

立法會
Legislative Council

LC Paper No. LS15/11-12

**Paper for the House Committee Meeting
on 16 December 2011**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 9 December 2011**

Date of tabling in LegCo : 14 December 2011

Amendment to be made by : 11 January 2012 (or 1 February 2012 if extended by resolution)

**Public Health and Municipal Services Ordinance (Cap. 132)
Harmful Substances in Food (Amendment) Regulation 2011 (L.N. 173)**

The Harmful Substances in Food (Amendment) Regulation 2011 is made by the Director of Food and Environmental Hygiene (the Director) pursuant to section 55(1) of the Public Health and Municipal Services Ordinance (Cap. 132) (the Ordinance) to amend the Harmful Substances in Food Regulations (Cap. 132 sub. leg. AF) (the Regulations).

2. Under section 55(1) of the Ordinance, the Director 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 of any specified substance to food intended for sale for human consumption, and generally for regulating or prescribing the composition of such food.

3. The Regulations currently govern the import and sale of food containing harmful substances. Under regulation 3A of the Regulations, a person must not import, sell or consign or deliver for sale for human consumption any fish, meat or milk which contains any substance specified in the Second Schedule to the Regulations (the Second Schedule). Contravention is an offence, which carries a fine of HK\$50,000 and imprisonment for 6 months¹. As the definition of "milk" excludes dried milk, condensed milk or reconstituted milk², such prohibition does not apply to them. Consequently, presence of these prohibited substances in infant formula is not disallowed.

¹ Regulation 5 of the Regulations.

² Regulation 2 of the Regulations.

4. To plug this loophole, L.N. 173 amends the Regulations to extend the prohibition of the presence of substances specified in the Second Schedule in food to dried milk (including infant formula), condensed milk and reconstituted milk. According to the Administration, the potential problem highlighted by the suspected contaminated infant formula in the Mainland in August 2010 will also have been tackled³.

5. L.N. 173 will come into operation on 1 March 2012.

6. Members may refer to the LegCo Brief (File Ref: FH CR 2/3231/05) issued by the Food and Environmental Hygiene Department, the Food and Health Bureau, in December 2011 for further information.

7. According to the Administration, the Administration consulted members of the trade through a Trade Consultation Forum and a special consultation session held on 12 May and 3 June 2011 respectively. The traders present were content on the proposed amendments. The Advisory Council on Food and Environmental Hygiene and the Expert Committee on Food Safety were also consulted on 25 May and 2 June 2011 respectively and both bodies supported the proposal.

8. The Panel on Food Safety and Environmental Hygiene was consulted on the proposed legislative amendments at its meeting on 14 June 2011. Members generally expressed support for the proposal.

Pilotage Ordinance (Cap. 84)

Pilotage (Dues) (Amendment) Order 2011 (L.N. 174)

9. Under section 22 of the Pilotage Ordinance (Cap. 84), the Pilotage Authority, who is the Director of Marine, may by order provide for the amount of pilotage dues charged by licensed pilots for the provision of pilotage services after consultation with the Pilotage Advisory Committee. The current pilotage dues are those specified in the Schedule to the Pilotage (Dues) Order (Cap. 84 sub. leg. D) (the PDO Schedule).

10. L.N. 174 is made by the Pilotage Authority to amend the PDO Schedule -

³ According to paragraph 5 of the LegCo Brief, there were suspected presence of harmful hormones in some infant formulas manufactured in the Mainland which led to suspected cases of precocious puberty in some children in the Mainland in August 2010.

- (a) to increase the basic amount of the standard pilotage due from HK\$4,100 to HK\$4,400 as from 3 February 2012;
- (b) to increase an additional pilotage due, which is payable for any pilotage service that requires a pilot to board a ship or disembark from a ship west of a straight line drawn from Pearl Island to East Brother Island, from HK\$2,000 to HK\$2,300 as from 3 February 2012 and then further to HK\$2,600 as from 1 January 2013; and
- (c) to increase the pilotage due payable where the engagement of a pilot is cancelled from HK\$4,100 to HK\$4,400 as from 3 February 2012.

11. Members may refer to the LegCo Brief (File Ref: MA 50/1) issued by the Transport and Housing Bureau on 7 December 2011 for further information. According to paragraphs 2 and 8 of the LegCo Brief, Hong Kong Liner Shipping Association and the Hong Kong Pilots Association representing the service users and service providers respectively recommended increases in pilotage dues having regard to the current market environment and operating conditions and the proposed revision of pilotage dues was endorsed by the Pilotage Advisory Committee in June 2011.

12. The Panel on Economic Development was consulted on the proposal at its meeting on 28 November 2011 and indicated support.

Port Control (Cargo Working Areas) Ordinance (Cap. 81)
Port Control (Public Cargo Working Area) Order 2011 (L.N. 175)

13. Section 3(1) of the Port Control (Cargo Working Areas) Ordinance (Cap. 81) empowers the Secretary for Transport and Housing (STH) to declare by an order any area of unleased Government land and any area of water adjoining any such area to be a public cargo working area (PCWA). Pursuant to section 46 of the Interpretation and General Clauses Ordinance (Cap. 1), STH has the power to repeal any order made.

14. The Kwun Tong PCWA and Cha Kwo Ling PCWA have been commissioned for many years and their current boundaries were declared under L.N. 85 of 2009 and L.N. 60 of 1998 respectively. According to the Administration, the operators operating at the Kwun Tong and Cha Kwo Ling PCWAs have moved out and the PCWAs are now vacant. In order to make way for the development of south-east Kowloon, the two PCWAs have not been released for further tendering as confirmed by the Administration.

15. In view of the decommissioning of the Kwun Tong and Cha Kwo Ling PCWAs, L.N. 175 repeals L.N. 85 of 2009 and L.N. 60 of 1998 and sections 5 and 9 of the Port Control (Public Cargo Working Area) (Consolidation) Order (Cap. 81 sub. leg. B).

16. L.N. 175 will come into operation on 6 February 2012.

17. Members may refer to the LegCo Brief (File Ref: MA 40/4) issued by the Transport and Housing Bureau on 7 December 2011 for further information.

18. According to paragraph 6 of the LegCo Brief, the PCWA operators were informed of the matter since 2008. The Kwun Tong District Council passed a motion on 29 January 2008 urging the Government to close the two PCWAs and develop the area into a waterfront promenade.

19. The Panel on Economic Development (PED) was briefed on the proposed closure of the Kwun Tong and Cha Kwo Ling PCWAs at the meeting on 17 March 2008. Members raised no particular views on the proposal. At subsequent meetings on 24 January 2011 and 28 February 2011, PED was consulted on the proposed arrangements for the re-allocation of berths in the two PCWAs following their closure.

Concluding remarks

20. No difficulties have been identified in relation to the legal or drafting aspects of the above items of subsidiary legislation.

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