

立法會

Legislative Council

LC Paper No. CB(2)966/18-19(03)

Ref : CB2/BC/4/18

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

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Smoking (Public Health) (Amendment) Bill 2019 ("the Bill") and gives a brief account of the discussion by the Panel on Health Services ("the Panel") on the Administration's proposals in relation to regulation of electronic cigarettes ("e-cigarettes")¹ and other new smoking products, namely heat-not-burn ("HNB") products² and herbal cigarettes³.

Background

2. The Smoking (Public Health) Ordinance (Cap. 371) ("the Ordinance") with its subsidiary legislation provide the legal framework on tobacco control for, among others, prohibiting smoking in designated areas; restricting tobacco advertising; and restricting the sale and giving of tobacco products. At present,

¹ E-cigarettes, which are battery-powered, are the most common prototype of electronic nicotine delivery systems or electronic non-nicotine delivery systems that do not burn or use tobacco but heat e-liquid that may or may not contain nicotine to create an aerosol the user then inhales. An e-cigarette usually comprises a mouthpiece, a battery-powered heating element, a cartridge or refillable tank containing e-liquid and an atomizer that vaporizes e-liquid when heated.

² HNB products use an electronic heating system to heat tobacco up to 350°C (lower than 600°C as in conventional cigarettes) to produce aerosol containing nicotine and other chemicals, which is inhaled by users through the mouth. The heating system, which is enclosed in a device, can be (a) an external heat source to aerosolize nicotine from specially designed cigarettes or tobacco sticks; or (b) a heated sealed chamber to aerosolize nicotine directly from tobacco leaf.

³ Herbal cigarettes are made with plants, herbs or fruits with no tobacco. They are consumed via a combustion process.

cigar, cigarette, cigarette tobacco, pipe and pipe tobacco are the only products covered under the Ordinance. However, by virtue of the definition of "smoke" in section 2 of the Ordinance, persons are in effect prohibited from smoking e-cigarettes and other new smoking products in designated no smoking areas and prescribed public transport carriers under sections 3 and 4 of the Ordinance. Separately, e-cigarettes and other new smoking products containing more than 0.1% of nicotine are categorized as Part 1 poisons, and are considered pharmaceutical products under the Pharmacy and Poisons Ordinance (Cap. 138). As such, they must be registered with the Pharmacy and Poisons Board of Hong Kong for sale or distribution, and can only be legally possessed or sold by licensed medicine dealers, including licensed wholesale dealers and authorized sellers of poisons.

3. According to the World Health Organization ("WHO"), all forms of tobacco use are unlikely to be harmless. The Seventh session of the Conference of the Parties to the World Health Organization Framework Convention on Tobacco Control ("WHO FCTC")⁴ held in 2016 proposed to the Parties to apply regulatory measures either to prohibit or restrict the manufacture, importation, distribution, presentation, sale and use of electronic nicotine delivery systems or electronic non-nicotine delivery systems, as appropriate to their national laws and public health objectives. WHO also advises that HNB products should be subject to policy and regulatory measures applied to all other tobacco products, in line with WHO FCTC.

4. In the light of the apparent health effect and hazards arising from the use of e-cigarettes, the wider long-term impact to students and youngsters and the recommendation of WHO, the Administration proposed in May 2015 to legislate for the prohibition of import, manufacture, sale, distribution, and advertising of e-cigarettes ("the 2015 proposal"). Subsequently, the Administration put forth a refined proposal in June 2018 to regulate e-cigarettes and other new smoking products in a way similar to conventional tobacco products⁵ with an aim to prevent youth and non-smokers from picking up the smoking habit, and to

⁴ WHO FCTC entered into force in 2005. Parties are obliged to take a number of steps to reduce demand and supply for tobacco products. China is one of the signatories to and has ratified WHO FCTC, the application of which has been extended to Hong Kong since 2006.

⁵ The proposed regulatory regime included: (a) prohibition of sale to minors; (b) prohibition of advertisement, promotion and sponsorship; (c) prohibition of sale unless in retail package bearing health warning; (d) prohibition of sale from vending machines; (e) a ban on use in no smoking areas; (f) relevant labeling requirements, including indication of the presence of tar and nicotine, and a ban on any claims or suggestions that were not backed by scientific evidence; (g) a ban on certain additives (such as vitamins) in e-cigarettes which might create an impression that such products have health benefits or present reduced health risks, and any promotion that suggested that the products might contain any appealing flavour; and (h) taxation on any tobacco component.

remind smokers and ex-smokers that these new products are harmful ("the June 2018 proposal"). In October 2018, the Chief Executive announced in her 2018 Policy Address that, with the protection of public health as the prime consideration, the Administration would submit a legislative proposal in the 2018-2019 legislative session to ban the import, manufacture, sale, distribution and advertisement of e-cigarettes and other new smoking products ("the October 2018 proposal").

The Bill

5. The Administration introduced the Bill into the Legislative Council ("LegCo") on 20 February 2019. The Bill seeks to amend the Ordinance, two items of its subsidiary legislation, and the Dutiable Commodities Ordinance (Cap. 109) to (a) prohibit the import, manufacture or sale and restrict the giving, possession or promotion of prescribed alternative smoking products ("ASPs"); (b) extend the current prohibitions on the use of cigarettes, cigars or pipes in specified places to the use of ASPs; (c) extend the current restrictions on tobacco advertising to the advertising of ASPs; (d) exclude ASPs from being dutiable commodities; and (e) make related, textual and consequential amendments. The key features of the Bill are set out in paragraphs 11 to 23 of the LegCo Brief (File Ref.: FH CR 1/3231/19) issued by the Food and Health Bureau and the Department of Health on 13 February 2019.

Deliberations of the Panel

6. The Panel was consulted on the 2015 proposal on 18 May 2015, and received oral representations from deputations on the proposal on 6 July 2015. The Panel discussed the June 2018 proposal and the October 2018 proposal on 19 June 2018 and 15 October 2018 respectively. The major views and concerns of members are summarized in the following paragraphs.

The legislative direction

7. When the Panel was consulted on the 2015 proposal, members noted that scientific research in relation to e-cigarette was limited and inconclusive, and the number of smokers using e-cigarettes in Hong Kong was not significant. Members in general did not have a strong view on the proposal. Noting that the Administration had no definite timetable to put the proposed prohibition into effect, they called for the Administration to conduct local laboratory analysis of the constituents and health effects of e-cigarettes prior to mapping out the degree of regulatory control for e-cigarettes.

8. The Panel was briefed on the June 2018 proposal on 19 June 2018. Some members were gravely concerned over the drastic change in the legislative direction amid mounting evidence had suggested that e-cigarettes and other new smoking products were no less harmful than conventional cigarettes. They pointed out that these products were often packaged as less harmful substitutes with product design, flavours and promotion tactics targeted at youngsters and non-smokers. Regulating these products in a way similar to conventional cigarettes and tobacco products would increase youngsters and non-smokers' chance of picking up the smoking habit. A motion was passed at the meeting urging the Administration to expeditiously impose a ban on sale of e-cigarettes and other new smoking products. Some other members, however, considered that a removal of these alternative products from the market would lead to black market trade, affect smokers' right to consume the products concerned and increase the possibility of people returning to the more harmful cigarettes. There was also a view that conventional tobacco products and new smoking products, which were both hazardous to health, should be regulated on equal footing. The Administration advised that it would keep in view the availability of new scientific evidence, if any, and take into account stakeholders' views in considering the need to impose a more stringent control over the new smoking products.

9. Those members advocating for a prohibition of the import, manufacture, sale, distribution and advertisement of e-cigarettes and other new smoking products expressed support for the October 2018 proposal. Other members, however, requested for scientific evidence to justify a sudden change in the regulatory approach for these products within just a few months. Pointing out that countries where the sale of e-cigarettes were prohibited were mostly less developed countries, they maintained the view that adult smokers should continue to have a choice of conventional cigarettes and new smoking products. Sale of e-cigarettes and other new smoking products should be allowed but with certain restrictions so as to protect the health of children and adolescents. There was also a concern that with such a hasty policy change, the livelihood of many small and medium-sized retailers selling these products would be adversely affected. These members considered that the Administration should conduct a public consultation exercise to gauge public views in this regard.

10. The Administration advised that the latest proposal was for the prime consideration of protecting public health. In arriving the decision, it had taken into account the scientific evidence, the findings of local and overseas studies on impact of e-cigarettes on children and adolescents, as well as the concerns raised by the medical professions, education sector, parents and many members of the public over the regulatory approach adopted in the June 2018 proposal. The latest legislative direction was a first step towards the target of further reducing

local smoking prevalence to 7.8% by 2025, which had been promulgated under "Towards 2025: Strategy and Action Plan to Prevent and Control Non-communicable Diseases in Hong Kong". It should be noted that several places outside Hong Kong had already adopted an endgame strategy seek to end the tobacco epidemic. The Administration would consider whether additional measures should be introduced if there was a consensus in the community.

Products to be covered

11. Holding the view that children and adolescents might be attracted by the contemporary design and outlook of the new smoking products, some members considered that devices for consumption of these products should be subject to regulation. Some other members, however, did not subscribe to this view. They pointed out that pipes, which was a receptacle or other device designated for use for smoking tobacco in a form other than a cigar or cigarette, were currently not under regulation. The Administration advised that at present, any pipes, lighters and matches, etc., with cigarette brand names printed on would be regarded as promotion under the Ordinance and be prohibited. Its proposal was that the definition of e-cigarettes and other new smoking products would cover the devices for consumption as appropriate.

Taxation on tobacco component

12. There was a view that all new smoking products, regardless of whether they contained any tobacco component, should be subject to taxation. There was another view that the tax regime for these products should be separated from that for conventional cigarettes and tobacco products. According to the Administration, tobacco sticks of HNB products which fell within the definition of tobacco under the Dutiable Commodities Ordinance were subject to tobacco duty. It was noted that some places outside Hong Kong currently classified HNB products as "other tobacco products" with similar rates of duties being levied.

Enforceability of the legislative proposal

13. Members were concerned about the enforceability of the latest legislative proposal if the possession for personal use and the giving as a gift of e-cigarettes and other new smoking products would constitute an offence under the proposal. Question was also raised as to whether passengers would be allowed to bring these products into Hong Kong for their own use. The Administration advised that it would make reference to overseas practices and take into account local situations when mapping out the details in this regard.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
15 March 2019

Relevant papers on the Smoking (Public Health) (Amendment) Bill 2019

| Committee | Date of meeting | Paper |
|--------------------------|--------------------------|--|
| Panel on Health Services | 18.5.2015 (Item V) | Agenda Minutes CB(2)1808/14-15(01) |
| | 6.7.2015 (Item I) | Agenda Minutes |
| | 19.6.2018 (Item V) | Agenda Minutes IN11/17-18 |
| | 15.10.2018 (Item III) | Agenda CB(2)13/18-19(01) |

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