

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1347/20-21  
(These minutes have been  
seen by the Administration)

Ref : CB2/BC/1/20

**Bills Committee on Smoking (Public Health) (Amendment) Bill 2019**  
**(2020-2021 session)**

**Minutes of the second meeting**  
**held on Tuesday, 17 November 2020, at 8:30 am**  
**in Conference Room 1 of the Legislative Council Complex**

- Members present** :
- Hon WONG Ting-kwong, GBS, JP (Chairman)
  - Hon Abraham SHEK Lai-him, GBS, JP
  - Hon Tommy CHEUNG Yu-yan, GBS, JP
  - Hon CHAN Kin-por, GBS, JP
  - Hon Paul TSE Wai-chun, JP
  - Hon YIU Si-wing, BBS
  - Hon MA Fung-kwok, SBS, JP
  - Hon LEUNG Che-cheung, SBS, MH, JP
  - Hon KWOK Wai-keung, JP
  - Hon Elizabeth QUAT, BBS, JP
  - Hon Martin LIAO Cheung-kong, GBS, JP
  - Ir Dr Hon LO Wai-kwok, SBS, MH, JP
  - Hon Jimmy NG Wing-ka, BBS, JP
  - Hon Holden CHOW Ho-ding
  - Hon SHIU Ka-fai, JP
  - Hon Wilson OR Chong-shing, MH
  - Dr Hon Pierre CHAN
  - Hon LAU Kwok-fan, MH
  - Dr Hon CHENG Chung-tai
- Members absent** :
- Hon Frankie YICK Chi-ming, SBS, JP (Deputy Chairman)
  - Hon Mrs Regina IP LAU Suk-yee, GBS, JP
  - Dr Hon Fernando CHEUNG Chiu-hung
  - Hon CHUNG Kwok-pan
  - Hon YUNG Hoi-yan, JP
  - Hon CHEUNG Kwok-kwan, JP
  - Hon LUK Chung-hung, JP

**Public Officers :** Item II  
**attending**

Dr CHUI Tak-yi, JP  
Under Secretary for Food and Health

Miss Amy YUEN, JP  
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 CHAN Tsz-tat  
Assistant Commissioner (Intelligence and Investigation)  
Customs and Excise Department

Mr Manuel NG  
Senior Government Counsel  
Department of Justice

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

**Staff in** : Ms Wendy KAN  
**attendance** : 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. Matter arising from the meeting on 6 November 2020**

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

Action

2. In response to the Chairman's invitation of views on how the Bills Committee should conduct the scrutiny work of the Bill, Mr Tommy CHEUNG, Mr SHIU Ka-fai, Mr LEUNG Che-cheung and Mr MA Fung-kwok expressed their views. Having taken into account members' views, the Chairman decided that (a) the Bills Committee would start the scrutiny work afresh to enable those members who had not joined the former Bills Committee to have a better understanding of the Bill to facilitate future deliberations; and (b) while no meeting would be arranged for receiving oral representations from deputations on the Bill amid the coronavirus disease 2019 epidemic, written views from interested parties and the public would be welcomed. Members raised no queries.

**II. Meeting with the Administration**

[File Ref.: FH CR 1/3231/19, LC Paper Nos. LS48/18-19, CB(3)397/18-19, 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)244/19-20(01) and CB(2)1267/19-20]

Admin

3. The Bills Committee requested the Administration to:

- (a) provide a comparison of the regulatory measures implemented by the Food and Drug Administration of the United States for electronic cigarettes ("e-cigarettes") and heated tobacco products ("HTPs"); and
- (b) advise the respective regulatory approaches for e-cigarettes and HTPs currently adopted by overseas places, including information on whether sale of these products was prohibited, allowed with restrictions or not subject to any regulation in their local markets.

**III. Any other business**

4. There being no other business, the meeting ended at 10:28 am.

**Proceedings of the second meeting of  
Bills Committee on Smoking (Public Health) (Amendment) Bill 2019  
(2020-2021 session)  
held on Tuesday, 17 November 2020, at 8:30 am  
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Matter arising from the meeting on 6 November 2020</i>			
000720 - 001837	Chairman Mr Tommy CHEUNG Mr SHIU Ka-fai Mr LEUNG Che-cheung Mr MA Fung-kwok	<p>The Chairman invited views from members on how the Bills Committee should conduct the scrutiny work of the Smoking (Public Health) (Amendment) Bill 2019 ("the Bill").</p> <p>Mr Tommy CHEUNG opined that the Bills Committee should start the scrutiny work afresh to consider the most up-to-date development relating to the tobacco products under study. The issue of whether this Bills Committee should invite deputations to give oral representations should only be considered when the coronavirus disease 2019 epidemic situation was eased.</p> <p>Mr SHIU Ka-fai said that given the substantial change in the membership of this Bills Committee as compared to the Bills Committee formed by the House Committee in 2019 to study the Bill ("the former Bills Committee"), it would be fairer to those members who had not joined the former Bills Committee if this Bills Committee started the scrutiny work afresh.</p> <p>Mr LEUNG Che-cheung said that for those members who had not joined the former Bills Committee, including himself, a fairer approach was to start the scrutiny work afresh. In view of the epidemic situation, the Bills Committee could consider inviting written views from members of the public on the Bill.</p> <p>Mr MA Fung-kwok remarked that the Bills Committee should arrange a few meetings for members, in particular those who had not joined the former Bills Committee, to discuss the general merits of the Bill. He drew members' attention that members of the former Bills Committee generally raised no objection to the prohibition of the import, manufacture, sale or offer for sale and restriction of the giving, possession or promotion ("full ban") of electronic cigarettes ("e-cigarettes"). However, there were divergent views as to whether a full ban should be imposed on heated tobacco products ("HTPs"). In his view, a full ban should not be imposed on HTPs and the Bill should extend the exemption under the existing section 3(2A) of the Smoking (Public Health) Ordinance (Cap. 371) to alternative smoking products ("ASPs").</p>	
001838 - 002131	Chairman	Having taken into account members' views, the Chairman decided that (a) the Bills Committee would start the scrutiny work afresh to enable those members who had not joined the former Bills Committee to have a better understanding of the Bill to facilitate future deliberations; and (b) while no meeting would be arranged for receiving oral representations from deputations on the Bill amid the epidemic, written views from interested parties and the public would be welcomed. Members raised no queries.	

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<i>Agenda item II: Meeting with the Administration</i>			
002132 - 002433	Chairman Admin	Briefing by the Administration on the Bill	
002434 - 002816	Chairman Mr Tommy CHEUNG	<p>Mr Tommy CHEUNG expressed disappointment that while Mr SHIU Ka-fai had submitted a set of draft amendments to the Bill which sought to exclude HTPs from the definition of ASPs to the former Bills Committee for consideration, the response of the Administration was to insist to impose a full ban covering HTPs. To secure an early passage of the Bill, he urged the Administration to:</p> <p>(a) adopt the aforementioned draft amendments to the Bill as HTP was a less harmful alternative to conventional cigarette for smokers. The United States Food and Drug Administration ("FDA") had determined that authorizing the IQOS Tobacco Heating System ("IQOS") for the market of the United States ("US") was appropriate for the protection of public health. It should also be noted that the high prices of HTPs were not affordable to most adolescents; and</p> <p>(b) step up public education on the harm of smoking to deter an increase in smoking prevalence. Hong Kong already had a relatively low smoking prevalence which, according to the latest Thematic Household Survey Report, stood at 10.2% of the local population aged 15 and above in 2019, whereas the smoking rates of Singapore and Japan were 10.6% and 17.9% respectively.</p>	
002817 - 004100	Chairman Mr SHIU Ka-fai Admin	<p>Mr SHIU Ka-fai declared that he was not a smoker and did not hold any share in tobacco companies. Being a Member returned from the functional constituency of wholesale and retail, he remarked that tobacco trade belonged to the wholesale and retail sector.</p> <p>Mr SHIU Ka-fai pointed out that all tobacco products were harmful to health. However, since conventional cigarettes were not prohibited and restricted on equal footing under the Bill, a full ban should not be imposed on HTPs to deprive the right of adult smokers to consume a less harmful product. Criticizing that the Administration had not distinguished between e-cigarettes and HTPs in the discussion of the former Bills Committee, he urged the Administration to only proceed with those legislative proposals in relation to e-cigarettes that had consensus to secure an early passage of the Bill for the protection of public health, in particular that of the adolescents, and subject HTPs to a regulatory regime similar to that of conventional cigarettes.</p>	
004101 - 004840	Chairman Mr LAU Kwok-fan	<p>Mr LAU Kwok-fan declared that he was a non-smoker. Referring to a justification put forward by the Administration that the legislative proposals could protect non-smokers from second-hand tobacco smoke, he remarked that HTPs produced less unpleasant smell to bystanders as compared to conventional cigarettes. Since a full ban was not imposed on traditional cigarettes under the Bill, he considered that a more appropriate approach to mitigate the harm of second-hand tobacco smoke was to prohibit smoking in</p>	

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		public places except in designated smoking areas. As regards the Administration's concern about the gateway effect of ASPs, a full ban on e-cigarettes, which contained harmful chemical mixture, different flavours and were highly appealing to youth, would be suffice to address the problem and existing smokers' right to consume HTPs should not be deprived.	
004841 - 005057	Chairman Mr Martin LIAO	Pointing out that e-cigarettes were typically chemical products whereas HTPs were tobacco products, Mr Martin LIAO said that he did not see the logic of the Administration's rationale for proposing a full ban on HTPs so as to protect public health as a full ban was not imposed on other tobacco products including traditional cigarettes and cigar.	
005058 - 005726	Chairman Mr KWOK Wai-keung	Mr KWOK Wai-keung opined that given the promotion tactic of e-cigarettes and HTPs which targeted not only at smokers consuming conventional cigarettes but also non-smokers, there was a need to impose a full ban on these products to avoid undermining the achievements in tobacco control over some 40 years. Pointing out that he had first proposed a full ban of e-cigarettes in 2014, he urged the Administration not to drag its feet but to enhance communication with Members on their position on the Bill and the proposed amendments to the Bill, if any, with a view to securing an early passage of the Bill.	
005727 - 010414	Chairman Dr CHENG Chung-tai	<p>Dr CHENG Chung-tai declared that he was a non-smoker. He drew members' attention to the draft amendments proposed to Taiwan's Tobacco Hazards Prevention Act, under which e-cigarettes would fall under the proposed definition of "類菸品" (English translation of which was quasi-tobacco product) and be banned, whereas HTPs would be regarded as a tobacco product and be regulated, and opined that in respect of the Administration's current legislative proposals:</p> <p>(a) a full ban should be imposed on e-cigarettes as it was evident that these products contained chemical mixture and even toxins that were hazardous to health; and</p> <p>(b) HTPs should be subject to a regulatory regime similar to that for conventional cigarettes. The current legislative proposal to impose a full ban on HTPs, which was a novel tobacco product, would create policy inconsistency as the Administration had neither proposed to impose a full ban on traditional cigarettes under the Bill nor announced any timetable to do so in the longer-term. In addition, the legislative proposal would be against Hong Kong's free market principle and freedom of choice of existing adult smokers. The Administration should instead step up education and publicity to enable the public to make an informed choice.</p>	
010415 - 012329	Chairman Mr SHIU Ka-fai Admin Mr LEUNG Che-cheung	Pointing out that HTPs, same as traditional cigarettes, were tobacco products and smokers should not be deprived of the right to choose their preferred tobacco products, Mr SHIU Ka-fai sought the Administration's view on the respective decisions made by FDA in April 2019 that authorizing the marketing of IQOS for the US market was appropriate for the protection of public health under the premarket tobacco product application	

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		<p>("PMTA") pathway; and in July 2020 that IQOS was permitted to be marketed as a modified risk tobacco product ("MRTP"). Referring to the above decisions of FDA, Mr LEUNG Che-cheung asked whether the Administration had authoritative scientific evidence to justify that HTPs which heated tobacco but did not burn it had an imminent health risk that they should be subject to a full ban but not regulatory control in Hong Kong.</p> <p>The Administration stressed that the Bill aimed at preventing the emergence of a new generation of smokers, and advised that:</p> <p>(a) under the PMTA pathway, FDA would consider the risks and benefits of the new tobacco product to the population as a whole for the issuance of a marketing order. As regards the MRTP pathway, while FDA had supported issuing an "exposure modification" order for IQOS, it had determined that the evidence did not support issuing a "risk modification" order. It should be noted that FDA had stressed that the authorization did not mean that it deemed the product to be safe for use by consumers, or the product was endorsed or approved by FDA. FDA might also withdraw the initial order (which would expire in four years) and any potential subsequent exposure modification orders if it determined that, among other things, the orders were no longer expected to benefit the health of the population as a whole, for example, as a result of an uptake in use of the product by youth or former smokers;</p> <p>(b) in respect of FDA's decision in July 2020 regarding IQOS, the World Health Organization ("WHO") had made a statement advising that (i) reducing exposure to harmful chemicals in HTPs did not render them harmless, nor did it translate to reduced risk to human health; (ii) there were some additional toxins present in HTP aerosols that were not present in conventional cigarette smoke and the health implications of exposure to these were unknown; and (iii) the granting of a temporary market authorization within US by FDA was based on factors specific to US, which was not a Party to the WHO Framework Convention on Tobacco Control; and</p> <p>(c) the Australian authority had made a final decision in August 2020 not to exempt nicotine contained in tobacco when prepared and packed for heating from all regulations as dangerous poisons. In making the decision, the authority had taken into account, among others, the decisions of FDA in respect of IQOS and the above WHO statement.</p>	
012330 - 013427	Chairman Mr Tommy CHEUNG Admin	Mr Tommy CHEUNG reiterated that smoking prevalence in Hong Kong was already very low and a more appropriate way to prevent the emergence of a new generation of smokers was to step up public education on the harm of smoking. Holding the view that HTPs should be subject to a regulatory regime similar to that of conventional cigarettes, he requested the Administration to provide from time to time up-to-date information on practices adopted by other places in respect of HTPs, and advise in writing before the next meeting a comparison of the regulatory measures implemented by FDA for e-cigarettes and HTPs.	<b>Admin</b>

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013428 - 015400	Chairman Ms Elizabeth QUAT Mr LAU Kwok-fan Admin	<p>Ms Elizabeth QUAT said that she had all along supported a full ban on all tobacco products as smoking was harmful to health and would create substantial health cost to society. While understanding that same as other places, it would be politically difficult to do so in Hong Kong, she considered that there was a need to prevent novel smoking products, which were attractive to the younger generation, from taking root in the local market. In her view, HTPs would attract a new generation of adolescents and women to become smokers as they produced less unpleasant smell. She noted that there would not be much controversy over introducing a full ban on e-cigarettes which contained a mixture of chemicals and even toxicants. To address the concern of many members that the proposed full ban on HTPs would create policy inconsistency, she urged the Administration to set out the measures and timetable for achieving a smoke-free Hong Kong so as to avoid the Bills Committee's discussion became stagnant.</p> <p>Mr LAU Kwok-fan expressed support for a full ban on all tobacco products as smoking was harmful to health. However, he did not support the current legislative proposal of introducing a full ban on HTPs as conventional cigarettes, which were known to be harmful, were not banned on equal footing. A more logical approach was to subject HTPs to a regulatory regime similar to that of conventional cigarettes. Ms Elizabeth QUAT and Mr LAU Kwok-fan also enquired about the health effects of exposing to second-hand aerosol of HTPs.</p> <p>The Administration advised that:</p> <p>(a) it had laid down in the "Towards 2025: Strategy and Action Plan to Prevent and Control Non-communicable Diseases in Hong Kong" the target of reducing smoking prevalence from the current level of about 10% to 7.8% by 2025. The Bill aimed at preventing the emergence of a new and younger generation of smokers which might result in a rebound of smoking prevalence, reducing the use of tobacco products as well as protecting non-smokers from second-hand smoke. Public education would also be strengthened to educate the public about the harm of tobacco use; and</p> <p>(b) according to WHO, HTPs would generate side-stream emission with a number of harmful toxicants, although at a lower level than in conventional cigarettes. However, there was currently no evidence to suggest that a lower level of some toxicants in HTPs translated to reduced health risk. In addition, there was no safe level of exposure to second-hand tobacco smoke. That said, there was no available evidence to indicate whether HTPs were associated with any long-term clinical outcomes from exposure to second-hand emission.</p>	
015401 - 020056	Chairman Mr SHIU Ka-fai Admin Mr Tommy CHEUNG	<p>Mr SHIU Ka-fai's view that a reduction in the level of harmful toxicants in the emissions of HTPs implied a reduction in harm. Given that all tobacco products were harmful to health and there was no scientific evidence to suggest that HTPs were more harmful than conventional cigarettes, it was irrational to impose a full ban on HTPs.</p>	

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		Mr SHIU Ka-fai and Mr Tommy CHEUNG requested the Administration to advise in writing the respective regulatory approaches for e-cigarettes and HTPs currently adopted by overseas places, including information on whether sale of these products was prohibited, allowed with restrictions or not subject to any regulation in their local markets.	<b>Admin</b>
<i>Agenda item III: Any other business</i>			
020057 - 020210	Chairman Mr SHIU Ka-fai	Closing remarks	

Council Business Division 2  
Legislative Council Secretariat  
5 August 2021