

**Food and Drugs (Composition and Labelling)
(Amendment) Regulation 2004
(L.N. 85 of 2004)**

Draft Proposed Amendment to be moved by the Subcommittee
Explanatory Note

1. At the meeting of the Subcommittee on Food and Drugs (Composition and Labelling) (Amendment) Regulation 2004 ("the Amendment Regulation") held on 17 June 2004, the Legal Service Division was instructed to prepare different versions of draft Proposed Amendment to the Amendment Regulation for the consideration of the Subcommittee. Three sets of Proposed Amendment together with a brief explanation for each of them are now attached for the Subcommittee's consideration.

Proposed Amendment (A) - Commencement Notice

2. The Amendment Regulation provides that it shall come into operation on 9 July 2004 and that it shall not be an offence to advertise for sale, sell or manufacture for sale on or before 9 January 2006 any prepackaged food which is not labelled in accordance with paragraph 2 (List of Ingredients) and paragraph 4 (Indication of "best before" or "use by" date) of Schedule 3 (Marking and Labelling of Prepackaged Foods).

3. Proposed Amendment (A) changes the operation date of the Amendment Regulation as follows-

- (a) Section 2 (Interpretation) and Section 3 (provisions for Schedule 1, i.e. milk and milk products) of the Amendment Regulation shall come into operation on 9 July 2004.
- (b) Section 4 of the Amendment Regulation shall come into operation on a date to be appointed by the Secretary for Health, Welfare and Food ("SHWF"). Section 4 contains provisions relating to listing of allergen substances, labelling of additives and marking of "best before" date.
- (c) Section 5 of the Amendment Regulation shall come into operation on a date to be appointed by SHWF. Section 5 amends Schedule 4 (Items

Exempt from Schedule 3) to deal with the new labelling requirements for alcoholic drinks.

- (d) Section 6 of the Amendment Regulation (grace period of 30 months) shall come into force on a date to be appointed by SHWF. Section 6, which will be amended as per the draft Proposed Amendment, will provide a grace period of 30 months from the date of commencement (which is to be appointed by SHWF) for foods not labelled in accordance with paragraphs 2 and 4 of Schedule 3.

4. The commencement date for sections 4, 5 and 6 is to be appointed by SHWF but since the proposed amendment is to be made by the Subcommittee, members may wish to consider whether to expressly provide that such commencement date should not be appointed before a certain date.

5. For the sake of completeness, section 5 (new labelling requirements for alcoholic drinks) of the Amendment Regulation is amended in the same way as the Administration proposed in LC Paper No. CB(2) 2858/03-04(01) on 17 June 2004.

Proposed Amendment (B) - Disclaimer/Defence in Case of Non-availability of Information on Allergens

6. A new defence section is added to allow a defendant who had reasonably and in good faith made enquiries with the importer or manufacturer as to whether the prepackaged food contained any allergen substance and such information is not provided by the importer or manufacturer, and the labelling of the prepackaged food contained a statement to the effect that information on the presence of those substances is not available.

7. This newly added defence was raised at the meeting of the Subcommittee on 17 June 2004. The Legal Service Division suggests that the policy aspect and implication of the defence should be further considered.

8. The commencement date of 9 July 2004 is retained subject to an extension of the grace period to 30 months (i.e. to 9 January 2007), as proposed by the Administration in LC Paper No. CB(2) 2858/03-04(01) on 17 June 2004.

9. For the sake of completeness, section 5 (new labelling requirements for alcoholic drinks) of the Amendment Regulation is amended in the same way as the Administration proposed in LC Paper No. CB(2) 2858/03-04(01) on 17 June 2004.

Proposed Amendment (C) - Repeal of section 4(a)(i) of the Amendment Regulation (labelling of allergens)

10. Proposed Amendment C repeals the whole part relating to the labelling requirements for allergen substances whilst the new labelling requirements for milk and milk products, additives, "best before" dates are retained.

11. For the sake of completeness, section 5 (new labelling requirements for alcoholic drinks) of the Amendment Regulation is amended in the same way as the Administration proposed in LC Paper No. CB(2) 2858/03-04(01) on 17 June 2004.

12. The commencement date of 9 July 2004 and the grace period of 18 months (i.e. to 9 January 2006) for the new labelling requirements for additives, "best before" dates and alcoholic drinks are retained.

Encl

Prepared by

Legal Service Division
Legislative Council Secretariat
19 June 2004

Proposed Amendment (A)
- Commencement Notice

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

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

Resolution made and passed by the Legislative Council under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) on July 2004.

RESOLVED that the Food and Drugs (Composition and Labelling) (Amendment) Regulation 2004, published in the Gazette as Legal Notice No. 85 of 2004 and laid on the table of the Legislative Council on 19 May 2004, be amended -

(a) by repealing section 1 and substituting -

"1. Sections 2 and 3 of this Regulation shall come into operation on 9 July 2004. Sections 4, 5 and 6 of this Regulation shall come into operation on a date to be appointed by the Secretary for Health, Welfare and Food by notice published in the Gazette, but the Secretary for Health, Welfare and Food shall not appoint a date that is earlier than 1 October 2004(?) .";

(b) in section 5 -

(i) in section (a), by repealing "Paragraph 2" and substituting

- "The whole Schedule except paragraphs 3 and 4"; and
- (ii) in subsection (b), by repealing "Paragraphs 2 and 4" and substituting "The whole Schedule except paragraph 3";
- (c) by repealing section 6 and substituting -

"6. Transitional provision

Within a period of 30 months following the commencement date for section 4 of this Regulation appointed under section 1 of this Regulation, it shall not be an offence under regulation 5(1) of the Food and Drugs (Composition and Labelling) Regulations (Cap. 132 sub. leg. W) ("principal Regulations") to advertise for sale, sell or manufacture for sale any prepackaged food which is not labelled in accordance with paragraphs 2 and 4 of Schedule 3 to the principal Regulations as amended by this Regulation, if that prepackaged food is labelled in accordance with what would have been the requirements of paragraphs 2 and 4 of Schedule 3 to the principal Regulations had this Regulation not come into operation."

Ricky FUNG Choi-cheung
Clerk to the Legislative Council

July 2004

*Proposed Amendment (B)
- Disclaimer/Defence in
case of non-availability of
information on allergens*

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**FOOD AND DRUGS (COMPOSITION AND LABELLING)
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Resolution made and passed by the Legislative Council under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) on July 2004.

RESOLVED that the Food and Drugs (Composition and Labelling) (Amendment) Regulation 2004, published in the Gazette as Legal Notice No. 85 of 2004 and laid on the table of the Legislative Council on 19 May 2004, be amended -

(a) by adding the following after section 2 -

"2A. Offences and penalties

Regulation 5 is amended by adding the following after paragraph (3) -

"(3A) Without affecting paragraph (3), in any proceedings for an offence against paragraph (1) in relation to any prepackaged food which is not marked or labelled in accordance with paragraph 2(4E) of Schedule 3, it shall be a defence if -

(a) the defendant reasonably and in good faith made enquires with the importer or manufacturer (as the case may be) as to whether the prepackaged food in question consisted of or contained any substance referred to in paragraph 4(E) of Schedule 3 and such information was not provided by the importer or manufacturer; and

(b) the labelling of the prepackaged food contained a statement to the effect that information on the presence of those substances is not available."

(b) in section 5 -

(i) in section (a), by repealing "Paragraph 2" and substituting "The whole Schedule except paragraphs 3 and 4"; and

(ii) in subsection (b), by repealing "Paragraphs 2 and 4" and substituting "The whole Schedule except paragraph 3".

(c) in section 6, by repealing "2006" and substituting "2007".

Ricky FUNG Choi-cheung
Clerk to the Legislative Council

July 2004

Proposed Amendment (C)
- Repeal of section 4(a)(i) of
the Amendment Regulation
(labelling of allergens)

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

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

Resolution made and passed by the Legislative Council under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) on July 2004.

RESOLVED that the Food and Drugs (Composition and Labelling) (Amendment) Regulation 2004, published in the Gazette as Legal Notice No. 85 of 2004 and laid on the table of the Legislative Council on 19 May 2004, be amended -

(a) by repealing paragraph (a)(i) of section 4.

(b) in section 5 -

(i) in section (a), by repealing "Paragraph 2" and substituting "The whole Schedule except paragraphs 3 and 4"; and

(ii) in subsection (b), by repealing "Paragraphs 2 and 4" and substituting "The whole Schedule except paragraph 3".

Ricky FUNG Choi-cheung
Clerk to the Legislative Council

July 2004