

立法會
Legislative Council

LC Paper No. CB(2)722/19-20

(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 seventh meeting
held on Monday, 2 December 2019, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Members present :

Hon KWOK Wai-keung, JP (Chairman)
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 MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon Kenneth LEUNG
Dr Hon KWOK Ka-ki
Hon IP Kin-yuen
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Hon Junius HO Kwan-yiu, JP
Hon HO Kai-ming
Hon SHIU Ka-fai
Dr Hon Pierre CHAN
Hon LUK Chung-hung, JP
Dr Hon CHENG Chung-tai
Hon AU Nok-hin

Members absent : Hon Alice MAK Mei-kuen, BBS, JP
Hon Dennis KWOK Wing-hang
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon CHUNG Kwok-pan
Hon CHEUNG Kwok-kwan, JP
Hon Kenneth LAU Ip-keung, BBS, MH, JP
Hon Jeremy TAM Man-ho

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 YUEN Ka-yiu
Medical and Health Officer (Tobacco and Alcohol
Control Office)3
Department of Health

Ms Ida NG
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. Meeting with the Administration

[File Ref.: FH CR 1/3231/19, LC Paper No. LS48/18-19, CB(2)244/19-20(01), CB(2)283/19-20(01) to (03), CB(2)299/19-20(01), CB(2)966/18-19(02), CB(2)1175/18-19(01), CB(2)1431/18-19(04), CB(2)1651/18-19(01), CB(2)1749/18-19(01) and CB(3)397/18-19]

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

2. Mr Tommy CHEUNG indicated that the Liberal Party planned to submit for consideration by the Bills Committee at its next meeting a set of proposed amendments to the Bill to the effect that heat-not-burn ("HNB") products would not be subject to the proposed prohibition of import, manufacture or sale and restriction of the giving, possession or promotion of the prescribed alternative smoking products but a regulatory regime similar to that of conventional cigarettes.

Admin

3. The Bills Committee requested the Administration to:

- (a) in respect of the longitudinal study on HNB products in Japan quoted by the Administration in paragraph 10 of LC Paper No. CB(2)283/19-20(02), provide, if available, for the purpose of comparison with the findings that the use of HNB products among adolescents aged 15 to 19 has increased from 0.6% in 2015 to 2% in 2017, the prevalence of conventional cigarette use among adolescents aged 15 to 19 in the corresponding period;
- (b) in respect of the population data of Korea published in August 2019 on youth use of HNB products quoted by the Administration in paragraph 10 of LC Paper No. CB(2)283/19-20(02), provide, if available:
 - (i) a breakdown by the types of smokers (i.e. new smokers or conventional cigarette users who switched to HNB products) of the 2.8% survey respondents aged 12 to 18 who had used HNB products in the one year after the introduction of these products into the Korean market; and

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- (ii) the annual smoking prevalence in Korea in the past five years, with a breakdown by the use rates of conventional cigarettes, electronic cigarettes ("e-cigarettes") and HNB products; and the factors causing an increase or decrease, as the case might be, in these figures over the said period; and
- (c) clarify why the number of signatories of the Hong Kong Council on Smoking and Health's "Support to enact a total ban on e-cigarettes and other new tobacco products" Signatory Campaign as referred to by the Administration at the meeting was different from that as shown on the website of the Signatory Campaign as of the date of this meeting.

II. Any other business

- 4. There being no other business, the meeting ended at 1:01 pm.

Council Business Division 2
Legislative Council Secretariat
17 March 2020

**Proceedings of the seventh meeting of
the Bills Committee on Smoking (Public Health) (Amendment) Bill 2019
held on Monday, 2 December 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>			
000704 - 000722	Chairman	Opening remarks	
000723 - 001740	Chairman Admin	Briefing by the Administration on its respective responses to the follow-up actions arising from the discussion at the meeting on 25 June 2019 and the two motions passed at that meeting [LC Paper Nos. CB(2)283/19-20(02) and (03)].	
001741 - 003847	Chairman Mr MA Fung-kwok Admin Mr Jimmy NG Mr SHIU Ka-fai	<p>While agreeing with the Administration's justifications for 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 MA Fung-kwok did not subscribe to the Administration's explanation that a full ban should also be imposed on heat-not-burn ("HNB") products which, as pointed out by the Administration, had a lower level of some toxicants as compared to conventional cigarettes. In his view, the legislative proposal of solely cutting the local market supply of HNB products without prohibiting the use of these products, the usage of which among smokers was already not very low, would give rise to illicit trade activities. A more desirable regulatory approach was to set a statutory limit on the level of toxicants contained in these products.</p> <p>Mr Jimmy NG's criticism that the Administration's summary of the United States Food and Drug Administration ("FDA")'s review report on the pre-market tobacco product application for a heated tobacco product called IQOS was taken out of context. Noting that FDA's review report revealed that some data from countries where IQOS was marketed showed low uptake by youth and current non-smokers and concluded that IQOS was appropriate for protection of public health, he asked whether the Administration would introduce a regulatory regime for HNB products. Mr SHIU Ka-fai queried why the Administration's stance was in contrary to the above conclusion of FDA.</p> <p>The Administration's elaboration on (a) the toxicants and health risks of HNB products as set out in paragraph 4 of LC Paper No. CB(2)283/19-20(02); (b) the factors FDA would take into account in determining whether a tobacco product would be considered "as appropriate for protection of public health" as set out in paragraph 2 of the Appendix to the Annex to the paper; and (c) the reasons why the Administration disagreed with FDA's conclusion that the uptake of IQOS by youth was low as set out in paragraphs 14 and 15 of the Annex to the paper. It further advised that many chemicals of HNB products did not have sufficient inhalation toxicity or genotoxicity or carcinogenicity data available, and as such it was difficult, if not impossible, to set statutory limits on the various chemicals of these products. The</p>	

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		<p>imposition of a full ban on the prescribed alternative smoking products ("ASPs") would make potential consumers difficult to get access to these products 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>Mr SHIU Ka-fai stressed that HNB products and e-cigarettes were different products and should not be subject to the same legislative approach. He did not subscribe to the Administration's view that it would be difficult to impose statutory limits on the chemicals of HNB products as there was no safe level of exposure to tobacco smoke. In addition, according to the Administration's summary of FDA's review of IQOS (Appendix to the Annex to LC Paper No. CB(2)283/19-20(02)), while some of the chemicals of the product aerosols were genotoxic or cytotoxic, these chemicals were present in very low levels.</p>	
003848 - 004915	Chairman Mr SHIU Ka-fai Admin Mr Tommy CHEUNG	<p>Referring to the Administration's remarks in the Annex to LC Paper No. CB(2)283/19-20(02) that the United States was not a Party to the Framework Convention on Tobacco Control ("FCTC") and hence, was not bound to implement tobacco control policies and measures in accordance with the provisions of FCTC, Mr SHIU Ka-fai sought explanation from the Administration as to the reason why it did not follow the practice of Japan, Korea and Canada, which were Parties to FCTC, to allow the sale of HNB products under a regulatory regime.</p> <p>The Administration's advice that each place would take into account a basket of factors and its local situation, such as smoking prevalence, in determining its tobacco control policies. Referring to the longitudinal study on HNB products in Japan quoted by the Administration in paragraph 10 of LC Paper No. CB(2)283/19-20(02), Mr SHIU Ka-fai requested the Administration to provide in writing, if available, for the purpose of comparison with the findings that the use of HNB products among adolescents aged 15 to 19 had increased from 0.6% in 2015 to 2% in 2017, the prevalence of conventional cigarette use among adolescents aged 15 to 19 in the corresponding period.</p> <p>Mr Tommy CHEUNG's remarks that with the multi-pronged tobacco control efforts of the Administration, smoking prevalence of Hong Kong, in particular that of the youth, was already very low. Given that not many members of the Bills Committee were supportive to the legislative proposal of introducing a full ban on HNB products, the Administration should only take forward the proposed full ban on e-cigarettes at this stage. The Liberal Party would submit a set of proposed amendments to the Bill in this regard for the Bills Committee's consideration at the next meeting.</p>	Admin
004916 - 005753	Chairman Mr CHAN Chi-chuen Admin	Mr CHAN Chi-chuen expressed dissatisfaction that the response of the Administration towards the two motions passed at the last meeting of the Bills Committee, which requested for a suspension of the legislative exercise and the employment of different means to regulate e-cigarettes and HNB products, was to secure passage	

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		<p>of the Bills as soon as practicable. Enquiring about the meeting schedule of the Bills Committee in the current legislative session, he said that he did not subscribe to the Administration's view that the formal introduction of HNB products into the local market could reverse Hong Kong's downward trend of smoking prevalence and he intended to propose a motion to call for the withdrawal of the Bill.</p> <p>Elaborating on the respective prevalence and trend of e-cigarette use and HNB products use among young people in Canada and in Japan and Korea as set out in paragraphs 9 and 10 of LC Paper No. CB(2)283/19-20(02), the Administration stressed that a full ban of ASPs was the most effective control in prohibiting these emerging products with health risks and marketing appeal from entering and taking root in the local market. The Administration explained the rationale for the proposed full ban of HNB products as set out in LC Paper No. CB(2)283/19-20(03). It would strive to secure passage of the Bill in the current legislative session.</p>	
005754 - 010640	Chairman Mr YIU Si-wing Admin	<p>Mr YIU Si-wing's remarks that members of the Bills Committee in general did not object to the proposed full ban on e-cigarettes but had various concerns over the proposed full ban on HNB products. However, the Administration had failed to provide comprehensive information, scientific evidence and local findings to facilitate the Bills Committee's consideration of the merits and demerits of the relevant legislative proposal. In response, the Administration advised that the increasing uptake of HNB products in overseas, after such products had been put on the market just for a short period of time, had raised grave concern. There was currently no evidence to suggest that a lower level of some toxicants translated to reduced health risk. Hence, there was a need to prevent this new class of addictive and harmful smoking products from taking root in the local market.</p> <p>In reply to Mr YIU Si-wing's concern about the enforcement of the proposed prohibition of the bringing of prescribed ASPs into Hong Kong by incoming travellers, the Administration advised that if the Bill was passed, it would step up publicity to enhance incoming travellers' awareness of the prohibition. It intended to adopt a lenient approach at the early stage of the enactment of the relevant provisions. Incoming travellers who had disposed of HNB products for their own use upon arrival could use nicotine patches to ease craving.</p>	
010641 - 011448	Chairman Mr LEUNG Yiu-chung Admin	<p>Mr LEUNG Yiu-chung's enquiry about how the passage of the Bill, which solely cut the local market supply of HNB products without prohibiting the use of these products, could lower smoking prevalence or reduce the use of HNB products. He drew members' attention to the findings of a local survey which revealed that over 90% of 500-odd respondents objected to the proposed full ban on HNB products and if imposed, HNB users would not quit smoking but would enter into the black market of HNB products or switch to the use of conventional cigarettes.</p> <p>The Administration advised that protecting public health was its prime consideration. There was no reason to enable a new</p>	

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		<p>smoking product that was known to be harmful to take root in the market as being called for by many non-smokers as well as the health and education sectors. This was evident by the tens of thousands of signatures collected by different organizations indicating support to the legislative proposals, including some 70 000 signatories under the Hong Kong Council on Smoking and Health ("COSH")'s "Support to enact a total ban on e-cigarettes and other new tobacco products" Signatory Campaign. It should also be noted that illicit trade could take place regardless of whether a full ban or a regulatory regime would be introduced for HNB products.</p>	
011449 - 012300	Chairman Mr WONG Ting-kwong Admin	<p>Echoing other members' concern over the incomprehensiveness of the information the Administration had provided to the Bills Committee, Mr WONG Ting-kwong remarked that in formulating the legislative proposals in relation to HNB products, the Administration should take into account, among others, (a) the black market issue; (b) the negative impact of the implementation of the proposed full ban on the business of licensed newspaper hawkers who sought to be allowed to sell HNB products under their licences in the future; (c) the relatively small opportunity of circulating HNB products in the social setting; and (d) the fact that family, school and public education was the main factor in lowering youth smoking prevalence.</p> <p>In respect of the population data of Korea published in August 2019 on youth use of HNB products quoted by the Administration in paragraph 10 of LC Paper No. CB(2)283/19-20(02), Mr WONG Ting-kwong requested the Administration to, provide, if available, a breakdown by the types of smokers (i.e. new smokers or conventional cigarette users who switched to HNB products) of the 2.8% survey respondents aged 12 to 18 who had used HNB products in the one year after the introduction of these products into the Korean market.</p>	Admin
012301 - 012921	Chairman Mr AU Nok-hin Admin	<p>Given the divergent views among members on the proposed full ban on HNB products, Mr AU Nok-hin, who declared that he was a non-smoker, urged the Administration to re-consider how it could take forward the current legislative exercise. In response, the Administration reiterated that it would strive to secure passage of the Bill in the current legislative session.</p>	
012922 - 013919	Chairman Dr KWOK Ka-ki Mr Tommy CHEUNG Mr SHIU Ka-fai Admin	<p>Expressing support to the Bill, Dr KWOK Ka-ki surmised that some tobacco companies might use means such as "transfer of benefit" to persuade individual Members to object to the Bill as it was expected that the sale of HNB products would account for about 40% of their profits in future.</p> <p>Mr Tommy CHEUNG and Mr SHIU Ka-fai expressed concern about Dr KWOK Ka-ki's allegation of Members' misbehaviour without any supporting evidence.</p> <p>On Dr KWOK Ka-ki's concerns about the proposed arrangement of not prohibiting the use of ASPs otherwise than in a no-smoking area or public transport carrier and the existing regulatory control of ASPs, the Administration elaborated on the justifications for</p>	

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		the proposed full ban and the registration requirement of products containing nicotine under the Pharmacy and Poisons Ordinance (Cap. 138).	
013920 - 014610	Chairman Ms Elizabeth QUAT Admin	<p>Ms Elizabeth QUAT's remarks that given that all tobacco products were addictive and harmful, she maintained the view that a full ban should be imposed on e-cigarettes and HNB products to prevent an increase in smoking prevalence, in particular that of youth and women who were promotion targets of tobacco companies. Expressing concern over the proposed arrangement of not prohibiting the use of prescribed ASPs otherwise than in a no-smoking area or public transport carrier, she called on the Administration to step up public education to enable members of the Bills Committee and the general public to better understand the health effects of these products and the rationale for the proposed full ban.</p> <p>The Administration's advice that it would not rule out the need to prohibit the use of prescribed ASPs as the next step. The target of the Administration was to lower the smoking prevalence to 7.8% by 2025 and move toward the endgame for tobacco.</p>	
014611 - 015016	Chairman Mr Frankie YICK Admin	Mr Frankie YICK's request for the Administration to advise in writing the annual smoking prevalence in Korea in the past five years, with a breakdown by the use rates of conventional cigarettes, e-cigarettes and HNB products; and the factors causing an increase or decrease, as the case might be, in these figures over the said period.	Admin
015017 - 015804	Chairman Mr Andrew WAN Admin	<p>Mr Andrew WAN declared that he was a non-smoker and had no contact with any tobacco companies or any organizations formed under these companies. While having no view on imposing a full ban on all tobacco products, he considered that the Bill, which subjected prescribed ASPs but not the more harmful conventional cigarettes to a full ban, was not logical and justifiable. He criticized that the Administration had turned a deaf ear to the requests of the Bills Committee as set out in the two motions passed at the meeting on 25 June 2019.</p> <p>In response to Mr Andrew WAN's enquiry in relation to paragraph 10 of LC Paper No. CB(2)283/19-20(03), the Administration elaborated on the manufacturing and lack of safety standard of the interchangeable devices of HNB products. It further advised that the proposed ban was consistent with the Administration's goal to achieve the target of lowering the smoking prevalence to 7.8% by 2025 and an endgame for tobacco.</p>	
015805 - 020520	Chairman Admin	In view of the concerns of many Members and the community over the proposed full ban on HNB products, the Chairman asked whether the Administration had considered putting on shelf the proposed full ban on HNB products and secure the passage of the legislative proposals in relation to the introduction of a full ban on e-cigarettes as a first step; and if not, the measures to be put in place by the Administration to strengthen tobacco control in the event that the Bill was not passed in the current legislative	

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		<p>session. In response, the Administration advised that the way forward would be subject to the deliberation of the Bills Committee. In case the Bill was not passed in the current legislative session, it would continue its multi-pronged tobacco control efforts and enforcement under the existing regulatory regime.</p> <p>At 12:44 pm, the Chairman extended the meeting time for 15 minutes beyond the appointed ending time at 12:45 pm.</p>	
020521 - 021451	Chairman Mr IP Kin-yuen Admin Mr SHIU Ka-fai	<p>Mr IP Kin-yuen's remarks that he was in support of the proposed full ban on e-cigarettes and HNB products, and a full ban on all tobacco products in the long run. He called on the Administration to provide more scientific evidence on the gateway effects of HNB products and how these products would reduce smokers' intention to quit smoking and lead to the emergence of a new generation of smokers so as to justify the proposed full ban of these products.</p> <p>The Administration advised that since HNB products were often packaged as less harmful substitutes, the public, including smokers and non-smokers, might underestimate the harmful effects of these products if these products were allowed to be sold. This might also prevent smokers from quitting smoking completely when they thought that switching to these products could reduce harm, thus undermining the achievement in tobacco control over the years. Referring to the remarks made by Mr SHIU Ka-fai at the earlier part of the meeting that the levels of some toxicants in HNB products were lower than those found in conventional cigarettes, the Administration stressed that while FDA concluded that there was potential to reduce exposure to harmful substances in users who completely switched to IQOS, it found that dual use of the product with conventional cigarettes had been common. There was also no scientific evidence to support the claim that lower toxicant levels would result in low risks compared to conventional cigarettes.</p> <p>Mr SHIU Ka-fai remarked that on the premise that the levels of some toxicants in HNB products were lower than those found in conventional cigarettes, the health risk borne by dual users would be lower than that borne by conventional cigarette users. It should be noted that New Zealand had changed from a full ban on HNB products to a regulatory approach. Locally, 54% of the deputations making oral representations to the Bills Committee supported a regulatory approach while 46% agreed with a full ban approach.</p> <p>At the request of Mr SHIU Ka-fai, the Administration agreed to clarify in writing the reason why the number of signatories of COSH's Signatory Campaign as referred to by the Administration at the earlier part of the meeting was different from that as shown on the website of the Signatory Campaign.</p>	Admin
021452 - 021840	Chairman Mr Andrew WAN Admin	Mr Andrew WAN reiterated his view that he did not subscribe to the logic put forth by the Administration so far for introducing a full ban on HNB products. As the community had no consensus	

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		on the issue, the Administration should take a step backward to secure the passage of the legislative proposals in relation to the introduction of a full ban on e-cigarettes in the current legislative session.	
<i>Agenda item II: Any other business</i>			
021841 - 022007	Chairman Mr CHAN Chi-chuen	In response to Mr CHAN Chi-chuen's question, the Chairman said that subject to the discussion progress of the Bills Committee, his plan was for the Bills Committee to hold meetings once a month. Closing remarks	

Council Business Division 2
Legislative Council Secretariat
17 March 2020