

立法會
Legislative Council

LC Paper No. CB(2)1424/20-21
(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 sixth meeting
held on Friday, 25 June 2021, at 10:45 am
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 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, GBS, 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 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
 - Dr Hon CHENG Chung-tai
- Members absent** :
- Hon Mrs Regina IP LAU Suk-yee, GBS, JP
 - Hon LAU Kwok-fan, MH

- 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 YUEN Ka-yiu
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 Assistant Law Draftsman (Acting)
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), CB(2)1198/20-21(01) and (02), and CB(2)1232/20-21(01)]

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

Clause-by-clause examination of the Bill

2. The Bills Committee completed the clause-by-clause examination of the Chinese text of the Smoking (Public Health) (Amendment) Bill 2019 ("the Bill").

Draft amendments to the Bill to be proposed by Mr SHIU Ka-fai

Admin

3. Members noted the draft amendments to the Bill to be proposed by Mr SHIU Ka-fai as set out in LC Paper No. CB(2)1232/20-21(01). The Chairman requested the Administration to provide a written response in this regard to facilitate members' consideration of the draft amendments at the next meeting of the Bills Committee to be scheduled.

II. Any other business

4. There being no other business, the meeting ended at 12:25 pm.

Council Business Division 2
Legislative Council Secretariat
1 September 2021

**Proceedings of the sixth meeting of
Bills Committee on Smoking (Public Health) (Amendment) Bill 2019
(2020-2021 session)
held on Friday, 25 June 2021, 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>			
000654 - 001732	Chairman Mr YIU Si-wing Admin	<p>Members noted the Administration's response to the follow-up actions arising from the discussion at the meeting on 30 March 2021 [LC Paper No. CB(2)1198/20-21(02)].</p> <p>Mr YIU Si-wing enquired about the reason why the 80 chemicals set out in LC Paper No. CB(2)1198/20-21(02) ("the 80 chemicals") were either present in higher concentration in aerosols of heated tobacco products ("HTPs") or not found in conventional cigarette smoke if both HTPs and conventional cigarettes were tobacco products with the former heated the tobacco but not burned it.</p> <p>The Administration advised that independent studies on the chemical profile of the aerosols of most of HTPs in the market were not available. Most of the scientific data on HTPs was generated by the manufacturers. The list of the 80 chemicals was extracted from the data submitted by the manufacturer of an HTP to the Food and Drug Administration of the United States ("FDA") for the application of marketing authorization ("the applicant"). However, whether more chemicals would be found in aerosols of HTPs remained unknown. It should be noted that the types and amount of chemicals produced by HTPs would be affected by a number of factors including the ingredients used in the tobacco part, how the tobacco stick was manufactured as well as the method and temperature of heating the tobacco.</p> <p>Mr YIU Si-wing's view that HTPs should be subject to the same regulatory approach that applied to conventional tobacco products if the factors affecting the chemical profile of the aerosols of the former also applied to the latter. The Administration advised that HTPs were novel products and there was limited research data on the toxicants present in aerosols of these products. There was also no scientific evidence to suggest that the use of HTPs could reduce health risks. As such, the Administration considered it necessary to impose prohibition on the import, manufacture or sale, and restriction on the giving, possession or promotion ("full ban") of HTPs.</p>	
001733 - 002333	Chairman Mr SHIU Ka-fai	<p>Mr SHIU Ka-fai noted that the Administration had obtained the information on the 80 chemicals from the Premarket Tobacco Product Application Technical Project Lead Review ("PMTA Technical Project Lead Review") released by FDA. He said that according to the PMTA Technical Project Lead Review, of the 80 chemicals, four were possibly carcinogenic, 30 were identified by the applicant as generally recognized as safe and 46 were additional ingredients (mostly flavoring ingredients). For the four possible carcinogens, it was stated in the PMTA Technical Project Lead Review that the levels of exposure to them appeared low and when considered with other data did not preclude a conclusion that</p>	

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		the products were appropriate for protection of public health. However, the Administration had neither provided the information in its paper nor at the meeting which might mislead members and the public. He further pointed out that one of the possible carcinogens, i.e. Glycidol, was also present in many alcohol products and the other three carcinogens, i.e. 1,2-Propanedio1 [3-chloro-], 2-Furanmenthanol and furfural were found in many additives in food and drinks. In the light of the above, there was no evidence to suggest that HTPs were more harmful than conventional cigarettes.	
002334 - 002450	Chairman Admin ALA6	Commencement of clause-by-clause examination of the Chinese text of the Bill	
002451 - 004010	Chairman Admin	<u>Examination of the long title and clauses 1 to 13</u>	
004011 - 004727	Chairman Admin ALA6	<u>Examination of clause 14</u> The Legal Adviser to the Bills Committee drew members' attention to the reason given by the Administration in paragraphs 20 and 21 of its reply letter [LC Paper No. CB(2)1431/18-19(04)] ("the Admin's First Letter") to her observation set out in paragraph 5 of the Schedule to her letter to the Administration dated 4 April 2019 [LC Paper No. CB(2)1175/18-19(01)] ("the ALA's First Letter") for excluding the premises of any manufacturer of alternative smoking products ("ASPs") or any wholesale dealer dealing in ASPs that were used for the manufacturing of ASPs or for the purpose of dealing by wholesale in ASPs from the exemption provided in the proposed section 12(4) of the Smoking (Public Health) Ordinance (Cap. 371) ("the Ordinance") for the display of a smoking product advertisement.	
004728 - 004842	Chairman Admin	<u>Examination of clauses 15 to 17</u>	
004843 - 005323	Chairman Admin ALA6	<u>Examination of clause 18</u> The Legal Adviser to the Bills Committee drew members' attention to the reason given by the Administration in paragraph 24 of the Admin's First Letter to her observation set out in paragraph 7 of the Schedule to the ALA's First Letter for not extending the exemption provided for in the proposed section 14(6) of the Ordinance that the display of price marker(s), a price board or catalogues meeting specified conditions at any premises where conventional smoking products were offered for sale was not a smoking product advertisement to any premises where ASPs were offered for sale with a view to exporting them.	
005324 - 005607	Chairman Admin	<u>Examination of clauses 19 to 22</u>	
005608 - 010107	Chairman Admin ALA6	<u>Examination of clause 23</u> The Legal Adviser to the Bills Committee drew members' attention to the reason given by the Administration in paragraph 25 of the	

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		Admin's First Letter to her observation set out in paragraph 8 of the Schedule to the ALA's First Letter for setting the penalties for the offence under the proposed new section 15DA(4) of the Ordinance at a fine at level 5 and an imprisonment for six months.	
010108 - 010726	Chairman Admin ALA6	<p>The Administration's advice that it would propose amendments to the proposed new section 15DB of the Ordinance to the effect that members of unincorporated bodies would also be similarly liable for committing the offence under the proposed new section 15DA(4) of the Ordinance, as was the arrangement provided for in the Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Ordinance (Cap. 629) and the Private Columbaria Ordinance (Cap. 630).</p> <p>The Legal Adviser to the Bills Committee drew members' attention to the reason given by the Administration in paragraph 27 of the Admin's First Letter in response to her observation set out in paragraph 9(b) of the Schedule to the ALA's First Letter for not making a provision similar to the proposed new section 15DB of the Ordinance to the other offences under the Ordinance.</p>	
010727 - 011324	Chairman Admin ALA6	<p>The Legal Adviser to the Bills Committee drew members' attention to the Administration's explanations set out in the replies referred to in paragraphs (a) and (b) below on the relevant requirements applicable to an ASP which was registered as a pharmaceutical product under regulation 36 of the Pharmacy and Poisons Regulations (Cap. 138A) as mentioned in the proposed new section 15DF of the Ordinance:</p> <p>(a) the reply given by the Administration in paragraphs 31 to 33 of the Admin's First Letter in response to her observations set out in paragraphs 11(b) and (c) of the Schedule to the ALA's First Letter; and</p> <p>(b) the reply given by the Administration in paragraph 25 of its reply letter [LC Paper No. CB(2)244/19-20(01)] in response to her clarification sought in relation to the Administration's response referred to in paragraph (a) above as set out in paragraph 7 of Schedule I to her letter to the Administration dated 3 June 2019 [LC Paper No. CB(2)1651/18-19(01)].</p>	
011325 - 011636	Chairman Admin ALA6	<p>The Administration advised that in respect of the observations of the Legal Adviser to the Bills Committee set out in paragraphs 13(a) and 15(a) of the Schedule to the ALA's First Letter, namely:</p> <p>(a) how long could an Inspector (i.e. an inspector appointed under section 15F of the Ordinance), pursuant to the proposed new section 15DG(2) of the Ordinance, detain a person who was reasonably suspected by the Inspector to have committed or be committing an offence under the proposed new section 15DA(4) of the Ordinance to facilitate the enforcement of the proposed new section 15DA of the Ordinance; and</p> <p>(b) how long could a Customs and Excise officer (i.e. a person holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap. 342)), pursuant to the</p>	

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		<p>proposed new section 15DH(5) of the Ordinance, detain a person who was reasonably suspected by such officer to have committed or be committing an import offence (i.e. an offence under the proposed new section 15DA(4) of the Ordinance for the contravention of the proposed new section 15DA(1)(a) of the Ordinance) to facilitate the enforcement of the proposed new section 15DA of the Ordinance in relation to the offence,</p> <p>the Administration would propose amendments to the Bill to provide expressly that the power of an Inspector or a Customs and Excise officer to detain such a person would only be for a reasonable time.</p>	
011637 - 011732	Chairman Admin	<u>Examination of clauses 24 and 25</u>	
011733 - 012039	Chairman Admin ALA6	<u>Examination of clause 26</u> The Legal Adviser to the Bills Committee drew members' attention to the explanation given by the Administration in paragraph 39 of the Admin's First Letter in response to her observation set out in paragraph 16 of the Schedule to the ALA's First Letter in respect of the need to include under the proposed item 10 of Part 2 of Schedule 2 to the Ordinance a room which was designated for tasting or testing of ASPs in the manufacturing premises of a business engaged in the ASP trade as an area exempted from the prohibition on smoking if specified conditions were met.	
012040 - 012154	Chairman Admin	<u>Examination of clauses 27 and 28</u>	
012155 - 013824	Chairman Admin ALA6 Mr SHIU Ka-fai	<u>Examination of clauses 29 to 34</u> On the Legal Adviser to the Bills Committee's remark that the Secretary for Food and Health might by order published in the Gazette amend the proposed new Schedules 7 and 8 to the Ordinance and such an order would be subsidiary legislation subject to scrutiny by the Legislative Council pursuant to the negative vetting procedure, Mr SHIU Ka-fai said that he had reservation about such arrangement in respect of the proposed new Schedule 7 to the Ordinance. The Legal Adviser to the Bills Committee drew members' attention to the reply given by the Administration in paragraphs 22 and 23 of the Admin's First Letter in response to her observation set out in paragraph 6 of the Schedule to the ALA's First Letter that some of the words or phrases listed in the proposed new Schedule 8 to the Ordinance might mean, stand for or refer to various things including those which might not relate to smoking products or smoking.	
013825 - 013914	Chairman Admin	<u>Examination of clause 35</u> Completion of clause-by-clause examination of the Chinese text of the Bill.	

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013915 - 014406	Chairman Mr SHIU Ka-fai Admin	<p>Mr SHIU Ka-fai's remark on the rationale of his proposed draft amendments to the Bill [LC Paper No. CB(2)1232/20-21(01)] to the effect that HTPs would not be subject to the proposed full ban on ASPs but a regulatory regime similar to that of conventional cigarettes.</p> <p>The Administration's advice that while it had reservations about not imposing a full ban on HTPs, it would study carefully the draft amendments to the Bill to be proposed by Mr SHIU Ka-fai. The Chairman requested the Administration to provide a written response in this regard to facilitate members' consideration of the draft amendments at the next meeting of the Bills Committee.</p>	Admin
<i>Agenda item II: Any other business</i>			
014407 - 014435	Chairman	Closing remarks	

Council Business Division 2
Legislative Council Secretariat
1 September 2021