

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1605/20-21  
(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 seventh meeting**  
**held on Friday, 10 September 2021, at 8:30 am**  
**in Conference Room 1 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 Mrs Regina IP LAU Suk-ye, GBM, GBS, JP
  - Hon YIU Si-wing, SBS
  - Hon MA Fung-kwok, GBS, JP
  - Hon LEUNG Che-cheung, SBS, MH, JP
  - Hon Elizabeth QUAT, BBS, JP
  - Hon Martin LIAO Cheung-kong, GBS, JP
  - Ir Dr Hon LO Wai-kwok, GBS, 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, JP
- Members absent** :
- Hon Abraham SHEK Lai-him, GBS, JP
  - Hon Paul TSE Wai-chun, JP
  - Hon KWOK Wai-keung, JP

**Public Officers :** Prof Sofia CHAN Siu-chee, JP  
**attending** 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 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

Miss Celia HO  
Government Counsel  
Department of Justice

**Clerk in** : Ms Maisie LAM  
**attendance** Chief Council Secretary (2) 3

**Staff in** : Ms Wendy KAN  
**attendance** Assistant Legal Adviser 6

Ms Catherina YU  
Senior Council Secretary (2) 3

Miss Alison HUI  
Legislative Assistant (2) 3

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## **I. Meeting with the Administration**

[LC Paper Nos. CB(2)1232/20-21(01), CB(2)1294/20-21(01), CB(2)1321/20-21(01), CB(2)1430/20-21(01) and (02)]

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

### Draft amendments to the Bill to be proposed by individual members

2 The Bills Committee noted that Mr SHIU Ka-fai intended to move a set of draft amendments to the Bill, as set out in LC Paper No. CB(2)1232/20-21(01), in his own name; and that the Deputy Chairman and Mr SHIU Ka-fai might propose other amendments to the Bill in relation to the manufacturing of alternative smoking products and the exemptions from the prohibition against importing these products.

### Draft amendments to the Bill to be proposed by the Administration

3 The Bills Committee noted that the draft amendments to the Bill as set out in Annex B to LC Paper No. CB(2)1430/20-21(02) were the final version of the amendments to be proposed by the Administration. The Bills Committee raised no objection to the amendments.

### Legislative timetable

4 The Chairman concluded that the Bills Committee had completed scrutiny of the Bill. He would report the deliberations of the Bills Committee to the House Committee on 24 September 2021.

5 The Administration said that it would attempt to resume the Second Reading debate on the Bill at the Council meeting of 13 October 2021. As it was envisaged that a number of bills would resume their Second Reading debate at the Council meeting of 13 October 2021, Mr Tommy CHEUNG and Ms Elizabeth QUAT considered that the Second Reading debate on the Bill should resume at the Council meeting of 20 October 2021. The Chairman requested the Administration to reconsider the date of the resumption of the Second Reading debate on the Bill having regard to members' views.

6 Members noted that if the Administration would resume the Second Reading debate on the Bill at the Council meeting of 13 October 2021, the deadline for giving notice to move amendments to the Bill, if any, would be 4 October 2021. Alternatively, if the Administration would resume the Second Reading debate on the Bill at the Council meeting of 20 October

2021, the deadline for giving notice to move amendments to the Bill, if any, would be 9 October 2021.

*(Post-meeting note: Members were informed vide LC Paper No. CB(2)1476/20-21 on 15 September 2021 that the Administration had indicated its intention to resume the Second Reading debate on the Bill at the Council meeting of 20 October 2021.)*

## **II. Any other business**

7 There being no other business, the meeting ended at 9:57 am.

Council Business Division 2  
Legislative Council Secretariat  
18 November 2021

**Proceedings of the seventh meeting of  
Bills Committee on Smoking (Public Health) (Amendment) Bill 2019  
(2020-2021 session)  
held on Friday, 10 September 2021, 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: Meeting with the Administration</i>			
000440 - 000649	Chairman	Opening remarks	
000650 - 001614	Chairman Mr YIU Si-wing Admin	<p>Members noted the Administration's response (LC Paper No. CB(2)1321/20-21(01)) to the requisite information set out in the letter dated 12 July 2021 from Mr SHIU Ka-fai (LC Paper No. CB(2)1294/20-21(01)).</p> <p>Mr YIU Si-wing enquired the reason why the Administration stated in paragraph 3 of LC Paper No. CB(2)1321/20-21(01) that research data on the chemical profile and toxicity of the emissions were lacking for most of the heated tobacco products ("HTPs") but concluded in paragraph 19 of the same paper that HTPs entailed risks beyond those brought about by conventional tobacco products. In his view, imposing heavy tax on HTPs or age restriction for using tobacco products including conventional tobacco products could prevent the emergence of a new generation of smokers and maintain the downward trend of smoking prevalence if import and sale of HTPs was allowed in Hong Kong.</p> <p>The Administration elaborated that information provided in paragraph 3 of LC Paper No. CB(2)1321/20-21(01) was based on a report of the World Health Organization ("WHO") Study Group on Tobacco Product Regulation. As stated in paragraphs 8 and 18 in the paper, WHO had pointed out that the health implications of exposure to HTP aerosols were unknown and HTPs might be a moving target that their technological developments would easily outpace the regulatory capacities of a country or region. The Administration further advised that imposition of age restriction on the use of tobacco products could not be effective in preventing youth uptake because the majority of smokers worldwide started smoking before age 18.</p>	
001615 - 002610	Chairman Mr SHIU Ka-fai Admin	<p>While agreeing that all tobacco products were harmful, Mr SHIU Ka-fai remarked that many places had allowed the sale of HTPs because these products were less harmful than conventional tobacco products and adult smokers should not be deprived of the choice of using HTPs.</p> <p>Noting that 69 carcinogens were present in conventional tobacco products, Mr SHIU Ka-fai enquired how many carcinogens were found in HTPs. The Administration advised that according to WHO, the types and amount of chemicals existed in HTPs might not be identified through untargeted analysis within a short period of time. While the types of chemicals found in conventional tobacco products which were also present in HTPs had reduced, some health organizations had emphasized that the use of HTPs would expose users to a range of known and unknown toxicants present in aerosols of these products.</p>	

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		<p>Mr SHIU Ka-fai referred members to the Administration's response in paragraph 10 of LC Paper No. CB(2)1321/20-21(01) that among the 80 chemicals set out in LC Paper No. CB(2)1198/20-21(02) which were found to be either present in higher concentration in aerosols of a specific HTP or not found in conventional cigarette smoke, four were possible carcinogens, 19 were identified with genotoxic and/or carcinogenic potential and 20 were exhibiting potential health effects. Pointing out that these chemicals were also found in many processed food and drinks sold in Hong Kong because they had not exceeded the maximum permissible levels, he criticized that the Administration had thus far not provided the level of carcinogens found in that HTP. Mr SHIU Ka-fai further said that many of the 60-odd countries which allowed the import and sale of HTPs were developed countries and only 10 countries, which were mostly developing countries, had prohibited the sale of HTPs.</p>	
002611 - 002841	Chairman Mrs Regina IP Admin	<p>In response to Mrs Regina IP's enquiry about whether HTPs and electronic cigarettes ("e-cigarettes") with claims of slimming or beauty effect had contravened the Trade Descriptions Ordinance (Cap. 362), the Administration advised that it was an offence under the Trade Descriptions Ordinance for any person, in the course of the person's trade or business, to apply a false trade description to any goods, or to supply or offer to supply any goods to which a false trade description was applied. Expressing concern that HTPs and e-cigarettes were popular among teenagers, Mrs Regina IP urged the Administration to carry out inspections of the shops selling these products.</p>	
002842 - 003914	Chairman Admin Mr SHIU Ka-fai	<p>The Administration stressed that all tobacco products including alternative smoking products ("ASPs") were harmful and highly addictive. As stated by WHO, there was no evidence to support the claims of the tobacco industry that HTPs were less harmful than conventional tobacco products. According to the findings of a study published by The University of Hong Kong ("HKU") in 2021 in a journal on the characterization of respiratory symptoms among youth using HTPs in Hong Kong, respiratory symptoms were more prevalent in ever exclusive HTP users than ever exclusive cigarette users.</p> <p>Mr SHIU Ka-fai expressed concern about the design of the study referred by the Administration. To his understanding, there were no HTPs in the market with claims of slimming effect. Pointing out that there was no dispute about the possible addictiveness of HTPs, he remarked that there were views, including those of the health authorities of Germany and Japan, that the health risk posed by HTPs was lower than that associated with the use of conventional cigarettes.</p>	
003915 - 003959	Chairman ALA6	<p>In response to the Chairman's enquiry, the Legal Adviser to the Bills Committee advised that the Administration had provided in 2019 its responses to her observations in relation to the legal and drafting aspects of the Chinese and English text of the Bill, and had proposed some textual amendments in response to her observations. She had no further observations to make in respect of the legal and drafting aspects of the Bill.</p>	
004000 - 004858	Chairman Deputy Chairman	<p>In response to the Deputy Chairman's enquiry, the Administration elaborated the exemptions from the prohibition on importing ASPs</p>	

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	Admin	<p>in the case of persons in transit, articles in transit and air transshipment cargos as provided for in the proposed new sections 15DC and 15DD of the Smoking (Public Health) Ordinance (Cap. 371) ("the Ordinance").</p> <p>The Deputy Chairman considered that exemption should also be provided for ASPs that were brought into Hong Kong and removed from the aircraft or vessel or air transshipment cargo solely for the purpose of re-exporting them after repackaging within Hong Kong. Reference could be made to the arrangement currently adopted for pharmaceutical products whereby an electronic system had been set up for licensed wholesalers of pharmaceutical products to enlist those unregistered pharmaceutical products or substances that would be imported into Hong Kong for re-export on the one hand, and on the other hand for the Administration to monitor the movement of these products into and out of Hong Kong. In response, the Administration advised that as ASPs were not daily necessities but were merely consumer goods that had harmful effect on the health of users, it did not consider the use of these extra resources well-justified.</p>	
004859 - 010223	Chairman Deputy Chairman Admin Mr Tommy CHEUNG ALA6	<p>In response to the Deputy Chairman's enquiry, the Administration advised that the manufacturing of ASPs and the possession of ASPs for the manufacture of any other ASPs was prohibited under the Bill.</p> <p>As regards the Deputy Chairman's enquiry as to whether designing packages of ASPs for advertising in places outside Hong Kong would be allowed under the Bill, the Administration affirmed that there would be no such prohibition under the Bill. While the Bill proposed to amend Part 4 of the Ordinance to extend the existing restrictions on tobacco advertising to the advertising of ASPs, it was provided under the proposed section 11(3) of the Ordinance that the prohibition on printing and publication of a smoking product advertisement in a printed publication and display of a smoking product advertisement in writing would not apply in relation to a smoking product advertisement in a printed publication that was published for the smoking products trade, or as the in-house publication of any company engaged in that trade. However, there was no exemption for ASPs which were brought into Hong Kong and removed from the aircraft or vessel or air transshipment cargo for other businesses' in-house use including packaging design.</p> <p>Given that the primary basis of criminal jurisdiction in Hong Kong was territorial and the growth in the use of Internet for advertising, the Chairman and the Deputy Chairman raised queries over the liability of a local Internet host where a smoking product advertisement was being uploaded to the Internet by a third party from a place outside Hong Kong and/or through servers located outside Hong Kong. The Administration advised that a person who placed or caused to be placed a smoking product advertisement on the Internet targeting at Hong Kong would be held liable under the proposed section 13B(1) of the Ordinance. For Internet hosts that had no knowledge over the advertisement uploaded or distributed, they would be required to, within a reasonable period of time, remove the advertisement from their platforms.</p>	

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		<p>The Legal Adviser to the Bills Committee drew members' attention that section 13B(2) of the Ordinance currently provided that a holder of a Public Non-Exclusive Telecommunications Service Licence granted under the Telecommunications Ordinance (Cap. 106) would not be responsible for any content placed on the Internet by a user and made available for the use of another user unless the holder had knowledge of such content and could reasonably be expected to block the use of such content or require amendment of such content; or any such content to which the holder only provided access, including the automatic and temporary storage of such content by the holder due to the request of a user. The above apart, the proposed section 13B(3) of the Ordinance provided that the prohibition on placing of smoking product advertisement on the Internet would not apply to any smoking product advertisement which was contained in any private correspondence on the Internet and was not for commercial purposes.</p>	
010224 - 011102	<p>Chairman Mr SHIU Ka-fai Admin Mr CHUNG Kwok-pan</p>	<p>Mr SHIU Ka-fai considered that manufacturing of ASPs solely for export but not for sale in the local market should be allowed as manufacturing of conventional cigarettes was currently allowed in Hong Kong, and an additional exemption for a person engaged in the smoking products trade for importing ASPs for product research and development purpose should be provided for under the Bill.</p> <p>The Administration advised that the manufacturing of ASPs would be banned to avoid the risk of these products entering into the local market. Given that its tobacco control policy was to discourage the use of tobacco products and contain the proliferation of tobacco use, it was inappropriate to put in place measures to facilitate research and development of new smoking products.</p> <p>In response to Mr SHIU Ka-fai's enquiry, the Administration elaborated on the enforcement regime to monitor the whole supply chain of tobacco products, including a licensing and control system to ensure that they did not enter into the local market illegally. If the manufacturing of ASPs or the import of ASPs for certain specified purposes was allowed, a complex enforcement regime with a whole new set-up involving disproportionate resources would be required.</p>	
011103 - 011159	<p>Chairman Dr Pierre CHAN</p>	<p>Dr Pierre CHAN's enquiry and the Chairman's response about the legislative timetable.</p>	
011200 - 011405	<p>Chairman Mr CHUNG Kwok-pan</p>	<p>Referring to the Administration's remark in its response to the draft amendments to the Bill proposed by Hon SHIU Ka-fai (LC Paper No. CB(2)1430/20-21(01)) that a study conducted by HKU shown that low smoking prevalence was a key reason to Hong Kong's leading longevity, Mr CHUNG Kwok-pan opined that a full ban should also be imposed on conventional cigarettes if this was the case.</p>	
011406 - 011501	<p>Chairman Mr SHIU Ka-fai</p>	<p>Mr SHIU Ka-fai indicated that he intended to move his set of draft amendments to the Bill as set out in LC Paper No. CB(2)1232/20-21(01) in his own name; and that he might propose other amendments to the Bill in relation to the manufacturing of ASPs and the exemptions from the prohibition against importing ASPs.</p>	



<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)/Discussion</b>	<b>Action required</b>
011502 - 011925	Chairman Mr SHIU Ka-fai Mr Tommy CHEUNG	Citing the statistics of smoking prevalence and longevity in Japan as a reference, Mr SHIU Ka-fai and Mr Tommy CHENG said that they did not subscribe to the finding of HKU that low smoking prevalence was a key reason to Hong Kong's leading longevity.	
011926 - 012141	Chairman Admin	In response to the Chairman's enquiry, the Administration confirmed that the set of draft amendments which was set out in Annex B to LC Paper No. CB(2)1430/20-21(02) was the final version of the amendments to be proposed by the Administration. Members raised no objection to the amendments.	
012142 - 012721	Chairman Admin Mr SHIU Ka-fai Mr Tommy CHEUNG Ms Elizabeth QUAT	Ms Elizabeth QUAT's indication of support for the imposition of a full ban on HTPs and e-cigarettes.  Legislative timetable	
<i>Agenda item II: Any other business</i>			
012722 - 013100	Chairman Admin	The Chairman's remark that he had met with the Administration, the tobacco trade and the Hong Kong Council on Smoking and Health six times, 12 times and two times respectively during the scrutiny of the Bill in the 2020-2021 session.  The Administration's recapitulation of the objective of the Bill under the prime consideration of protecting public health.	

Council Business Division 2  
Legislative Council Secretariat  
 18 November 2021