

**立法會**  
**Legislative Council**

LC Paper No. LS84/17-18

**Legal Service Division Report on an  
order made under section 30 of the  
Food Safety Ordinance (Cap. 612)  
(G.N. 5412 of 2018) gazetted on 20 July 2018**

Published in the Gazette on 20 July 2018, G.N. 5412 ("2018 Order") is made by the Director of Food and Environmental Hygiene ("the Director") under section 30(5) of the Food Safety Ordinance (Cap. 612) to vary the order ("2011 Order") previously made by the Director to prohibit the importation into and supply within Hong Kong of certain food products originating from Fukushima, Ibaraki, Tochigi, Gunma and Chiba ("Five Prefectures") of Japan. Under section 30(6) of Cap. 612, the 2018 Order is not subsidiary legislation and, as such, is not required to be tabled before the Legislative Council ("LegCo") and is not subject to amendment by LegCo.

The 2011 Order

2. Members may recall that following the leakage of radioactive substances from the Daiichi nuclear power plant in Fukushima as a result of the massive earthquake and subsequent tsunami in Japan on 11 March 2011, the Director made the 2011 Order under section 78B of the Public Health and Municipal Services Ordinance (Cap. 132) prohibiting all persons from importing into and supplying<sup>1</sup> within Hong Kong the following food products intended for human consumption and harvested, manufactured, processed or packed on or after 11 March 2011 from the Five Prefectures:

- (a) all fruits and vegetables, and all milk, milk beverages and dried milk ("Plant and Milk Products"); and
- (b) all chilled or frozen game, meat and poultry, all poultry eggs, and all live, chilled or frozen aquatic products ("Meat and Seafood"), unless accompanied by a certificate issued by the competent

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<sup>1</sup> Under section 78A of Cap. 132, "supplying" meant (a) selling the food; (b) offering, keeping or exhibiting the food for sale; (c) exchanging or disposing of the food for consideration; (d) transmitting, conveying or delivering the food in pursuance of (i) a sale; or (ii) an exchange or disposal for consideration; or (e) for commercial purposes, giving the food as a prize or making a gift of the food.

authority of Japan certifying that the radiation levels do not exceed the standards laid down by the Codex Alimentarius Commission ("Codex") in the Guideline Levels for Radionuclides in Foods Contaminated following a Nuclear or Radiological Emergency ("Radiation Certificate").

The 2011 Order took effect at 12:00 noon on 24 March 2011. A Subcommittee was formed under the House Committee to study the 2011 Order. Members may refer to the Subcommittee's report dated 8 June 2011 (LC Paper No. CB(2)2000/10-11) for details of its deliberations.

3. Upon Cap. 612 coming into operation on 1 August 2011 (L.N. 60 of 2011), Part VA (sections 78A to 78L) of Cap. 132 was repealed and re-enacted as Part 4 (sections 30 to 38) of Cap. 612. Section 61 of Cap. 612 provides that an order in force under section 78B of Cap. 132 immediately before the repeal of Part VA of Cap. 132 remains in force in accordance with its terms as if it were an order made under section 30 of Cap. 612 and may be varied or revoked accordingly.

#### The 2018 Order

4. The 2018 Order varies the 2011 Order as follows:

- (a) the importation into and supply within Hong Kong of Plant and Milk Products from the four prefectures of Ibaraki, Tochigi, Gunma and Chiba is allowed if the products are accompanied by: (i) a Radiation Certificate; and (ii) an exporter certificate issued by the competent authority of Japan certifying that the food exporter concerned has complied with the requirements of Hong Kong's import control measures on Japanese food with regard to radiological protection, and that all the food products being exported are readily available for sale in Japan and are fit for human consumption as far as radiological protection is concerned ("Exporter Certificate"); and
- (b) the importation and supply of the following products prohibited under the 2011 Order (as specified in Annex B to the 2018 Order) continues to be prohibited until further notice:
  - (i) Plant and Milk Products from the prefecture of Fukushima; and
  - (ii) Meat and Seafood from all Five Prefectures, unless accompanied by a Radiation Certificate.

5. The 2018 Order has taken effect from 12:00 noon on 24 July 2018. By virtue of section 32 of Cap. 612, a person bound by the 2018 Order who contravenes a term of the order commits an offence and is liable to a fine at level 6 (up to \$100,000) and to imprisonment for 12 months.

6 Annex A to the 2018 Order sets out the reasons for, and the principal factors that led to, varying the 2011 Order. These include (a) none of over 490 000 food samples from Japan tested by the Centre for Food Safety ("CFS") in Hong Kong between 24 March 2011 and 31 May 2018 being shown to exceed the Codex guideline levels; (b) only about 1 200 (out of over two million) food samples collected in Japan for radiation testing as at early March 2018 exceeding the Codex guideline levels; and (c) international organizations such as the World Health Organization and the International Atomic Energy Agency confirming the safety of Japanese food from the perspective of radiation levels. Members may refer to the LegCo Brief (File Ref: FHB/F/5/1/37) issued by the Food and Health Bureau ("FHB") on 20 July 2018 for further details.

7. As advised by the Clerk to the Panel on Food Safety and Environmental Hygiene, the Panel discussed at its meeting on 12 June 2018 FHB's proposal to lift the import ban on Plant and Milk Products from Ibaraki, Tochigi, Gunma and Chiba with conditions, while continuing to ban such products from Fukushima. Some members supported the proposal, while others expressed concerns about the possibility of danger to public health and adverse consequence on food safety. FHB assured members that CFS would continue to safeguard the radiation safety of Japanese food through the Japanese Government's gatekeeping at the places of export and CFS' surveillance at the import level. According to FHB, every consignment of food products imported from Japan must be accompanied by a Radiation Certificate and an Exporter Certificate issued by the Ministry of Agriculture, Forestry and Fisheries of Japan. CFS would continue to conduct radiation tests on every consignment of food products from Japan, regardless of their origins and channels of import.

8. No difficulties have been identified in relation to the legal or drafting aspects of the 2018 Order.

Prepared by

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