

立法會
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**Subcommittee on Order made under Section 78B of
the Public Health and Municipal Services Ordinance**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information relating to the making of an order under section 78B of the Public Health and Municipal Services Ordinance (Cap. 132) (G.N. (E.) 11 of 2011) ("the Order").

Background

2. Section 78B of Cap. 132 empowers the Director of Food and Environmental Hygiene ("DFEH") to make an order to prohibit the import and the supply of any food for the period specified in the order. Such an order may only be made if DFEH has reasonable grounds to believe that the making of the order is necessary to prevent or reduce a possibility of danger to public health or to mitigate any adverse consequence of a danger to public health. Under section 78C(3), if a section 78B order is addressed to a class of persons or all persons, the order must be published in the Gazette. Section 78B(6) specifies that a section 78B order is not subsidiary legislation. Accordingly, such order is not required to be tabled before the Legislative Council ("LegCo") and is not subject to amendment by LegCo.

The Order

3. According to the LegCo Brief on the Order dated 23 March 2011 (Ref.: FHB/F/5/1/37), the Administration stated that owing to the massive earthquake and the subsequent tsunami which happened in Japan on 11 March 2011, the Daiichi nuclear power plant in Fukushima prefecture

was damaged, leading to release of radioactive substances in the environment. Japanese authorities have examined the food products and announced that the radioactive substances have contaminated certain foods in the prefectures in the vicinity of the nuclear power plant, including Fukushima, Ibaraki, Tochigi and Gunma. Radiation levels hazardous to human health have been found in foods including various vegetables and milk. In addition, tests conducted by the Hong Kong Centre for Food Safety on 23 March 2011 indicating that certain vegetable samples imported from Chiba prefecture of Japan had been contaminated with radioactive substances at such a level hazardous to human health.

4. On 23 March 2011, DFEH made an order under section 78B of Cap. 132 to prohibit the import into and supply within Hong Kong of the following food products which are/were harvested, manufactured, processed or packed on or after 11 March 2011 from five prefectures of Japan, namely, Fukushima, Ibaraki, Tochigi, Gunma and Chiba with effect from 12:00 noon on 24 March 2011 until further notice -

- (a) All fruits and vegetables;
- (b) All milk, milk beverages, dried milk; and
- (c) All chilled or frozen game, meat and poultry, all poultry eggs and all live, chilled or frozen aquatic products, unless accompanied by a certificate issued by the competent authority of Japan certifying that the radiation levels do not exceed the standards laid down by the Guideline Levels for Radionuclides in Foods Contaminated following a Nuclear or Radiological Emergency.

5. The Order was published in the Gazette on 24 March 2011 and took effect at 12:00 noon on 24 March 2011.

6. Under section 78D of Cap. 132, any person who contravenes a term of the Order commits an offence and is liable to a fine at level 6 (currently at \$100,000) and to imprisonment for 12 months.

7. Under section 78G of Cap. 132, a person bound by the Order who is aggrieved by the Order may, within 28 days from becoming bound by the Order, appeal to the Municipal Service Appeal Board against the Order. Under 78H, a person bound by the Order may apply for an amount of compensation that is just and equitable in all the circumstances

of the case, for losses arising as a direct result of compliance with the Order. These losses include total or partial loss of the food that is the subject of the Order and costs or expenditure actually and directly incurred.

Related information

8. The Panel on Food Safety and Environmental Hygiene ("the Panel") has not been consulted on the Order. Arising from the concern over the safety of food products imported from Japan, the Panel conducted a visit to the Airport Food Inspection Office on 8 April 2011 to view demonstrations on food inspection procedure and operation of contamination monitoring system.

Relevant papers

9. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
20 April 2011

Appendix

Relevant papers on Order made under Section 78B of the Public Health and Municipal Services Ordinance

Meeting	Date of meeting	Paper
Legislative Council	16.3.2011	Official Record of Proceedings Pages 10-33 (Questions under Rule 24(4) of the Rules of Procedure)
Legislative Council	17.3.2011	Official Record of Proceedings Pages 45-80 (Motion for the adjournment of the Council)
House Committee	1.4.2011 (Item IV)	Agenda LC Paper No. LS 43/10-11

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