
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Hon HO Kai-ming
Hon SHIU Ka-fai
Dr Hon Pierre CHAN
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

- Members absent** : Hon Frankie YICK Chi-ming, SBS, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Dr Hon Junius HO Kwan-yiu, JP
Hon CHEUNG Kwok-kwan, JP
- 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
- Ms Ida NG
Assistant Commissioner (Intelligence and Investigation)
Customs and Excise Department
- Mr Manuel NG
Senior 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
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Action

I. Meeting with the Administration

[File Ref: FH CR 1/3231/19, LC Paper Nos. LS48/18-19, CB(2)966/18-19(02), CB(2)1175/18-19(01) to (03), CB(2)1275/18-19(01), CB(2)1431/18-19(01) to (04), CB(2)1651/18-19(01) and CB(3)397/18-19]

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

Motions

2. The Chairman ruled that the two motions proposed by Mr CHAN Chi-chuen, the wording of which had been tabled at the meeting, were directly related to the agenda item under discussion, and invited members to consider whether the motions should be proceeded with at the meeting. Members agreed. The Chairman ordered that the voting bell be rung for five minutes to notify Bill Committee members of the voting.

Motion 1

3. Mr CHAN Chi-chuen moved the following motion:

"本委員會要求政府暫緩《2019年吸煙(公眾衛生)(修訂)條例草案》的修例工作，並重新諮詢，進行更多解說工作和聽取不同的意見，以紓緩社會緊張和對立的局面。"

(Translation)

"This Bills Committee requests the Government to suspend the legislative amendment exercise relating to the Smoking (Public Health) (Amendment) Bill 2019, and conduct consultation afresh, do more explanation work and listen to different views on the Bill, so as to ease the tension and confrontation in society."

4. The Chairman then put the motion to vote. The results were: 10 members voted in favour of the motion, three members voted against the motion, and no member abstained from voting. The Chairman declared that the motion was carried.

Action

Motion 2

5. Mr CHAN Chi-chuen moved the following motion:

"本委員會要求政府暫緩《2019年吸煙(公眾衛生)(修訂)條例草案》的修例工作，並重新諮詢，進行更多解說工作和聽取不同的意見，以紓緩社會緊張和對立的局面，並應考慮以不同方法規管電子煙、加熱煙和其他未來出現的另類吸煙產品。"

(Translation)

"This Bills Committee requests the Government to suspend the legislative amendment exercise relating to the Smoking (Public Health) (Amendment) Bill 2019, and conduct consultation afresh, do more explanation work and listen to different views on the Bill, so as to ease the tension and confrontation in society and that the Government should also consider employing different means to regulate electronic cigarettes, heat-not-burn products and other alternative smoking products that might come on stream in future."

6. The Chairman then put the motion to vote. The results were: 10 members voted in favour of the motion, three members voted against the motion, and no member abstained from voting. The Chairman declared that the motion was carried.

Follow-up actions required of the Administration

Admin

7. The Bills Committee requested the Administration to:

- (a) compare the pros and cons, including but not limiting to the following aspects: (i) health risks; (ii) effects on smoking prevalence; (iii) legal and illicit trade of the products concerned; and (iv) duty revenue from tobacco, of the Administration's 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 legislative proposals which sought to prohibit the import, manufacture or sale, or use in certain places, of prescribed alternative smoking products ("ASPs"); and to restrict the giving, possession, advertising or promotion of the products; and explain clearly the reasons for the above sudden change in the legislative direction for these products;

Action

- (b) provide a response to the concern that the legislative proposals of not prohibiting the use of prescribed ASPs otherwise than in a no smoking area or public transport carrier and the possession of these products for self-use would give rise to black market trade activities; and
- (c) provide for members' reference the relevant materials, in full version and in bilingual form, issued by the Food and Drug Administration of the United States in respect of its issuance of a premarket tobacco product application marketing order to authorize the marketing of IQOS Tobacco Heating System, a heat-not-burn product, for the United States market after making certain that the marketing of which was appropriate for the protection of public health.

II. Any other business

- 8. There being no other business, the meeting ended at 12:59 pm.

Council Business Division 2
Legislative Council Secretariat
6 November 2019

**Proceedings of the sixth meeting of
the Bills Committee on Smoking (Public Health) (Amendment) Bill 2019
held on Tuesday, 25 June 2019, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Meeting with the Administration</i>			
000933 - 001022	Chairman	Opening remarks	
001023 - 002002	Chairman Admin	Briefing by the Administration on its responses to the follow-up actions arising from the discussion at the meetings on 18 March, 13, 25 and 27 April 2019 [LC Paper Nos. CB(2)1175/18-19(03) and CB(2)1431/18-19(03)].	
002003 - 003210	Chairman Mr Jimmy NG Admin Mr SHIU Ka-fai	<p>While raising no objection to the proposed prohibition of the import, manufacture or sale and restriction of the giving, possession or promotion ("full ban") of electronic cigarettes ("e-cigarettes"), Mr Jimmy NG considered that the Administration should set out safety requirements for heat-not-burn ("HNB") products but not impose a full ban on these products. He drew members' attention to the following practices in other places: (a) the Mainland had submitted to the World Trade Organization its industry standards for e-cigarettes; (b) the Food and Drug Administration of the United States ("FDA") had authorized the marketing of a HNB product in the United States ("US") for the protection of public health; and (c) New Zealand had changed to adopt a risk-based regulatory regime for HNB products and e-cigarettes.</p> <p>Mr SHIU Ka-fai elaborated on (b) and (c) above and added that harm reduction had been adopted by the United Kingdom ("UK") as part of its tobacco control policy, and the sale of HNB products was only prohibited in Macau, Singapore and Thailand. In his view, it was unreasonable to impose a full ban on HNB products, which, according to many studies, were less harmful than conventional cigarettes and other tobacco products.</p> <p>The Administration advised that:</p> <p>(a) about 60 out of the some 7 000 constituents contained in tobacco smoke were known to be carcinogenic, which had no safe exposure level. Evidence suggested that most e-cigarettes contained and emitted numerous potentially toxic substances. It should be noted that reduced toxicity did not automatically translate into reduced harm for smokers. Smokers should quit smoking completely to improve health by using methods that had been proven effective and safe; and</p> <p>(b) prompt actions had to be taken before alternative smoking products ("ASPs") had taken root in the local market to ensure that the achievement in tobacco control over the years would not be undermined. It should be noted that FDA had yet approved the modified risk tobacco product applications that the tobacco company also submitted for the</p>	

Time marker	Speaker	Subject(s)/Discussion	Action required
		HNB product concerned to market it with claims of reduced exposure or reduced risk.	
003211 - 003907	Chairman Mr CHAN Chi-chuen Admin	<p>Elaborating on the decision of FDA referred to by Mr Jimmy NG and Mr SHIU Ka-fai at the earlier part of the meeting, Mr CHAN Chi-chuen urged the Administration not to be so overbearing to impose a full ban on both e-cigarettes and HNB products, which in his view, should be subjected to separate legislative framework, and all future non-conventional tobacco products simply because it considered that the legislative proposals would have the support of majority of Members. He appealed members' support for his moving of two motions at the later part of the meeting to call on the Administration to suspend the legislative exercise and listen to different views on the Bill.</p> <p>The Administration's advice that with public health as its prime consideration, the legislative proposals were drawn up after having taken into account, among others, the scientific evidence on the harm of the new smoking products, recommendations of the World Health Organization, views from different sectors, and local smoking prevalence. It should be noted that products that would fall within the definition of ASP were classified into three categories under Part 2 of the proposed new Schedule 7 to the Smoking (Public Health) Ordinance (Cap. 371) ("the Ordinance").</p>	
003908 - 004455	Chairman Mr Tommy CHEUNG Admin	Casting doubt on the comprehensiveness of the scientific evidence that the Administration had made reference to in formulating the legislative proposals, Mr Tommy CHEUNG requested the Administration to provide, in bilingual form, copies of the relevant materials to facilitate discussion of the Bills Committee. In response, the Administration advised that a list of the relevant studies, most of which were protected by copyright and only available in English, had been set out in Annex A to LC Paper No. CB(2)1175/18-19(03) and it stood ready to explain any queries from members on the studies.	
004456 - 005228	Chairman Mr WONG Ting-kwong Admin	<p>In response to Mr WONG Ting-kwong's enquiry, the Administration elaborated on the harmful effects of e-cigarettes and HNB products as set out in Annex B to the Legislative Council ("LegCo") Brief [File Ref: FH CR 1/3231/19].</p> <p>Mr WONG Ting-kwong's request for the Administration to advise in writing (a) the reasons for its sudden change in the legislative direction from the previous proposal to regulate e-cigarettes and other new smoking products in a way similar to conventional smoking products as proposed in June 2018 ("the 2018 proposal") to the current legislative proposals; and (b) its response to his concern that the legislative proposals of not prohibiting the use of prescribed ASPs otherwise than in a no smoking area or public transport carrier and the possession of these products for self-use would give rise to black market trade activities.</p>	Admin
005229 - 010005	Chairman Mr AU Nok-hin Admin	Referring to the conclusion of a journal article entitled "Effect of IQOS introduction on cigarettes sales: evidence of decline and replacement" that the net population health impact could not	

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		<p>be assessed without resolving several key uncertainties related to the direct harm of IQOS Heating Tobacco System and the precise patterns of both smoking and IQOS use, Mr AU Nok-hin considered that a full ban should not be imposed on HNB products to deprive adult smokers' right of choice unless there was conclusive evidence that these products were more harmful than conventional tobacco products.</p> <p>The Administration stressed that there was a remaining gap in the evidence on the potential adverse health outcomes on the long-term use of HNB products and reiterated its justifications for the legislative proposals.</p>	
010006 - 010659	Chairman Mr MA Fung-kwok Admin	<p>Pointing out that the local market supply of ASPs would be cut if the Bill was passed, Mr MA Fung-kwok said that he did not subscribe to the explanations given by the Administration in paragraphs 6 and 7 of LC Paper No. CB(2)1431/18-19(03) for not adopting his proposal of extending the exemption under the existing section 3(2A) of the Ordinance to ASPs to the effect that a person was not prevented from smoking or carrying an activated ASP in a no smoking area if he was exempted under Schedule 5 to the Ordinance, including live performance and recording for film or television programme which, in his view, would facilitate the operation of the industry.</p>	
010700 - 011551	Chairman Dr KWOK Ka-ki Admin	<p>Noting that the Bill, if passed, would come into operation on the expiry of six months after the day on which it was published in the Gazette as an Ordinance, Dr KWOK Ka-ki questioned about the need to provide such a transitional period. In response, the Administration explained that suppliers might require time to export the prescribed ASPs, which was not prohibited under the Bill, to clear their stock.</p> <p>In response to Dr KWOK Ka-ki and the Chairman's questions, the Administration assured members that it would enhance publicity on the harmful effects of new smoking products, in particular HNB products, through various channels.</p>	
011552 - 011611	Chairman Mr SHIU Ka-fai	<p>The Chairman's remark on the wordings of the motions proposed by Mr CHAN Chi-chuen.</p>	
011612 - 012304	Chairman Mr SHIU Ka-fai	<p>Mr SHIU Ka-fai shared the view of Mr MA Fung-kwok, reiterated the relevant practices of the Mainland and US, and added that:</p> <p>(a) about 52% of the 270-odd deputations who had made oral representations to the Bills Committee and about 60% of the some 11 600 written submissions received by the Bills Committee so far were opposed to the Bill;</p> <p>(b) there might be an increase in the illicit trade activities of HNB products as the amount of duty collected on tobacco products was decreased by \$11.5 million from 2017-2018 to 2018-2019 whereas that on HNB products was increased by only \$1.3 million during the same period; and</p>	

Time marker	Speaker	Subject(s)/Discussion	Action required
		(c) the Thailand Government had set up a task force in December 2018 to review the existing ban on new smoking products in response to the concern raised by some consuls on the inconvenience caused by the policy to tourists. According to a survey, the yearly number of incoming visitors from UK would be reduced by 35 000 if the Bill was passed.	
012305 - 012609	Chairman Mr SHIU Ka-fai Prof Joseph LEE	Prof Joseph LEE's concern over the appropriateness for using the term "opposition camp" by the Chairman in the context of discussion of the Bills Committee; and Mr SHIU Ka-fai's view on the role of the Chairman. In response, the Chairman said that he would continue to ensure the smooth conduct of meetings in his capacity as Chairman, and would give his personal views on the Bill during his assigned speaking time.	
012610 - 013420	Chairman Mr Tommy CHEUNG Admin	Mr Tommy CHEUNG's view that the Administration should assess the economic impact arising from the legislative proposals. On Mr Tommy CHEUNG's request that the Administration should provide, in bilingual form, the full set of the scientific studies listed in Annex A to LC Paper No. CB(2)1175/18-19(03) to facilitate the discussion of the Bills Committee, the Administration explained the difficulties in acceding to the request and added that members could access the studies which were available in the public domain.	
013421 - 014156	Chairman Mr AU Nok-hin Admin	Citing the conclusion of the journal article entitled "Evolving IQOS packaging designs change perceptions of product appeal, uniqueness, quality and safety: a randomised experiment, 2018, USA" that regulators should consider the visual design of packaging of HNB products as linking or separating IQOS products with a well-established cigarette brand changes how adult smokers respond to the product, Mr AU Nok-hin opined that the Administration could regulate the packaging of ASPs to make them less appealing to adolescents instead of proposing a full ban on these products. The Administration advised that the 2018 proposal, which covered regulatory measures on packaging and promotion of e-cigarettes, HNB products and herbal cigarettes, had been heavily criticized by many quarters. It further elaborated the prevalence and growth of underage use of ASPs in US and Japan as set out in paragraph 5 of LC Paper No. CB(2)1175/18-19(03).	
014157 - 015731	Chairman Mr CHAN Chi-chuen Admin Mr Tommy CHEUNG	In view of the Administration's refusal to address the various concerns of members on the Bill, Mr CHAN Chi-chuen called on the Secretary for Food and Health to attend the next meeting of the Bills Committee to answer questions from members. At Mr CHAN Chi-chuen's request, the Administration elaborated on its analysis of the materials issued by FDA in respect of its issuance of a premarket tobacco product application marketing order to authorize the marketing of IQOS Tobacco Heating System for the US market and concluded that there was a lack of conclusive evidence that HNB products were less harmful than conventional cigarettes and tobacco products.	

Time marker	Speaker	Subject(s)/Discussion	Action required
		<p>Expressing disagreement to the conclusion drawn by the Administration on the FDA's materials, Mr Tommy CHEUNG requested the Administration to provide the full version of the said materials in bilingual form for thorough discussion of the Bills Committee and that no meeting should be held until the Administration was ready to provide the relevant materials.</p>	Admin
015732 - 020126	<p>Chairman Mr Jimmy NG Admin</p>	<p>Mr Jimmy NG cast doubt on whether the proposed full ban on HNB products was well justified given that there was a lack of scientific evidence to prove that these products were more harmful than conventional cigarettes and tobacco products; and his remark that manufacturers of HNB products had never claimed that the products were developed for smoking cessation purpose.</p> <p>The Administration's advice that there was increasing evidence that ASPs were harmful to health. There was a need to introduce a full ban on ASPs, including HNB products, under the precautionary principle to prevent the harm of these products from taking root.</p>	
020127 - 020225	<p>Chairman Mr SHIU Ka-fai Mr CHAN Chi-chuen</p>	<p>At 12:43 pm, the Chairman extended the meeting time for 15 minutes beyond the appointed ending time at 12:45 pm for dealing with the two motions proposed by Mr CHAN Chi-chuen, and ordered the ringing of the five-minute voting bell.</p>	
020226 - 020903	<p>Chairman Mr CHAN Chi-chuen</p>	<p>Handling of the motions proposed by Mr CHAN Chi-chuen</p>	
020904 - 021657	<p>Chairman Mr SHIU Ka-fai Mr Tommy CHEUNG</p>	<p>Mr Tommy CHEUNG said that the Liberal Party objected to the legislative proposals to impose a full ban on HNB products. Referring to the Administration's analysis of the materials issued by FDA in respect of its issuance of a premarket tobacco product application marketing order to authorize the marketing of IQOS Tobacco Heating System for the US market at the earlier part of the meeting, Mr SHIU Ka-fai and Mr Tommy CHEUNG remarked that FDA had stated in its press release issued on 30 April 2019 that authorizing these products for the US market was appropriate for the protection of public health as these products produced fewer or lower levels of some toxins than combustible cigarettes and the aerosol produced by these products contained fewer toxic chemicals than cigarette smoke, and many of the toxins identified were present at lower levels than in cigarette smoke.</p> <p>Mr SHIU Ka-fai drew members' attention to a submission [LC Paper No. CB(2)1214/18-19(1777)] which had cited a study published by the Division of Environmental and Preventive Medicine at Tottori University in May 2018 which revealed that youth usage of HNB products was much lower than that of conventional cigarettes (i.e. 0.3% versus 1.4% in the third year senior high school males aged 17 to 18).</p>	
021658 - 021801	<p>Chairman</p>	<p>The Chairman's request for the Administration to compare the pros and cons, including but not limiting to the following aspects: (a) health risks; (b) effects on smoking prevalence; (c)</p>	Admin

Time marker	Speaker	Subject(s)/Discussion	Action required
		legal and illicit trade of the products concerned; and (d) duty revenue from tobacco, of the 2018 proposal versus the current legislative proposals.	
<i>Agenda item II: Any other business</i>			
021802 - 021812	Chairman	Closing remarks	

Council Business Division 2
Legislative Council Secretariat
6 November 2019