

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

**Follow-up actions arising from the discussion
at the meetings on 13, 25 and 27 April 2019**

The Government's response on the items raised by Members is set out as follows.

The proposed regime of the Smoking (Public Health) (Amendment) Bill 2019 (“Bill”)

2. To protect the public health of Hong Kong, the Bill aims to prohibit the import, manufacture, sale, distribution and advertisement of alternative smoking products (“ASPs”). We also propose to ban possession for the purpose of manufacture, sale or distribution of ASPs. The activation and use of ASPs in no smoking areas are also banned.

3. Under the Smokeless Tobacco Products (Prohibition) Regulations (Cap. 132BW) enacted in 1987, the import, manufacture, sale, possession for sale, offer or exposing for sale, consignment or delivery of any smokeless tobacco products is banned, while the use of such products is not prohibited under the said Regulations. Other than practicality in enforcement, an important consideration of the control of ASPs is that we do not want to begin with an overly stringent regime. The emphasis of the proposed ban is to make it difficult for potential consumers to get access to such products before they become widely popular, similar to what we had achieved with the ban of smokeless tobacco under Cap. 132BW.

Parts and components of ASPs

4. The definition of ASPs is set out under Part 2 of the proposed new Schedule 7 to the Smoking (Public Health) Ordinance (Cap. 371), which includes anything that is designed for use as a component of, or accessory to, an ASP (as described in item 1.1 or 2.1 under the said Part), such as a mouthpiece, heating element and battery, as well as any substance or tobacco that is packaged as being suitable for use with an ASP device (collectively “parts and components”). The reason for including such parts and components in the proposed ban is to prevent the sale of parts and components that can be easily assembled for use by members of the public on their own while the sale of whole devices is prohibited. On the other hand, in practice, it would not be feasible to ban everything that can be used as a part and component of an ASP, which may also be capable of being used with appliances that are not ASPs. We have indeed taken a balanced view on the aim of this Bill, the actual enforcement situation and concerns of

relevant stakeholders in proposing to include components of or accessories to ASPs that are “designed for use as” such components or accessories, as well as any substance or tobacco that is packaged as being suitable for use with an ASP device, in the proposed ban. The intention is not to ban components or accessories that are generally capable of being used with appliances that are not ASPs.

Import of ASPs for the purpose of export after repacking in Hong Kong

5. With regard to the ban on import of ASPs, it has been proposed under the Bill that articles in transit, air transshipment cargoes and persons in transit should be exempted. When considering whether to provide further exemption to the import of ASPs, we need to examine whether such relaxation will undermine the high level of protection to public health as intended by the Bill. Should we allow the import of ASPs for the purpose of exporting them after repacking in Hong Kong, an elaborate enforcement regime would be required to monitor the whole supply chain, including registration and vigorous tracking of such goods to ensure that they are duly exported after repacking, instead of entering into the black market. We consider that such relaxation would require disproportionate resources in enforcement and place unnecessary pressure on the overall enforcement regime. We therefore do not agree with the Member’s suggestion to allow the import of ASPs for the purpose of exporting them after repacking in Hong Kong.

Exemption of use of ASPs in a live performance etc.

6. Section 3(2A) of Cap. 371 currently provides that a person is not prevented from smoking or carrying a lighted cigarette, cigar or pipe in a no smoking area if he is exempted under Schedule 5, including live performance and recording for film or television programme. Such exemptions are not proposed to be extended to ASPs under the Bill.

7. While currently the use of ASPs is not banned under the Bill otherwise than in a no smoking area or public transport carrier, the purpose of the Bill is to discourage the use of such products through prohibiting supply, by banning the import, manufacture, sale, distribution and promotion of the products as they are harmful to health and can bring about gateway and renormalisation effects. We would like to avoid the situation where the use of ASPs during a live performance and recording for film or television programme generates public interest in such products. Moreover, there should no longer be any local supply of ASPs upon enactment of the Bill and therefore we consider it not necessary to extend the exemption under the current section 3(2A) to ASPs.

International studies on substances in emissions of heat-not-burn (“HNB”) products

8. Current evidence has confirmed that HNB products, which are made of tobacco, also contain substances harmful to health.¹ Since these products have only emerged into the market for a relatively short period of time, the types, nature, and health effects of chemical substances that may be emitted from HNB products have yet to be determined comprehensively. The results and analysis from independent studies showed that while some harmful substances in HNB products may be reduced, there are other harmful substances or substances of unknown toxicity found to be actually increased in HNB products.² The burning process and the types and levels of chemical substances emitted from tobacco products may vary by heating at different temperatures. It is possible that HNB aerosol may contain substances that are not present in cigarette smoke.³ Laboratory studies also found that HNB products and conventional cigarettes emit similar quantities of nicotine^{4,5,6}, which is the main constituent causing addiction. Therefore, users of HNB products will be addicted to nicotine just as users of conventional cigarettes.

9. In a nutshell, independent studies on the constituents of emissions of HNB products, and their levels and toxicity, are still limited. Data on their health effects, in particular the long term health consequences, are scarce. We would like to reiterate that products with lower tar and nicotine yields and other harmful substances should not be considered less harmful (Please see Administration's response to issues raised at the meeting on 18 March 2019, LC Paper No. CB(2)1175/18-19(03)). Smokers consuming cigarettes claimed to be “low tar” or “light” inhale essentially the same amount of tar and nicotine as they would from regular cigarettes. There is no safe level of exposure to tobacco smoke, and there is no safe tobacco product. There is currently no evidence to suggest that reduced exposure to some of the toxic chemicals in tobacco smoke translates to reduced risk of disease or death in users. Our advice is that members of the public, rather than using these products that are claimed to be less harmful, should quit smoking by using methods that have been proven effective and safe, such as nicotine replacement therapy.

¹ Uchiyama S, Noguchi M, Takagi N, Hayashida H, Inaba Y, Ogura H, et al. Simple Determination of Gaseous and Particulate Compounds Generated from Heated Tobacco Products. *Chemical Research in Toxicology*. 2018;31(7):585-93.

² St.Helen G, Jacob III P, Nardone N, Benowitz NL. IQOS: examination of Philip Morris International’s claim of reduced exposure. *Tobacco Control*. 2018;Published Online First: 29 August 2018;doi: 10.1136/tobaccocontrol-2018-054321.

³ Same as 2.

⁴ Mallock N, Böss L, Burk R, Danziger M, Welsch T, Hahn H, et al. Levels of selected analytes in the emissions of “heat not burn” tobacco products that are relevant to assess human health risks. *Archives of Toxicology*. 2018;10.1007/s00204-018-2215-y.

⁵ Li X, Luo Y, Jiang X, Zhang H, Zhu F, Hu S, et al. Chemical Analysis and Simulated Pyrolysis of Tobacco Heating System 2.2 Compared to Conventional Cigarettes. *Nicotine & Tobacco Research*. 2018:nty005-nty.

⁶ Salman R, Talih S, El-Hage R, Haddad C, Karaoghlanian N, El-Hellani A, et al. Free-Base and Total Nicotine, Reactive Oxygen Species, and Carbonyl Emissions From IQOS, a Heated Tobacco Product. *Nicotine & Tobacco Research*. 2018:nty235-nty.

Duty collected from tobacco products

10. According to the Dutiable Commodities Ordinance (Cap. 109), tobacco is a dutiable commodity and is liable to duty payment. Currently, travellers bringing in HNB products for their own use exceeding the statutory duty-free concessions are liable to duty payment. The duty collected on tobacco products in the past five years with the breakdown of that on HNB products brought in by incoming travellers is as follows:

	2014-15	2015-16	2016-17	2017-18	2018-19
Duty (HK\$M)	6,072.4	6,539.2	6,001.2	6,426.7	6,310.9
- HNB products	(0)	(0)	(0)	(0.4)	(1.7)

Meeting requests received by the Food and Health Bureau and the Department of Health regarding the control of ASPs (from 2017 to April 2019)

11. According to Article 5.3 of the World Health Organization (“WHO”) Framework Convention on Tobacco Control (“FCTC”), in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law. Principle 1 of the Guidelines for implementation of Article 5.3 of the WHO FCTC states that “[t]here is a fundamental and irreconcilable conflict between the tobacco industry’s interests and public health policy interests” and Parties should protect the formulation and implementation of public health policies for tobacco control from the tobacco industry to the greatest extent possible.

12. The Food and Health Bureau has received meeting requests from Philip Morris Asia Limited and a consultancy firm working for a client considering to invest in the “e-smoking” market. In compliance with the guidelines of the WHO, we had not met with them when formulating the control of ASPs.

13. The Department of Health received a meeting request from IQOSER in February 2019. As the views of the group had been clearly expressed in the letter, we did not accede to the meeting request.

Food and Health Bureau
Department of Health
Customs and Excise Department
Department of Justice
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