

立法會
Legislative Council

LC Paper No. LS77/03-04

**Paper for the House Committee Meeting
on 21 May 2004**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 14 May 2004**

Date of tabling in LegCo : 19 May 2004

Amendment to be made by : 16 June 2004 (or 7 July 2004 if extended by resolution)

PART I LEGAL AID

Legal Aid Ordinance (Cap. 91)

Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2004 (L.N. 83)

Legal Aid Ordinance (Cap. 91)

Resolution of the Legislative Council (L.N. 45 of 2004) (Commencement) Notice 2004 (L.N. 99)

A resolution was proposed by the Administration to amend sections 5(1) and 5A(b) of the Legal Aid Ordinance (Cap. 91) to adjust downward the financial eligibility limit for the Ordinary Legal Aid Scheme from \$169,000 to \$155,800 and that for the Supplementary Legal Aid Scheme from \$471,600 to \$432,900 with a view to reflecting the cumulative reduction in consumer prices from July 2000 to July 2003. A Subcommittee was formed to study the proposed resolution and the proposed resolution was passed by the Legislative Council on 17 March 2004 (published in the Gazette as L.N. 45 of 2004). The Subcommittee had been advised that the existing scale of contributions provided in Part I of Schedule 3 to the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg.) would be amended to reflect the new financial eligibility limit.

2. L.N. 83, which shall come into operation on 12 July 2004, amends Part I of Schedule 3 to the Legal Aid (Assessment of Resources and Contributions) Regulations to make amendments corresponding to the above resolution. L.N. 99 appoints 12 July 2004 as the day on which the resolution shall come into operation.

3. Members may refer to the two LegCo Briefs (ref: CSO/ADM CR 3/3221/02(04) Pt. 15) issued by the Administration Wing of the Chief Secretary for Administration's Office, both dated 13 May 2004 for background information.

PART II ELECTORAL AFFAIRS COMMISSION

Electoral Affairs Commission Ordinance (Cap. 541)

Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2004 (L.N. 84)

4. The Regulation introduces changes to the electoral procedure of LegCo elections. It will commence on 16 July 2004 in preparation for the coming LegCo elections in September 2004.

5. The main changes are -

- (a) to conduct the counting of votes for geographical constituencies at individual polling stations except small stations with less than 200 electors; and
- (b) to re-categorise certain types of questionable ballot papers which are clearly invalid as invalid ballot papers so that they will not be counted.

These changes are intended to speed up the counting process and have already been implemented in the 2003 District Council elections. The counting of votes for functional constituencies (FC), which will remain unchanged, will continue to be conducted at the central counting station.

6. Some other changes to detailed electoral arrangements are also made. They include -

- (a) dispensing with envelopes for FC ballot papers;
- (b) dispensing with registered residential addresses of subscribers on candidates' nomination forms;
- (c) allowing an elector to leave the polling station before casting his vote and to return later; and
- (d) varying the no canvassing zone and no staying zone by a presiding officer.

7. Proposals on the main changes have been discussed at the Panel on Constitutional Affairs at its meetings on 16 February and 15 March 2004. While some of the members supported the decentralised vote-counting arrangements, there were also objections raised on various grounds.

8. According to the House Committee's decision on 9 January 2004, subsidiary legislation relating to the 2004 LegCo elections to be gazetted within the session should be examined by the subcommittee formed earlier to study a related electoral regulation.

9. Members may refer to the LegCo Brief issued by the Registration and Electoral Office in May 2004 for more details. The legal and drafting aspects of the Regulation are still under scrutiny.

PART III FOOD AND DRUGS

Public Health and Municipal Services Ordinance (Cap. 132) Food and Drugs (Composition and Labelling) (Amendment) Regulation 2004 (L.N. 85)

10. This Regulation amends the Food and Drugs (Composition and Labelling) Regulations (Cap. 132 sub. leg. W) mainly in the following aspects-

- (a) to relax the restrictions on the inclusion of additives in certain milk products;
- (b) to require food labels to declare the presence of certain substances which are known to cause allergy;
- (c) to require food labels to list both the functional class (i.e. the category) of the food additive used and its specific name (or its identification number under the International Numbering System for Food Additives);
- (d) to update the functional class of additives for labelling purposes;
- (e) to require the "best before" and "use by" dates shown in Arabic numerals to indicate their sequences in English letterings and Chinese characters and remove the requirement for the dates to be listed in the strict order of the day, the month and the year;
- (f) to exempt drinks with an alcoholic strength by volume of more than 1.2% but less than 10% from the requirements in respect of a list of ingredients but require other prepackaged food which was previously exempted to comply with the requirements in Schedule 3 to the existing Regulations; and
- (g) to exempt wines and other drinks with an alcoholic strength by volume of 10% or more from certain requirements in Schedule 3 to the existing Regulations.

11. At the meeting of the Panel on Food Safety and Environmental Hygiene held on 22 January 2001, the Administration briefed members on its proposals to improve food labelling legislation on prepackaged foods including-

- (a) to require declaration of the presence of substances which were known to cause allergy in some people;
- (b) to require indication of the type of food additives used with the full name or the identification code number;
- (c) to allow more flexibility in the marking of "best before" or "use by" dates; and
- (d) to strengthen labelling requirements on prepackaged alcoholic drinks.

12. For the background about this Regulation, members may refer to the LegCo Brief (ref: HWF(F)5/1/8) issued by the Health, Welfare and Food Bureau in May 2004.

13. The Regulation shall come into operation on 9 July 2004. Section 6 of the Regulation provides that it shall not be an offence to advertise for sale, sell or manufacture for sale on or before 9 January 2006 any prepackaged foods containing additives and allergens which are not labelled in accordance with the Regulation, whilst relaxation on the additives on milk products and butter shall come into effect upon the commencement of the Regulation.

14. Members may note that the newly added Part III (Additives in Certain Milk Products) of the Regulation was not included in the briefing to the Panel on Food Safety and Environmental Hygiene on 22 January 2001.

15. According to the LegCo Brief, public consultation on the proposed labelling amendments was conducted from October to December 2000. With regard to the amendment on relaxation of restrictions on milk products additives, the Administration considers it a technical exercise and public consultation is not necessary (para. 20 of LegCo Brief).

16. Since the publication of the Regulation in the Gazette, the Legislative Council Secretariat has received representations from certain members of the retail trade (Appendix).

17. In view of the serious concerns raised by the relevant trade and the fact that the briefing to the Panel on Food Safety and Environmental Hygiene on this subject was given more than 3 years ago, members may wish to consider whether to set up a subcommittee to study the Regulation.

PART IV SUPPLEMENTARY MEDICAL PROFESSIONS

Supplementary Medical Professions Ordinance (Cap. 359)

Medical Laboratory Technologists (Registration and Disciplinary Procedure) (Amendment) Regulation 2004 (L.N. 86)

Occupational Therapists (Registration and Disciplinary Procedure) (Amendment) Regulation 2004 (L.N. 87)

Optometrists (Registration and Disciplinary Procedure) (Amendment) Regulation 2004 (L.N. 88)

Physiotherapists (Registration and Disciplinary Procedure) (Amendment) Regulation 2004 (L.N. 89)

Radiographers (Registration and Disciplinary Procedure) (Amendment) Regulation 2004 (L.N. 90)

18. The above items of subsidiary legislation were made under section 29(1B) of the Supplementary Medical Professions Ordinance (Cap. 359) in relation to the regulation of medical laboratory technologists, occupational therapists, optometrists, radiographers and physiotherapists. The effects of the amendments in these regulations are that-

- (a) the Secretary of Justice may appoint counsel or a solicitor to carry out the duties that a secretary of the board of the relevant profession has to perform in an inquiry;
- (b) the requirement to provide the identity card number in a certificate of registration (required to be displayed in the premises where the profession is practised) will be removed in order to tie in with the provisions of the Personal Data (Privacy) Ordinance (Cap. 486);
- (c) to change the name of "Hong Kong Association of Occupational Therapists" to "Hong Kong Occupational Therapy Association" (L.N. 87);
- (d) to change the Chinese name of the Hong Kong Society of Professional Optometrists from "香港專業視光師學會" to "香港眼科視光師學會" (L.N. 88); and
- (e) to clarify that diagnostic radiographers can accept referral by chiropractors for plain radiograph for the vertebral column and peripheral joints, including the pelvis (L.N. 90).

19. Members may refer to the LegCo Brief (ref: HWF/H/22/1 Pt. 9(95)) issued by the Health, Welfare and Food Bureau on 14 May 2004 for background information about these regulations.

20. The Administration considers public consultation not necessary because the amendments are either technical or textual and will not bring about material

change to the operations of the Supplementary Medical Professions Council nor the existing arrangement for registration and disciplinary control governing the five relevant professions (para. 12 of LegCo Brief). An information paper setting out the background and reasons for making the amendment subsidiary legislation was provided by the Administration to the members of the Panel on Health Services on 13 May 2004. Members did not raise any query on the paper at the meeting of the Panel held on 17 May 2004.

21. The above amendment regulations shall come into operation on 1 August 2004.

PART V IMPORT AND EXPORT ORDINANCE

Import and Export Ordinance (Cap. 60)

Import and Export Ordinance (Specification of Ending Date under Section 42) Notice 2004 (L.N. 96)

Import and Export (Registration) Regulations (Cap. 60 sub. leg. E)

Import and Export (Registration) Regulations (Specification of Ending Date under Regulation 15) Notice 2004 (L.N. 97)

22. The purpose of these two Notices is to specify 16 July 2004 as the date on which the transitional period allowing submissions in either paper or electronic form in respect of the relevant mode of transport will end so that the electronic submission of air and rail cargo manifests will henceforth be implemented with full force.

23. Members may refer to the LegCo Brief (ref: CIB 89/18/1) issued by the Commerce and Industry Bureau on 13 May 2004 for background about the Notices.

24. The Administration has briefed the Panel on Commerce and Industry on the proposals contained in the Notices on 23 April 2004. The Panel noted that the relevant industries had been consulted and that no hardship as a result of compliance was envisaged, and members made no objection to the Administration's proposals.

PART VI AIRPORT

Airport Authority Ordinance (Cap. 483)

Airport Authority Ordinance (Map of Restricted Area) Order (L.N. 91)

25. This Order, which shall come into operation on 9 July 2004, specifies the revised boundaries of the Restricted Area for the purposes of the Airport Authority Ordinance (Cap. 483).

26. The Legal Service Division has ascertained from the Administration that revision of boundaries of the restricted areas is a routine exercise and therefore the Administration has not referred it to any LegCo Panel for discussion.

**Hong Kong Airport (Control of Obstructions) Ordinance (Cap. 301)
Hong Kong Airport (Control of Obstructions) (Exemption) (Amendment) Order
2004 (L.N. 92)**

27. Under section 3(1AA) of the Hong Kong Airport (Control of Obstructions) Ordinance (Cap. 301), the Secretary for Housing, Planning and Lands may, on the advice of the Director-General of Civil Aviation, by order prescribe the areas within which no building shall exceed the height specified in the order. Section 3(3A) of the Ordinance provides that the Secretary may, on the advice of the Director-General of Civil Aviation, by order grant an exemption from the operation of an order made pursuant to section 3(1AA) subject to such terms and conditions required for or related to the safety of aircraft as he may impose.

28. The Hong Kong Airport (Control of Obstructions) (Exemption) Order (Cap. 301 sub. leg. E) ("Exemption Order") exempts certain portions of land from that restriction. This amendment Order amends the Exemption Order to further exempt a portion of land on Lamma Island from that restriction. However, any building to be erected on that portion of land is still subject to the height restriction prescribed in the amendment Order. The exemption facilitates the construction of a building extension to a transposer station on Lamma Island.

29. Members may refer to the LegCo Brief (ref: HPLB(L) 83/02/01) issued by the Housing, Planning and Lands Bureau in May 2004 for background information about this amendment Order. The proposal contained in the amendment Order has not been referred to the Panel on Planning, Lands and Works for discussion.

30. This amendment Order has come into operation on the date of its publication in the Gazette, that is, 14 May 2004.

PART VII OTHERS

**Prisons Ordinance (Cap. 234)
Prisons (Amendment) Order 2004 (L.N. 93)**

31. This Order sets apart Castle Peak Bay Immigration Centre as a prison under the Prisons Ordinance (Cap. 234). It shall come into operation on 1 March 2005.

32. The proposal contained in the Order has not been referred to the Panel on Security for discussion.

District Court Ordinance (Cap. 336)
Rules of the District Court (Amendment) Rules 2004 (L.N. 94)

33. The object of the amendment Rules is to apply the threshold of \$150,000 for determining whether costs can be allowed in respect of counsel appearing for a plaintiff in the District Court to cases in which counsel appears for a party to a counterclaim, third party proceedings or other similar proceedings.

34. Members may refer to the LegCo Brief (ref: LM(2) to SC 101/17/16) issued by the Judiciary Administration in May 2004 for background information about the amendment Rules.

35. According to the Judiciary Administration, the Law Society of Hong Kong and Hong Kong Bar Association were consulted in March 2003 and the two professional bodies agreed to the proposed refinement of the existing rule (para. 11 of LegCo Brief). In July 2003, the Judiciary Administration provided a paper on its review on the threshold of \$150,000 for the requirement of counsel's certificate to the Panel on Administration of Justice and Legal Services Panel (LC Paper No. CB(2)2887/02-03(01)). The Panel noted the paper at its meeting on 29 July 2003.

36. The amendment Rules shall come into operation on a date to be appointed by the Chief Justice by notice published in the Gazette.

Hong Kong Science and Technology Parks Corporation Ordinance (Cap. 565)
Hong Kong Science and Technology Parks Corporation Ordinance (Amendment of Schedule 1) Notice 2004 (L.N. 95)

37. This Notice amends Schedule 1 to the Hong Kong Science and Technology Parks Corporation Ordinance (Cap. 565) to update the list of premises where activities related to certain purposes of the Hong Kong Science and Technology Parks Corporation are, or are to be, carried out. It shall come into operation on 9 July 2004.

Telecommunications Ordinance (Cap. 106)
Telecommunications (Amendment) Ordinance 2003 (30 of 2003)
(Commencement) Notice 2004 (L.N. 98)

38. The Telecommunications (Amendment) Ordinance 2003 (No. 30 of 2003) was passed on 9 July 2003 to provide a more comprehensive regime for the regulation of merger and acquisition activities in the telecommunications sector. Section 1(3) of the Ordinance provides that sections 5, 6, 7, 8, 9 and 12 of the amendment Ordinance (provisions regarding carrier licences) shall come into force on a date to be appointed by the Secretary for Commerce, Industry and Technology. The Administration undertook that the Telecommunications Authority ("TA") would conduct consultation on the draft guidelines on how the amendment Ordinance would

be enforced and then publish the finalized guidelines before the relevant sections were to be brought into operation.

39. The guidelines were published on 3 May 2004 after the Administration had conducted consultation. For background information, members may refer to the LegCo Brief (ref: CTB(CR) 7/13/14 (04) Pt.11) issued by the Commerce, Industry and Technology Bureau in May 2004. The Panel on Information Technology and Broadcasting met with deputations and the Administration on 23 October 2003, 19 April 2004 and 10 May 2004. The Panel noted that the policy considerations underlying the guidelines had been discussed at the relevant Bills Committee. At the Panel meetings, some members supported the early commencement of the amendment Ordinance and some other members noted the different views held by the Administration and the operators.

40. This Notice appoints 9 July 2004 as the date on which sections 5, 6, 7, 8, 9 and 12 of the amendment Ordinance shall come into operation.

Encl

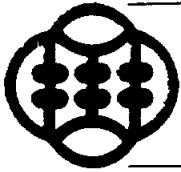
Prepared by

CHEUNG Ping-kam, Arthur, Senior Assistant Legal Adviser (Legal Notices No. 84)

Kitty Cheng, Assistant Legal Adviser (Legal Notices No. 83 and 85 to 99)

Legislative Council Secretariat

19 May 2004

**HONG KONG RETAIL MANAGEMENT ASSOCIATION****香港零售管理協會**

18 May 2004

Mrs Justina Lam
Clerk to House Committee
Legislative Council Secretariat
8 Jackson Road
Hong Kong

By fax: 2509 0775 & mail

Dear Mrs Lam

**FOOD AND DRUGS (COMPOSITION AND LABELLING)(AMENDMENT)
REGULATION 2004**

I refer to the captioned Regulation and would like to express our greatest concern that despite our views towards the subject as highlighted in our letter dated 21 December 2000, the amendment to the regulation has been gazetted on 14 May 2004.

The trade is in shock that our views have not been considered before the gazette. We request that a Sub-Committee be formed to review the subject and to allow the trade the opportunity to voice out their concerns again. I attach herewith our earlier letter for your easy reference.

In the meantime, should you have any queries, please do not hesitate to contact the undersigned at 2866 8311.

Yours sincerely,

Anita Bagaman (Miss)
Executive Director

c.c. Dr Yeoh Eng-kiong, JP, Secretary for Health, Welfare and Food
Mrs Selina Chow, Legislative Councillor, Wholesale & Retail



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Mrs Justina Lam
Clerk to House Committee
Legislative Council Secretariat
8 Jackson Road
Hong Kong

18th May 2004

Re: Food and Drugs (Composition and Labelling) (Amendment) Regulation 2004

Dear Mrs. Lam,

It is with some considerable surprise, shock and concern that we received a letter from the Food Environmental Hygiene Department (FEHD) stating the captioned has been published in the Gazette. It is expected to come into operation on 9 July 2004 with an 18 months grace period.

Back in 2001 when the FEHD's consultation paper was issued a detailed submission was made to the FEHD through the Hong Kong Retail Management Association. This detailed the severe consequences these regulations would have on the food retail and food importation businesses in Hong Kong as well as the adverse effect on Hong Kong consumer choice.


At a subsequent meeting with the FEHD in 2001 on the subject matter, we were assured by the FEHD that our views would be taken into account & that they would discuss the issue further at a later stage.

We heard nothing on the subject issue from the FEHD until receiving a letter from them yesterday.

We therefore request that a Sub-Committee be formed to review this issue & allow the Trade to present their concerns.

For & on behalf of A. S. Watson Group (HK) Ltd

Yours Sincerely,



Peter Johnston



The Dairy Farm Company Ltd

5/F Devon House, Taikoo Place, 979 King's Road
Quarry Bay, Hong Kong. GPO Box 286
Tel: +852 2299 3888 Fax: +852 2299 2888

18 May 2004

Mrs Justina Lam
Clerk to House Committee
Legislative Council Secretariat
8 Jackson Road
Hong Kong



By fax: 2509 0775 & mail

Dear Mrs Lam

**FOOD AND DRUGS (COMPOSITION AND LABELLING)(AMENDMENT)
REGULATION 2004**

It is with great surprise that I learned today that an amendment to Food and Drugs Regulations was gazetted on 14 May 2004.

The Government issued a Consultation Paper on this subject in October 2000 and the views of the retail trade were consolidated and included in a submission from the Hong Kong Retail Management Association (as enclosed) to the Government in December 2000. Members of the retail trade subsequently met with the FEHD in May 2001 to discuss this important matter and we have received no further news from the FEHD since then.

Despite the significant effect that these Registrations will have, we are not aware of the Government carrying out any Economic Impact Study.

As a matter of urgency, we request that a Sub-committee be formed to review the subject and to allow the trade the opportunity to voice out their concerns again.

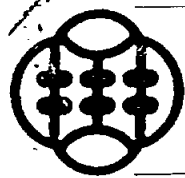
Yours sincerely,

A handwritten signature in black ink, appearing to read "Jeff Shaw".

Jeff Shaw
CEO, Wellcome

cc: Dr Yeoh Eng-kiong, JP, Secretary for Health, Welfare and Food
Mrs Selina Chow, Legislative Councillor, Wholesale & Retail
Anita Bagaman, Hong Kong Retail Management Association
File: Letter to Legislative Council re Food and Drugs Regulation 2004

A member of The Dairy Farm International Group



HONG KONG RETAIL MANAGEMENT ASSOCIATION

香港零售管理協會

21 December 2000

Mr W T Wong
Food and Environmental Hygiene Department
45/F Queensway Government Offices
66 Queensway
Hong Kong

By fax: 2521 4784 & mail

Dear Mr Wong,

**CONSULTATION PAPER ON PROPOSED AMENDMENT TO FOOD AND
DRUGS (COMPOSITION AND LABELLING) REGULATIONS
PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE, CAP.132**

Thank you for your letter dated 16 October 2000 inviting our Association to comment on the captioned subject.

Please find below our comments as follows:

1. General

Mandatory labelling of products should only be required where there are good consumer safety or consumer choice reasons to do so. Furthermore, mandatory labelling requirements carry a compliance cost, which ultimately the consumer has to partly bear. Accordingly, additional labelling requirements therefore have to be fully justified based on the above factors.

We therefore feel that the proposed legislation is impractical and costly.

2. Hong Kong

Hong Kong imports almost all of its food from many different parts of the world. While reference should be taken from Codex on food labelling standards, it is most important that Hong Kong's labelling laws are consistent with its major trading partners. If Hong Kong has stricter labelling laws than its trading partners, this would lead to:

- (a) restricted choice of products available in Hong Kong (overseas manufacturers would not be willing to export products to Hong Kong because the additional costs would outweigh potential benefits in such a competitive market); and

(b) increase in the price of products (resulting from the compliance costs).

3. Labelling of Allergenic Substances

Although Codex has recommended that 8 allergen categories should be declared, we are unaware of which Hong Kong's main trading partners have to date imposed this specific requirement. In EU, for example, there are presently no specific mandatory labelling requirements for these allergens. Again, any requirements should not be more onerous than those which are set by our trading partners. To impose it in Hong Kong would place an enormous cost on retailers in terms of checking ingredients. It is therefore impracticable and would be very costly to control and label.

4. Food Additives

The consultative paper states that the proposal to declare the category and exact name of the additives on the food labels is "to provide consumers with more information". Although we believe that there is a benefit to the consumer in knowing the functional class of food additives (colour, preservative, etc), we believe the compliance costs outweighs any benefit for the consumer if it is mandatory to include details of food additives used in products.

E numbers are a requirement in Europe and Australia but not in the USA and other countries such as PRC and South Asia in general. To impose a requirement where every pack from these countries be labelled with a list of ingredients would be a nightmare. This would limit consumer choice and add a cost burden.

5. More Flexible Date Marking Format

Already, goods that are imported from overseas require re-labelling to comply with Hong Kong's bilingual labelling requirements for the "best before" or "use by" dates. Accordingly, using the example used in the Consultation Paper, even if the products imported from the United States followed the same marking sequence as in Hong Kong, those products must be re-labelled anyway to comply with the bilingual requirements. Hence this provision will not prevent the need to re-label imported products.

Furthermore, consumers in Hong Kong are aware of the day, month, and year sequence required by existing regulations and any change would only serve to confuse customers.

Again, we believe that the compliance costs outweigh any perceived benefit to the consumers.

6. Date Coding – Add bi-lingual characters/bigger labels required

The use of Chinese characters as well as roman numerals on sell-by-dates will impose a bit of problem for overseas labelers and ink jet machines which are not programmed for Chinese characters. This means hand-labels for every single imported product at a massive cost.

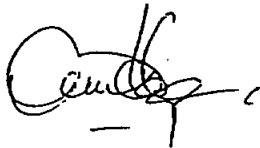
7. Responsibility

The question of responsibility when a product infringes the legislation should be looked into - whether a retailer should also be held responsible in addition to the manufacturer.

I hope the above comments will be useful in assisting the Government's review on the subject.

In the meantime, should you have any queries, please do not hesitate to contact the undersigned at 2866 8311.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Anita Bagaman', with a horizontal line underneath.

Anita Bagaman (Miss)
Executive Director