

立法會
Legislative Council

LC Paper No. LS69/08-09

**Paper for the House Committee Meeting
on 15 May 2009**

**Legal Service Division Report on
Subsidiary Legislation and Non-legislative Instrument
Gazetted on 8 May 2009**

Date of tabling in LegCo : 13 May 2009

Amendment to be made by : 10 June 2009 (or 8 July 2009 if extended by resolution)

PART I SUBSIDIARY LEGISLATION

**Public Health and Municipal Services Ordinance (Cap. 132)
Food Business (Amendment) Regulation 2009 (L.N. 93)**

The Food Business (Amendment) Regulation 2009 (Amendment Regulation) was made by the Director of Food and Environmental Hygiene under section 56 of the Public Health and Municipal Services Ordinance (Cap. 132).

2. The Amendment Regulation seeks to amend the Food Business Regulation (Cap. 132 sub. leg. X) (Principal Regulation) to prohibit the extraction of seawater from specified prohibited areas for keeping live fish and live shell fish intended for sale for human consumption.

3. The Amendment Regulation adds a new section 10AB to the Principal Regulation, which is to be read with section 35 of the Principal Regulation to make it an offence for a person doing any of the following -

- (a) extracting seawater from a prohibited area to keep, in the course of any food business, any live fish or shell fish that is intended for human consumption;
- (b) using seawater knowing or having reason to believe that it is extracted from a prohibited area for the purpose of keeping, in the course of any food business, any live fish or shell fish;
- (c) extracting seawater from a prohibited area knowing or having reason to believe that it is to be used by another person for the purpose of keeping, in the course of any food business, any live fish or shell fish; or

- (d) supplying, delivering or causing to be delivered, to another person seawater knowing or having reason to believe that it is extracted from a prohibited area and it is to be used for the purpose of keeping, in the course of any food business, any live fish or shell fish.

4. The prohibited areas are specified in the new Schedule 1A to the Principal Regulation. According to the Administration, areas with consistently high level of *E. coli* are demarcated as such prohibited areas. More specifically, they include -

- (a) the Victoria Harbour;
- (b) the 14 typhoon shelters specified in the Schedule to the Merchant Shipping (Local Vessels) (Typhoon Shelters) Regulation (Cap. 548 sub. leg. E);
- (c) areas along the shoreline of Hong Kong Island (including Ap Lei Chau); and
- (d) areas along the western shoreline of the New Territories (including Tsing Yi).

5. The maximum penalty of any breach of the new section 10AB is a fine of HK\$10,000 and imprisonment for three months upon conviction, which is the same as that under existing section 10A of the Principal Regulation. Section 10A prohibits, in the course of any food business, keeping any live fish or shell fish intended for human consumption in water of a quality below the standard specified by the Director of Food and Environmental Hygiene by notice published in the Gazette, which is *E. coli* less than 610 per 100 ml and absence of pathogenic organisms.

6. Members may refer to the LegCo Brief (Ref: FH CR 2/3231/08) issued by the Food and Health Bureau in May 2009 for background and other information.

7. According to the Administration, trade consultation and district consultation fora were conducted. Notwithstanding the general support for the proposal, some seafood traders at Lei Yue Mun area raised objection to the demarcation of the proposed prohibited areas. They claimed that water quality of coastal strip of waters immediately outside Sam Ka Tsuen Typhoon Shelter where they usually extracted water for keeping seafood was satisfactory and should therefore be excluded from the proposed prohibited areas. In response, the Food and Environmental Hygiene Department engaged an accredited laboratory to ascertain the water quality of that coastal strip in 2008. Upon laboratory findings that the average *E. coli* of most locations tested exceeded the statutory limit for fish tank water, the Administration has maintained that the proposed prohibited areas should remain unchanged.

8. The Food and Health Bureau provided an information paper on the proposed Amendment Regulation to the Panel on Food Safety and Environmental Hygiene (the Panel) in January 2009 (LC Paper No. CB(2)671/08-09(04)) for

discussion by the Panel in the meeting held on 20 January 2009. Members supported the Administration's proposal in principle. Some members were concerned about the demarcation of the proposed prohibited areas and the low penalty level proposed for extracting seawater from the prohibited areas.

9. The Amendment Regulation shall come into operation on 1 August 2009.

10. No difficulties in relation to the legal and drafting aspects of the Amendment Regulation have been identified.

Race Discrimination Ordinance (Cap. 602)

Race Discrimination (Formal Investigations) Rules (L.N. 94)

Race Discrimination (Investigation and Conciliation) Rules (L.N. 95)

11. The Race Discrimination (Formal Investigations) Rules (L.N. 94) and Race Discrimination (Investigation and Conciliation) Rules (L.N. 95) were made by the Equal Opportunities Commission (EOC) under section 82 of the Race Discrimination Ordinance (Cap. 602) (the Ordinance).

L.N. 94

12. The Race Discrimination (Formal Investigations) Rules set out the procedure of formal investigation conducted by the EOC under the Ordinance. The Rules, inter alia —

- (a) specify the manner in which notice of holding of formal investigation is to be served;
- (b) specify the manner in which notice of holding of formal investigation is to be given pursuant to section 65(3) of the Ordinance to certain persons in cases where general notice of the investigation is not given;
- (c) prescribe the form of a notice requiring a person to furnish written information or give oral information or produce documents; and
- (d) prescribe the form of an enforcement notice.

13. The Race Discrimination (Formal Investigations) Rules shall come into operation on the day appointed for the commencement of section 65 of the Ordinance, which requires terms of reference for formal investigations to be drawn up.

L.N. 95

14. The Race Discrimination (Investigation and Conciliation) Rules set out the procedure relating to the lodgment of complaints under section 78 of the

Ordinance and the investigation and conciliation of such complaints. The Rules specify —

- (a) the persons who may lodge a representative complaint, the circumstances under which a representative complaint may be lodged and the requirements of a representative complaint;
- (b) the matters to be taken into account in determining that a complaint should not be a representative complaint;
- (c) the manner in which persons may be required by the EOC by a notice in writing to furnish information for the purposes of investigating into an act and in endeavouring to settle the matter and the offence for failure to comply with such notice;
- (d) the manner in which disclosure of information is restricted; and
- (e) specify the manner in which persons may be directed to attend a conference and the procedure to be followed at a conference.

15. The Race Discrimination (Investigation and Conciliation) Rules shall come into operation on the day appointed for the commencement of section 78 of the Ordinance.

16. Members may refer to the LegCo Brief on the Race Discrimination (Formal Investigations) Rules and Race Discrimination (Investigation and Conciliation) Rules (with no file reference on it) issued by the EOC in May 2009 for background and further information.

17. The Panel on Constitutional Affairs was briefed on the two sets of Rules at its meeting on 16 February 2009. Members noted that both sets of Rules were materially in the same terms as the corresponding rules under the Sex Discrimination Ordinance (Cap. 480), the Disability Discrimination Ordinance (Cap. 487) and the Family Status Discrimination Ordinance (Cap. 527).

18. No difficulties in relation to the legal and drafting aspects of the Rules in L.N. 94 and 95 have been identified.

PART II NON-LEGISLATIVE INSTRUMENT

The Code of Practice on Employment under the Race Discrimination Ordinance (G. N. 2733)

19. The Code of Practice on Employment under the Race Discrimination Ordinance (the Code) was issued by the EOC under section 63 of the Ordinance for the elimination of racial discrimination, the promotion of equality of opportunity and harmony between persons of different racial groups.

20. The Code is divided into seven chapters which respectively elaborate on -

- (a) the purpose of the Code, its status and application;
- (b) meaning of "Race" under the Ordinance;
- (c) scope of discrimination and harassment in employment field;
- (d) rights and responsibilities of employers and employees under the Ordinance;
- (e) good employment procedures and practices;
- (f) unlawful acts under the Ordinance; and
- (g) legal protection available under the Ordinance when discrimination and harassment is encountered as well as roles and functions of the EOC.

21. A sample policy on racial equality is also provided at the end of the Code for employers' reference.

22. A failure on the part of any person to observe any provision of the Code does not render him liable to any proceedings. But in any proceedings under the Ordinance, the Code is admissible as evidence and the court shall take into account the relevant provisions of the Code in determining any question arising in the proceedings.

23. Members may wish to note that the scrutiny period of and amendment procedure for the Code are substantially the same as those for subsidiary legislation gazetted under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

24. The Code will come into operation upon the expiration of 28 days after the LegCo sitting at which it was so laid, or upon the expiration of the period extended for scrutiny, or in the case where the LegCo passes a resolution amending the Code, at midnight on the day before the day on which the resolution is published in the Gazette.

25. The EOC briefed the Panel on Constitutional Affairs (the Panel) on the first draft of the Code and its public consultation exercise on 17 November 2008. Members raised various queries about the overall approach of the draft Code, its content and drafting of its provisions. The Panel was briefed on the revised Code at its meeting on 16 March 2009. Members noted that after taking into account the views received during the public consultation conducted from 13 October 2008 to 19 January 2009 as well as the comments by the Panel, the EOC made substantial revision to the first draft of the Code. Members also expressed that adequate funding should be provided for the promotion of the Code.

26. Members may refer to the LegCo Brief on the Code of Practice on Employment issued by the EOC in May 2009 (with no file reference on it) for background and further information.

27. The Legal Service Division is seeking clarification with the EOC on some drafting points about the Code and will provide a further report if necessary.

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