

立法會
Legislative Council

LC Paper No. CB(2)1342/20-21
(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 fifth meeting
held on Tuesday, 30 March 2021, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex

- Members present** :
- Hon WONG Ting-kwong, GBS, JP (Chairman)
 - Hon Frankie YICK Chi-ming, SBS, JP (Deputy Chairman)
 - 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 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 CHUNG Kwok-pan
 - Hon Jimmy NG Wing-ka, BBS, JP
 - Hon Holden CHOW Ho-ding
 - Hon SHIU Ka-fai, JP
 - Hon Wilson OR Chong-shing, MH
 - Hon YUNG Hoi-yan, JP
 - Dr Hon Pierre CHAN
 - Hon CHEUNG Kwok-kwan, JP
 - Hon LUK Chung-hung, JP
 - Hon LAU Kwok-fan, MH
- Members absent** :
- Hon Abraham SHEK Lai-him, GBS, JP
 - Hon Mrs Regina IP LAU Suk-yee, GBS, JP
 - Hon MA Fung-kwok, GBS, JP
 - Dr Hon CHENG Chung-tai

- Public Officers attending** : 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
- Miss Celia HO
Government Counsel
Department of Justice
- Clerk in attendance** : Ms Maisie LAM
Chief Council Secretary (2) 3
- Staff in attendance** : Ms Wendy KAN
Assistant Legal Adviser 6
- Ms Catherina YU
Senior Council Secretary (2) 3
- Miss Alison HUI
Legislative Assistant (2) 3

I. 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)917/20-21(01) and (02)]

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

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2. The Bills Committee requested the Administration to provide a list of harmful chemical substances which were found in heated tobacco products but were not present in conventional tobacco products as suggested by the Food and Drug Administration of the United States and where appropriate, in other scientific studies to which the Administration had made reference in formulating the legislative proposal.

3. In the light of the tight timetable for completing the deliberation on the key contents of the Decision of the National People's Congress on Improving the Electoral System of the Hong Kong Special Administrative Region and the amendments to Annex I and Annex II to the Basic Law made by the Standing Committee of the National People's Congress as well as the relevant bill to be introduced into the Legislative Council later on, and the scrutiny of the Public Offices (Candidacy and Taking Up Offices) (Miscellaneous Amendments) Bill 2021, the Chairman advised that members' views on the meeting arrangement for the Bills Committee would be sought by circulation of paper.

4. The Chairman proposed that having taken into account that there had been a thorough discussion on the objectives of the Bill, the Bills Committee would commence clause-by-clause examination of the Bill at its next meeting to be scheduled and consider the proposed amendments to the Bill to be submitted by members to the Bills Committee for consideration, if any.

II. Any other business

5. There being no other business, the meeting ended at 6:22 pm.

Council Business Division 2
Legislative Council Secretariat
29 July 2021

**Proceedings of the fifth meeting of
Bills Committee on Smoking (Public Health) (Amendment) Bill 2019
(2020-2021 session)
held on Tuesday, 30 March 2021, at 4:30 pm
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>			
000518 - 000628	Chairman	Opening remarks	
000629 - 000925	Chairman Admin	<p>Members noted the Administration's response to the follow-up actions arising from the discussion at the meeting on 23 February 2021 [LC Paper No. CB(2)917/20-21(02)].</p> <p>On the proposal put forward by some members at the meeting on 23 February 2021 that the prohibition of the import, manufacture or sale and the restriction of the giving, possession or promotion ("full ban") should only be imposed on electronic cigarettes ("e-cigarettes") but not heated tobacco products ("HTPs") and the latter should instead be subject to regulatory control, the Administration maintained the stance that subjecting all alternative smoking products to a full ban was the most effective way to prevent these products from taking root in the local market so as to protect public health. It would not withdraw the Bill and would carefully study the draft amendments to the Bill to be submitted by members to the Bills Committee for consideration.</p>	
000926 - 001608	Chairman Mr Tommy CHEUNG	<p>Mr Tommy CHEUNG enquired whether the Administration would withdraw the Bill or accept the amendments proposed by members to the Bill if these amendments were passed in the committee of the whole Council. The Administration advised that it would need to examine the proposed amendments before making a decision.</p> <p>In the light of the tight timetable for completing the deliberation on the key contents of the Decision of the National People's Congress on Improving the Electoral System of the Hong Kong Special Administrative Region and the amendments to Annex I and Annex II to the Basic Law made by the Standing Committee of the National People's Congress as well as the relevant bill to be introduced into the Legislative Council later on, and the scrutiny of the Public Offices (Candidacy and Taking Up Offices) (Miscellaneous Amendments) Bill 2021, Mr Tommy CHEUNG considered that Members should accord priority to the above work. He proposed not holding meetings of the Bills Committee until the above work had been completed.</p> <p>To facilitate the taking forward of the scrutiny work of the Bill, Mr Tommy CHEUNG drew reference to the efforts made by the Chairman of the Bills Committee Formed on 16 October 2020 to Study the Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Bill 2018 ("the Bills Committee to Study the Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Bill 2018") to arrange working meetings between members of that Bills Committee and the Environment Bureau with a view to forging consensus on the draft amendments proposed by members.</p>	

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		<p>He suggested the Food and Health Bureau making use of the time before the next discussion to meet with members of this Bills Committee to understand their positions and the draft amendments to the Bill being prepared by members.</p>	
001609 - 003115	Chairman Mr SHIU Ka-fai Admin	<p>Referring to the public consultation exercise conducted by the State Tobacco Monopoly Administration ("STMA") starting from 22 March 2021 on its proposal to regulate novel tobacco products such as e-cigarettes under the Tobacco Patent Sales Law of the People's Republic of China ("STMA's proposal"), Mr SHIU Ka-fai asked whether the Administration would consider regulating HTPs instead of imposing a full ban on these products in view of STMA's proposal such that smokers would be free to choose their preferred tobacco products. The Administration responded that STMA's regulatory approach might not suit the local situation. The Bill was formulated having regard to the local tobacco control policy and smoking prevalence.</p> <p>Pointing out that many developed countries had not banned but regulated HTPs, Mr SHIU Ka-fai remarked that the Administration should not make reference only to the practice of those countries which had imposed a ban on HTPs, which were mostly developing countries and regions, in answering questions from members.</p>	
003116 - 004120	Chairman Mr LAU Kwok-fan Admin	<p>Given that some recent studies in Germany, Japan and the United States revealed that HTPs were less harmful than conventional cigarettes, Mr LAU Kwok-fan considered that the Administration should rebut these findings if it considered them unsubstantiated. The above apart, according to a Japanese study published in the International Journal of Environment Research and Public Health and some research in Argentina, France and the United States, the cancer-causing risk of and the concentration levels of certain volatile organic compounds emitted by HTPs were lower when compared with those of conventional cigarettes.</p> <p>The Administration stressed that while some studies had shown that the levels of emission of some toxic chemicals by HTPs were lower than those of conventional cigarettes, information submitted by the manufacturer of IQOS Tobacco Heating System ("the IQOS system") to the Food and Drug Administration of the United States ("FDA") revealed that there were some additional toxic chemicals present in the product that were not present in conventional cigarettes. It should be noted that since there were no safe tolerance limits for many harmful chemicals, a lower emission level of toxic chemicals did not necessarily translate to reduced harm. As pointed out by the World Health Organization ("WHO"), the exposure modification order issued by FDA for the IQOS system did not deem the product to be having reduced health risks.</p> <p>Mr LAU Kwok-fan criticized that the answers so far provided by the Administration at meetings of the Bills Committee were far from comprehensive enough to address members' concerns. At his request, the Administration undertook to provide in writing a list of harmful chemical substances which were found in HTPs but were not present in conventional tobacco products as suggested by FDA and where appropriate, in other scientific studies to which</p>	Admin

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		<p>the Administration had made reference in formulating the legislative proposal. The Chairman remarked that the Administration had not provided any scientific evidence to suggest that HTPs were more harmful than conventional cigarettes.</p>	
004121-005029	<p>Chairman Mr Tommy CHEUNG Deputy Chairman Admin</p>	<p>At the invitation of Mr Tommy CHEUNG, the Deputy Chairman, in his capacity as the Chairman of the Bills Committee to Study the Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Bill 2018, briefed members on the outcome of the working meetings between some members of that Bills Committee who belonged to different political parties and groupings and the Administration to take forward the scrutiny work.</p> <p>Taking the view that discussing the Bill in camera was an efficient way to solve divergence of views on the Bill, Mr Tommy CHEUNG reiterated his suggestion of arranging close-door meetings between members and the Administration to exchange views on members' draft amendments to the Bill. The Administration should also consider meeting representatives of the tobacco industry to receive their views on the Bill. In response, the Administration advised that it would attend discussions of the Bills Committee to be held in any form that the Bills Committee considered appropriate. On the suggestion of meeting with representatives of the tobacco industry, it had to abide by Article 5.3 of the WHO Framework Convention on Tobacco Control which required government officials to protect public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry.</p>	
005030 - 005554	<p>Chairman Mr LAU Kwok-fan Admin</p>	<p>Declaring that he was a non-smoker, Mr LAU Kwok-fan said that he supported imposing a full ban on all tobacco products but objected to the current legislative proposal of imposing a full ban on HTPs as conventional cigarettes, which brought greater effect (e.g. unpleasant smell) to bystanders, were not banned on equal footing. Given that members had divergent views on the proposed full ban on HTPs, he called on the Administration to consider regulating HTPs as a first step. The Administration responded that it was necessary to prevent the harm of new smoking products from taking root in the local market in order not to undermine the ongoing efforts in tobacco control.</p>	
005555 - 010632	<p>Chairman Mr Jimmy NG Admin Mr SHIU Ka-fai</p>	<p>Referring to STMA's proposal, Mr Jimmy NG held the view that the Administration should uphold the principle of "patriots administering Hong Kong" and follow STMA to regulate but not ban HTPs. Mr SHIU Ka-fai opined that the legislative proposal to impose a full ban on HTPs went in the opposite direction of the Mainland's proposed regulatory approach.</p> <p>The Administration advised that same as the policy direction of STMA's proposal, the proposed full ban on HTPs was a move in the direction of tightening tobacco control. That said, given the different consideration factors (e.g. smoking prevalence) for tobacco control in the Mainland and in Hong Kong, the regulatory approaches of the Mainland might not be locally applicable.</p>	
010633 - 012041	<p>Chairman Mr SHIU Ka-fai Admin</p>	<p>Mr SHIU Ka-fai referred to a submission from a medical expert from Japan [LC Paper No. CB(2)786/20-21(01)] proposing that HTPs should be regulated but not fully banned on the grounds that</p>	

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		<p>these products could reduce harms to users and bystanders; and the use of HTPs could help reduce the use of conventional cigarettes, as demonstrated by the fact that there was a 34% drop in the sale of conventional cigarettes in Japan after the introduction of HTPs. He sought the Administration's comments on the above views.</p> <p>The Administration reiterated that it disagreed with the argument that HTPs were less harmful than conventional cigarettes, and advised that HTPs would generate mainstream and side-stream emissions with harmful toxicants. Regarding the changes in the sale of conventional cigarettes after the introduction of HTPs in Japan, the Administration elaborated on its response given in paragraphs 13 to 17 of LC Paper No. CB(2)917/20-21(02) that according to some studies, the introduction of HTPs had not resulted in an accelerated decline in the combined total sales volume of cigarettes and HTPs in Japan and dual users of these two products were exposed to toxicants from both products.</p> <p>Mr SHIU Ka-fai's enquiries about (a) how the Administration would evaluate HTPs if it was proven that the overall consumption of tobacco products in Japan had decreased as a result of HTPs' entry into its market; and (b) the statistics on dual users of HTPs and conventional cigarettes in Japan. In response, the Administration advised that the effect of HTPs' entry into market on the tobacco use in the population needed to be assessed by independent surveys on tobacco use at individual level. According to two surveys conducted in Japan in 2018 as set out in LC Paper No. CB(2)917/20-21(02), 67.8% of the 4 000-odd respondents who were aged 20 or above were dual users of HTPs and conventional cigarettes and 63.2% of cigarette smokers also used HTPs. A concern of the Administration was that the introduction of HTPs would result in an increase in the number of youth smokers as they were more attracted to these products, albeit that there might be a drop in the sale of conventional cigarettes.</p>	
012042 - 012945	Chairman Mr Tommy CHEUNG Admin	Mr Tommy CHEUNG remarked that smoking prevalence in Hong Kong was already very low and not many persons would be able to afford HTPs to become new smokers. In his view, the scrutiny of the Bill had made little progress both in the last and the current legislative sessions as the Administration could not provide any evidence to show that HTPs were more harmful than conventional cigarettes and yet insisted on imposing a full ban on HTPs.	
012946 - 013626	Chairman Mr KWOK Wai-keung Admin	<p>Mr KWOK Wai-keung remarked that the number of smokers had only dropped from 1.39 billion in 2000 to 1.33 billion in 2018 globally and the "Healthy China 2030" Planning Outline released by the State Council of the People's Republic of China in 2019 had set targets to reduce the overall smoking prevalence in China as well as lower the rate of non-smokers being exposed to second-hand smoke. Noting that the Administration aimed to lower the smoking prevalence to 7.8% by 2025, he asked how this target would be affected and whether bystanders would have higher risk of exposure to second-hand smoke if HTPs were introduced into the Hong Kong market subject to regulatory control.</p> <p>The Administration advised that it could not quantify the impact of the entry of HTPs into the local market on the smoking prevalence</p>	

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		target but according to its assessment on the basis of the experience of other places, it would bring about adverse effect on the overall smoking prevalence. The Chairman urged the Administration to present facts rather than providing unfounded information, and make it clear to members and the public its legislative intent to ban HTPs was to prevent youth from access to and use of these products as they were more attracted to these products and its concern that the entry of HTPs would reverse Hong Kong's downward trend of smoking prevalence.	
013627 - 014628	Chairman Mr LAU Kwok-fan Admin	<p>Mr LAU Kwok-fan held the view that regulating instead of banning HTPs was already a step forward in tobacco control. He requested the Administration to consider the option of regulating HTPs with an open attitude. In response, the Administration advised that HTPs might give smokers the false expectation that switching to these products meant reduction in harm, thus maintaining tobacco use in current smokers who might otherwise have quit. The introduction of HTPs into the local market could also lead to the emergence of a new generation of smokers and bring about gateway effects.</p> <p>Given that the Bill did not prohibit the use of e-cigarettes and HTPs otherwise than in a no smoking area and the possession of which not for the purpose of sale, the Chairman expressed grave concern that it would create a loophole and exacerbate the illegal trade of these products which was highly profitable.</p>	
014629 - 014929	Chairman	The Chairman advised that members' views on the meeting arrangement for the Bills Committee in the light of other time critical bills would be sought by circulation of paper. He proposed that the Bills Committee would commence clause-by-clause examination of the Bill at its next meeting and consider the proposed amendments to the Bill to be submitted by members to the Bills Committee for consideration, if any.	
014930 - 015457	Chairman Mr SHIU Ka-fai Admin	Referring to his remark at the earlier part of the meeting about the effect of introduction of HTPs in Japan, Mr SHIU Ka-fai cited the findings of a report released by the Ministry of Health, Labour and Welfare in Japan which revealed that overall smoking prevalence of Japan had dropped from 19.6% in 2014 to 16.7% in 2019 and the conventional cigarette smoking prevalence had dropped from 19.6% in 2014 to 13.1% in 2019. Separately, he considered that the Administration should consider introducing age restriction for using tobacco products and imposing penalty on offenders to meet its objective of deterring adolescents from smoking. The Chairman remarked that publicity and education would be effective in discouraging adolescents to pick up smoking.	
<i>Agenda item II: Any other business</i>			
015458 - 015512	Chairman	Closing remarks	