

立法會

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Paper for the Panel on Food Safety and Environmental Hygiene

Harmful Substances in Food (Amendment) Regulation 2005

The Panel on Food Safety and Environmental Hygiene has decided to hold a meeting on 30 August 2005 to discuss the enforcement of the Harmful Substances in Food (Amendment) Regulation 2005 (L.N. 137 of 2005) (“the Amendment Regulation”). This paper provides the legal background for members’ information.

Harmful Substances in Food (Amendment) Regulation 2005

2. The Amendment Regulation was made under sections 55(1) and 57 of the Public Health and Municipal Services Ordinance (Cap. 132) (“the Ordinance”). Under section 55(1), the Director of Food and Environmental Hygiene may, so far as appears to him to be necessary or expedient in the interests of the public health, or otherwise for the protection of the public, make regulations for requiring, prohibiting or regulating the addition etc. of any specified substance to food intended for sale for human consumption. Pursuant to this power the Director has made the Harmful Substances in Food Regulation (Cap. 132 sub. leg. AF) (“the Principal Regulations”). Under section 57 of the Ordinance, regulations made under section 55 may include provision for the prohibition, restriction or regulation of the sale etc. of live poultry, live reptiles and live fish in the same manner as if such were food.

3. The First Schedule to the Principal Regulations is a list of substances the maximum concentration of which in specified foods is prescribed. Under regulation 3 of the Principal Regulations, no person shall import, consign, deliver, manufacture or sell, for human consumption, any food of a description specified in the First Schedule which contains any substances or the description of such substances

specified therein in greater concentration than is prescribed. Under regulation 5 of the Principal Regulations, contravention of regulation 3 is an offence punishable by a fine at level 5 (i.e. \$50,000) and imprisonment for 6 months.

4. The Amendment Regulation adds malachite green into the list of substances in the First Schedule. The maximum concentration prescribed is 0 microgram per kilogram in “any food (including liver fish, live reptiles and live poultry)”. The effect of the addition is that importing, consigning, delivering, manufacturing or selling any food (including live fish, live reptiles and live poultry) for human consumption which contains malachite green becomes an offence punishable by a fine at level 5 and imprisonment for 6 months. The Amendment Regulation commenced operation on the date it was published in the Gazette (i.e. 26 August 2005).

5. The Health and Welfare Bureau has issued a LegCo Brief (File Ref: HWF(F) CR 2/3231/05) dated August 2005 on the Amendment Regulation.

Enforcement

6. The enforcement powers are all in existing provisions of the Ordinance. Under section 58 of the Ordinance, the Director of Food and Environmental Hygiene has the power to call for information as to composition of substances used in the preparation of food. Under section 59(1)(b), the Director has the power to authorize any public officer to seize and remove any food if it appears to him that any regulation made under section 55 has been contravened. Under section 62, any public officer authorized by the Director may take samples for analysis. A copy of sections 58, 59 and 62 is attached.

Statutory defence

7. Under section 70 of the Ordinance, a person against whom proceedings are brought under the Principal Regulations is entitled to have any person to whose act or default he alleges that the contravention of the provisions in question was due brought before the court. If, after the contravention has been proved, the original defendant proves that the contravention was due to the act or default of that other person, that other person may be convicted of the offence, and, if the original defendant further proves that he has used all due diligence to secure that the provisions in question were complied with, he shall be acquitted of the offence.

8. Another statutory defence is in section 71 of the Ordinance which provides that in any proceedings for an offence under the Principal Regulations, being an offence consisting of selling, or offering, exposure or advertising for sale or having in possession for the purpose of sale, any article or substance, it shall be a defence for the defendant to prove—

- (a) that he purchased it as being an article or substance which could lawfully be sold or otherwise dealt with as aforesaid, or, as the case may be, could lawfully be sold or dealt with under the name or description or for the purpose under or for which he sold or dealt with it, and with a written warranty to that effect; and
- (b) that he had no reason to believe at the time of the commission of the alleged offence that it was otherwise; and
- (c) that it was then in the same state as when he purchased it.

In the case of a warranty given by a person resident outside Hong Kong, the defendant is required to prove that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained therein. This defence is also available to a servant or agent of the person who purchased the article or substance under a warranty. The section also provides that a name or description entered in an invoice shall be deemed to be a written warranty that the article or substance to which the entry refers can be sold or otherwise dealt with under that name or description by any person. A copy of sections 70 and 71 are attached for members' reference.

Encl

Prepared by

Legal Service Division
Legislative Council Secretariat
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58. 要求提供配製食物及藥物所使用
物質的成分組合資料的權力

(1) 為行使第 55 及 56 條授予有關當局的權力，有關當局可藉命令規定在命令的日期或其後所進行業務包括生產、輸入或使用命令所指明類別物質的人，在命令所指明的時間內，向命令所指明的公職人員，就該項業務運作中售賣用作配製出售供人食用的食物或配製出售供人使用的藥物的該等物質的成分組合及用途，或就該項業務運作中作上述用途的該等物質的成分組合及用途，提供命令所指明的詳情。（由 1997 年第 80 號第 3 條修訂；由 1999 年第 78 號第 7 條修訂）

(2) 在不損害第 (1) 款條文的概括性的原則下，根據第 (1) 款所作出的命令，可規定須就任何物質提供下列詳情，即——

- (a) 該物質的成分組合及化學性質的詳情；
- (b) 使用或擬使用該物質配製食物或藥物的方式的詳情；
- (c) 為斷定該物質或為斷定以上述方式使用該物質製成的產品是否損害健康或對健康有任何方面的影響，以及該等損害或影響的程度，而由進行有關業務的人作出或在其知悉下作出的調查的詳情；
- (d) 為斷定以普通分量食用或使用該物質後對人體健康的累積影響，而由進行有關業務的人作出或在其知悉下作出的調查或查究的詳情。

58. Power to call for information as to composition
of substances used in the preparation
of food and drugs

(1) The appropriate authority may, for the purpose of exercising the powers conferred on that authority under sections 55 and 56, by order require any person who at the date of the order or at any subsequent time carries on a business which includes the production, importation, or use of substances of any class specified in the order to furnish to such public officer as shall be specified in the order, within such time as may be so specified, such particulars as may be so specified of the composition and use of any such substance sold in the course of that business for use in the preparation of food for sale for human consumption or drugs for sale for use by man or used for that purpose in the course of that business. (Amended 80 of 1997 s. 3; 78 of 1999 s. 7)

(2) Without prejudice to the generality of the provisions of subsection (1), an order made thereunder may require the following particulars to be furnished in respect of any substance, that is to say—

- (a) particulars of the composition and the chemical nature of the substance;
- (b) particulars of the manner in which the substance is used or proposed to be used in the preparation of food or drugs;
- (c) particulars of any investigations carried out by or to the knowledge of the person carrying on the business in question, for the purpose of determining whether and to what extent the substance, or any product formed when the substance is used as aforesaid, is injurious to, or in any way affects, health;
- (d) particulars of any investigations or inquiries carried out by or to the knowledge of the person carrying on the business in question for the purpose of determining the cumulative effect on the health of a person consuming or using the substance in ordinary quantities.

(3) 按照根據第(1)款條文所作出的命令而提供的詳情以及透過該等詳情而取得有關個別業務的資料，如沒有進行有關業務的人的事先書面同意，不得披露，除非披露是——

- (a) 按照有關當局發出的指示而作出的；及 (由 1999 年第 78 號第 7 條代替)
- (b) 為進行就違反該命令的罪行而提起的法律程序或是為報導該等法律程序而作出的。

(4) 任何人在違反第(3)款條文下披露任何詳情或資料，即屬犯罪。

(5) 任何人沒有遵從根據第(1)款條文所作出的命令的規定，即屬犯罪。

(6) 在本條中，凡提述“有關當局”之處，均須按照第(7)款解釋。(由 1999 年第 78 號第 7 條增補)

(7) 有關當局——

(a) 在第(1)款中——

(i) 就第 55 及 56 條所授予關乎食物的權力而言，指食物環境衛生署署長；及

(ii) 就第 55 及 56 條所授予關乎藥物的權力而言，指衛生署署長；及

(b) 在第(3)款中——

(i) 就關乎食物的詳情及資料而言，指食物環境衛生署署長；及

(ii) 就關乎藥物的詳情及資料而言，指衛生署署長。(由 1999 年第 78 號第 7 條增補)

(3) No particulars furnished in accordance with an order made under the provisions of subsection (1), and no information relating to any individual business obtained by means of such particulars, shall, without the previous consent in writing of the person carrying on the business in question, be disclosed except—

(a) in accordance with the directions of the appropriate authority; and (Replaced 78 of 1999 s. 7)

(b) for the purposes of any proceedings for an offence against the order, or any report of those proceedings.

(4) Any person who discloses any particulars or information in contravention of the provisions of subsection (3) shall be guilty of an offence.

(5) Any person who fails to comply with the requirements of any order made under the provisions of subsection (1) shall be guilty of an offence.

(6) In this section any reference to “appropriate authority” is to be construed according to subsection (7). (Added 78 of 1999 s. 7)

(7) The appropriate authority—

(a) under subsection (1), for powers conferred by sections 55 and 56 in relation to—

(i) food, is the Director of Food and Environmental Hygiene; and

(ii) drugs, is the Director of Health; and

(b) under subsection (3), for particulars and information relating to—

(i) food, is the Director of Food and Environmental Hygiene; and

(ii) drugs, is the Director of Health. (Added 78 of 1999 s. 7)

59. 食物或藥物的檢驗、檢取和標記或銷毀

- (1) 獲主管當局就此以書面授權的公職人員——
- (a) 可檢驗擬供人食用或其覺得是擬供人食用的食物，或擬供人使用或其覺得是擬供人使用的藥物；及
 - (b) 如覺得該等食物不宜供人食用或該等藥物不宜供人使用(視屬何情況而定)、或覺得有人已就該等食物或藥物違反根據第 55 或 56 條訂立的規例條文，可將該等食物或藥物或裝載該等食物或藥物的包裝檢取和移走；及
 - (c) 凡認為就任何輸入的上述食物的檢驗需採取特別程序，或凡在進口商要求下採取上述特別程序，可指示進口商或其他管有該等食物的人，提供檢驗食物所需的一切方便。(由 1976 年第 29 號第 3 條代替)
- (1A) 如主管當局就此以書面授權的公職人員已妥為向任何人發出指示，規定其在按照第 (1)(c) 款的規定下提供檢驗輸入食物的方便，而該人沒有如此提供方便，該人即屬犯罪。(由 1976 年第 29 號第 3 條增補)
- (2) 獲主管當局就此以書面授權的公職人員，如覺得任何食物不宜供人食用或任何藥物不宜供人使用，或覺得有人已就該等食物或藥物違反根據第 55 或 56 條訂立的規例條文，則不論該等食物或藥物是否根據第 (1) 款條文被檢取，該公職人員均可——
- (a) 在該等食物或藥物加上標記、印記或其他名稱；或
 - (b) 銷毀或以其他方式處置該等食物或藥物，或安排將該等食物或藥物銷毀或以其他方式處置。
- (3) 任何人如在違反根據第 (2) 款條文加在食物或藥物上的標記、印記或其他名稱所宣稱事項下，將該等食物或藥物售賣或要約出售，或為將該等食物或藥物出售而將其展出，或為將該等食物或藥物出售或配製以供出售而將其交付某人存放或向某人託付，或以其他方式使用該等食物或藥物，或意圖欺騙他人而將該等標記、印記或名稱除去、更改或塗去，即屬犯罪。
- (4) 在根據第 (2) 款條文將食物或藥物銷毀或以其他方式處置前，須有一項說明及其他足可識別該等食物或藥物的資料記錄在案，而主管當局須將該記錄保管，為期不少於 12 個月。

59. Examination and seizure and marking or destruction of food or drugs

- (1) Any public officer authorized in writing in that behalf by the Authority may—
- (a) examine any food which is, or which appears to him to be, intended for human consumption, or any drug which is, or which appears to him to be, intended for use by man; and
 - (b) seize and remove such food or drug or any package in which the same was contained if it appears to him that such food or drug is unfit for human consumption or for use by man, as the case may be, or that any of the provisions of any regulation made under section 55 or 56 have been contravened in respect thereof; and
 - (c) where he is of the opinion that a special procedure is necessary for the examination of any such food which has been imported, or where at the request of the importer he has recourse to such special procedure, direct the importer or any other person in possession of the food to provide all such facilities as may be required for the examination of the food. (Replaced 29 of 1976 s. 3)
- (1A) Any person who fails to provide facilities for the examination of imported food in accordance with subsection (1)(c), after having been duly directed to do so by a public officer authorized in writing in that behalf by the Authority, shall be guilty of an offence. (Added 29 of 1976 s. 3)
- (2) If it appears to any public officer authorized in writing in that behalf by the Authority that any food or drug, whether seized under the provisions of subsection (1) or not, is unfit for human consumption or for use by man, respectively, or that any of the provisions of any regulations made under section 55 or 56 have been contravened in respect of any such food or drug, he may—
- (a) affix to such food or drug a mark, seal or other designation; or
 - (b) destroy or otherwise dispose of such food or drug or cause the same to be destroyed or otherwise disposed of.
- (3) If any person sells, offers or exposes for sale, or deposits or consigns to any person for the purpose of sale or preparation for sale, or otherwise uses, any food or drug contrary to the purport of any mark, seal or other designation affixed thereto under the provisions of subsection (2), or removes, alters or obliterates any such mark, seal or designation with intent to deceive any person, he shall be guilty of an offence.
- (4) Before any food or drug is destroyed or otherwise disposed of under the provisions of subsection (2), there shall be recorded a description and such other details as will suffice to identify such food or drug, and the Authority shall keep such record in its custody for a period of not less than 12 months.

(5) 任何人如認為根據第(1)或(2)款條文將任何食物或藥物檢取和移走，或加上標記、印記或其他名稱，或予以銷毀或以其他方式處置，令其感到受屈，可於有關作為作出後 72 小時內向法院提出申訴，而法庭則可完全或部分確認或批准有關作為；如任何作為被批准或被部分批准，法庭須命令將全部或與被批准作為有關部分的標記、印記或其他名稱除去，或將被檢取和移走的全部食物或藥物或與被批准作為有關部分的食物或藥物歸還，而有關食物或藥物或其任何部分如已遭銷毀或已以其他方式處置，或不再適宜供人食用或供人使用(視屬何情況而定)，或在命令作出時已因有關作為而致貶值，則法庭須命令主管當局付出一筆法庭在顧及個案情況下認為公正的款項以作補償，但不得超過該等食物或藥物在有關作為作出時的市價為限。

(6) 如就第 54(1) 或 (2) 條所訂罪行或根據第 55 條訂立的規例條文所訂罪行而定罪，法庭可發出命令，將定罪所關乎的食物或藥物，以及在被告人處所發現或在犯罪時或有關食物或藥物被檢取時由被告人管有的相類食物或藥物，連同所有裝載該等食物或藥物的包裝沒收。

(7) 根據第(6)款條文沒收的食物或藥物及將其裝載的包裝，均須按主管當局指示的方式處置。

(5) If any person considers himself aggrieved by the seizure and removal, or by the marking, sealing or otherwise designating, or by the destruction or other disposal, of any food or drug under the provisions of subsection (1) or (2) he may, within 72 hours after the doing of such act, complain to the court and the court may confirm or disallow the act, either wholly or in part, and shall, in the case of any act disallowed, or disallowed in part, order the removal of such mark, seal or other designation or the restoration of the food or drug seized and removed, either as to the whole or as to such part in respect of which the act was disallowed, or, if the food or drug in question, or any part thereof, has been destroyed or otherwise disposed of, or is no longer fit for human consumption or for use by man, as the case may be, or is depreciated in value at the time of making such order by reason of such act, order the

Authority, to pay by way of compensation such sum of money, not exceeding the market value of such food or drug at the time of the doing of such act, as the court may, having regard to the circumstances of the case, consider just.

(6) In the case of any conviction for an offence under section 54(1) or (2) or for an offence under any of the provisions of any regulation made under section 55, the court may order that any food or drug to which the conviction relates and any similar food or drug found on the defendant's premises or in his possession at the time of the commission of the offence or of the seizure of the food or drug in question, shall be forfeited, together with all packages containing the same.

(7) Any food or drug, and any package containing the same, forfeited under the provisions of subsection (6) shall be disposed of in such manner as the Authority may direct.

62. 抽取樣本的權力

(1) 獲主管當局就此以書面授權的公職人員，如覺得任何食物或藥物或任何可用作配製食物或藥物的物質，是擬出售或已經出售供人食用或供人使用的（視屬何情況而定），或在他因施行本條例而獲授權進入的處所、攤檔、車輛、船隻、飛機或地方內發現任何食物或藥物或任何可用作配製食物或藥物的物質，均可抽取其樣本以作分析、細菌化驗或其他檢驗：

但——

- (a) 上述公職人員須向看似是合法保管該等食物、藥物或物質的人，繳付上述樣本的市價或提供該市價的付款，但如不知有關市價或並非可輕易確定有關市價，則須向該人繳付合理的價錢或提供該價錢的付款；及
 - (b) 凡該等食物、藥物或物質是存盛於未開啟的包裝內以供零售的，則上述樣本不得少於任何個別包裝內的全部分量。
- (2) 在根據本條抽取樣本時，上述公職人員須採取所需的步驟，以令其本人信納所抽取的樣本可公正地作為大部分有關食物、藥物或其他物質的樣本。
- (3) 本條條文不得解釋為授權在違反《危險藥物條例》(第 134 章) 條文下購買或出售藥物。
- (4) 任何人沒有遵從根據本條條文所作的要求或請求，即屬犯罪。

62. Power to take samples

(1) Any public officer authorized in writing in that behalf by the Authority may take samples for analysis, or for bacteriological or other examination, of any food or drug, or of any substance capable of being used in the preparation of any food or drug, which appears to him to be intended for sale or to have been sold for human consumption or for use by man, as the case may be, or which is found by him on or in any premises, stall, vehicle, vessel, aircraft or place which he is authorized to enter for the purposes of this Ordinance:

Provided that—

- (a) such officer shall pay or tender payment of the market price of any such samples, or, if the market price be unknown or not readily ascertainable, a reasonable price, to the person appearing to have the lawful custody of such food, drug or substance; and
 - (b) where any such food, drug or substance is kept for retail sale in unopened packages, no such sample shall consist of less than the whole of the contents of any one such package.
- (2) When taking any sample under this section, such officer shall take such steps as may be necessary to satisfy himself that the sample taken is a fair sample of the bulk of the food, drug or other substance in question.
- (3) Nothing in this section shall be construed as authorizing any purchase or sale of drugs in contravention of the provisions of the Dangerous Drugs Ordinance (Cap. 134).
- (4) Any person who fails to comply with any demand or requisition made under the provisions of this section shall be guilty of an offence.

70. 因其他人而致違例

(1) 根據本部被起訴的人，如指稱違反有關條文是由於另一人的作為或失責所致，則在向法庭妥為提出告發，並向控方發出不少於 3 整天通知期的意向通知後，有權令該另一人在有關法律程序中被帶到法庭前應訊，而違例經證明屬實後，如原來的被告人證明違例是由於該另一人的作為或失責所致，則該另一人可被定罪，而原來的被告人如進一步證明其本人已盡一切應盡的努力，以確保有關條文獲得遵從，即獲判無罪釋放。

(2) 凡被告人尋求引用第(1)款條文——

- (a) 則控方及遭被告人指控犯罪的人，均有權盤問被告人(如被告人作證)及被告人為支持其中辯而傳召的證人，並有權提出反駁證據；
- (b) 法庭可作出其認為適當的命令，規定法律程序中任何一方向另一方繳付訟費。

(3) 凡主管當局覺得已發生一項罪行，並可根據本部就該罪行起訴某人，而主管當局亦合理地信納申訴所關乎的罪行是由於另一人的作為或失責所致及首述的人根據第(1)款提出的免責辯護成立，則主管當局可安排起訴該另一人而無須先行安排起訴首述的人；在有關法律程序中，被告人可被控以首述的人本可被控的罪行，而一經證明違例是由於被告人的作為或失責所致，則可裁定其犯了該罪行。

(4) 在根據第(3)款條文提起的法律程序中，告發或申訴須列出事實，並述明有關主管當局合理地信納申訴所關乎的罪行是由於被起訴人的作為或失責所致的。

70. Contraventions due to some other person

(1) A person against whom proceedings are brought under this Part shall, upon information duly laid by him and on giving to the prosecution not less than 3 clear days' notice of his intention, be entitled to have any person to whose act or default he alleges that the contravention of the provisions in question was due brought before the court in the proceedings, and, if, after the contravention has been proved, the original defendant proves that the contravention was due to the act or default of that other person, that other person may be convicted of the offence, and, if the original defendant further proves that he has used all due diligence to secure that the provisions in question were complied with, he shall be acquitted of the offence.

(2) Where the defendant seeks to avail himself of the provisions of subsection (1)—

- (a) the prosecution, as well as the person whom the defendant charges with the offence, shall have the right to cross-examine him, if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence;
- (b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party thereto.

(3) Where it appears to the Authority that an offence has been committed in respect of which proceedings might be taken under this Part against some person and the Authority is reasonably satisfied that the offence of which complaint is made was due to an act or default of some other person and that the first-mentioned person could establish a defence under subsection (1), the Authority may cause proceedings to be taken against that other person without first causing proceedings to be taken against the first-mentioned person, and, in any such proceedings, the defendant may be charged with, and, on proof that the contravention was due to his act or default, be convicted of, the offence with which the first-mentioned person might have been charged.

(4) In proceedings instituted under the provisions of subsection (3), the information or complaint shall set out the facts and state that the Authority concerned is reasonably satisfied that the offence of which complaint is made was due to the act or default of the person against whom the proceedings are brought.

71. 以保證書作為申辯中的免責辯護的條件

(1) 除本條條文另有規定外，在就本部所訂罪行而提起的法律程序中，如因將物品或物質售賣或要約出售、或因將物品或物質出售而將其展出、宣傳或管有而構成罪行，則被告人如證明下列事項，即為免責辯護——

- (a) 被告人購買該物品或物質，是將其作為可合法售賣或可採用上述其他方式處理的，或可按其本人售賣或處理該物品或物質所按照的名稱或說明而合法售賣或處理的，或可為其本人售賣或處理該物品或物質的目的而合法售賣或處理的（視屬何情況而定），而就該物品或物質並附有具上述意思的書面保證；及
- (b) 被告人在犯所指控的罪行時，並無理由相信該物品或物質是有別於上述情況的；及
- (c) 該物品或物質的狀況，在被告人犯所指控的罪行時，與在被告人購買該物品或物質時相同。

(2) 在根據本部提起的法律程序中，保證書只有在下列情況方可作為免責辯護——

- (a) 被告人——
 - (i) 在聆訊日期不少於 3 整天之前，曾將保證書副本連同通知送交檢控員，而通知是述明其本人擬依賴該保證書作辯，並指明向他給予保證書的人的姓名或名稱及地址；及
 - (ii) 亦曾將同樣的通知送交該人；及
- (b) 如給予保證書的人居住於香港以外地區，則被告人須證明其本人已採取合理步驟以確定保證書所載陳述乃屬準確，而其本人事實上亦相信保證書所載陳述乃屬準確。 (*由 1986 年第 10 號第 24 條修訂*)

(3) 凡被告人是購買該附有保證書物品或物質的人的受僱人或代理人，其本人亦有權依賴本條條文，猶如其僱主或委託人假若是被告人時本會有權依賴本條條文一樣。

(4) 被指稱給予保證書的人，有權出席聆訊和作證，而法庭如認為適當，可將聆訊押後，以使該人得以出席聆訊和作證。

(5) 為施行本條及第 72 條，發票上所記有的名稱或說明，須當作為書面保證，指任何人均將該記項上所提述的物品或物質按該名稱或該說明售賣或以其他方式處理，而不違反本部條文。

71. Conditions under which warranty may be pleaded as defence

(1) Subject to the provisions of this section, in any proceedings for an offence under this Part, being an offence consisting of selling, or offering, exposing or advertising for sale or having in possession for the purpose of sale, any article or substance, it shall be a defence for the defendant to prove—

- (a) that he purchased it as being an article or substance which could lawfully be sold or otherwise dealt with as aforesaid, or, as the case may be, could lawfully be sold or dealt with under the name or description or for the purpose under or for which he sold or dealt with it, and with a written warranty to that effect; and
- (b) that he had no reason to believe at the time of the commission of the alleged offence that it was otherwise; and
- (c) that it was then in the same state as when he purchased it.

(2) A warranty shall only be a defence in proceedings under this Part if—

- (a) the defendant—
 - (i) has, not later than 3 clear days before the date of the hearing, sent to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it; and
 - (ii) has also sent a like notice to that person; and
- (b) in the case of a warranty given by a person resident outside Hong Kong, the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained therein. (*Amended 10 of 1986 s. 24*)

(3) Where the defendant is a servant or agent of the person who purchased the article or substance under a warranty, he shall be entitled to rely on the provisions of this section in the same way as his employer or principal would have been entitled to do if he had been the defendant.

(4) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

(5) For the purposes of this section and of section 72, a name or description entered in an invoice shall be deemed to be a written warranty that the article or substance to which the entry refers can be sold or otherwise dealt with under that name or description by any person without contravening any of the provisions of this Part.