



中華人民共和國香港特別行政區政府總部食物及衛生局  
Food and Health Bureau, Government Secretariat  
The Government of the Hong Kong Special Administrative Region  
The People's Republic of China

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Miss Betty MA  
Clerk to Subcommittee on  
Import and Export (General)(Amendment) Regulation 2013  
Legislative Council Complex,  
1 Legislative Council Road,  
Central, Hong Kong

Dear Miss Ma,

**Subcommittee on  
Import and Export (General)(Amendment) Regulation 2013**

At the meeting of the Subcommittee on 6 April, some Members expressed concern about whether there is the need for the reference to “and any other relevant circumstances” in the newly amended definition of *powdered formula* (Annex I) and requested examples of similar references in other legislation.

Based on policy grounds, it is a common practice to include “other relevant circumstances” in addition to the specified circumstances in the provisions pertaining to legal liabilities and rights. The purpose is to cover not only the specified circumstances but also all possible scenarios which cannot be set out exhaustively to avoid creating a loophole.

Deletion of “and any other relevant circumstances” in the proposed new definition of *powdered formula* would mean that officers of the Customs

and Excise Department (C&ED) have to rely solely on the product descriptions or users instructions of a certain product in judging whether it is a powdered formula. C&ED officers cannot make such a judgment if the product descriptions or users instructions are deliberately altered or defaced, resulting in illegibility. Similarly, when parallel traders change the appearance of the package of powdered formula by using containers without any product descriptions or users instructions, C&ED officers will have difficulty in distinguishing whether the product is a powdered formula, thus posing enormous difficulties in law enforcement.

It can be seen that the deletion of “and any other relevant circumstances” will create a loophole and greatly undermine the effectiveness of the provision.

At Members’ request, some examples of similar references in other legislation are set out at Annex II for information.

Yours sincerely,



( Jeff LEUNG )

for Secretary for Food and Health

## Annex I

### **Proposed new definition**

*powdered formula* (配方粉) means any substance in powder form that, having regard to any product descriptions and users instructions (if applicable) and any other relevant circumstances, is intended for or claimed to be for consumption, as milk powder or soya-based formula powder, in liquid form by persons of any age under 36 months (notwithstanding it is also claimed, if applicable, to be suitable for consumption by persons of any age over 36 months) to satisfy their nutritional requirement;

## 建議的新定義

**配方粉** (powdered formula)指任何符合以下描述的粉狀物質：在顧及產品描述和使用指示(如適用)及任何其他有關情況下，該物質是擬供或宣稱是供未年滿36個月的任何年齡人士，作為奶粉或大豆配方粉，以液體形態食用，以滿足其營養需要(即使該物質亦宣稱(如適用)是適合36個月以上的任何年齡人士食用亦然)；



**Examples of reference to “other relevant circumstances”  
or similar references in legislation regarding  
(1) legal rights or liabilities or (2) application of provisions (e.g. definition)**

<u>Example</u>	<u>Reference</u>	<u>Contents of the Provision</u>
<b>(1) Provisions regarding legal rights or liabilities</b>		
1	Crimes Ordinance (Cap. 200) Section 147A(3)	For the purposes of this section— ... (b) <b>in deciding how a sign may reasonably be understood<sup>1</sup> regard may be had to—</b> (i) all aspects of the sign, including its size, colour, shape and design; (ii) the location of the sign; (iii) the user of any place that the sign advertises; and (iv) the services offered by any person whose services the sign advertises, and to <b>any other relevant circumstances</b> .
2	Race Discrimination Ordinance (Cap. 602) Section 13(1)	<b>Nothing in section 10 renders unlawful any act</b> done by an employer for the benefit of any person in or in connection with employing the person at an establishment in Hong Kong, <b>where—</b> ... (c) the act is reasonably done for a person so recruited or transferred, <b>having regard to—</b> (i) the prevailing terms of employment offered to persons with those skills, knowledge or experience in places outside Hong Kong; and (ii) <b>any other relevant circumstances</b> (other than the race of the person).

<sup>1</sup> Section 147(1) of that Ordinance provides that “any person who publicly displays ... a sign that ... may reasonably be understood to advertise the services of a prostitute ... shall be guilty of an offence”.

3	Prevention of Child Pornography Ordinance (Cap. 579) Section 4(2)	<p><b>It is a defence</b> to a charge under section 3 (other than section 3(3)) for the defendant to establish—</p> <p>...</p> <p>(d) that—</p> <p>(i) he took all such steps as were reasonable and practicable <b>in the circumstances of the case</b> to ascertain the age of the person pornographically depicted in the child pornography when originally depicted;</p> <p>(ii) in so far as the defendant was able to influence in any way how the person was depicted, he took all such steps as were reasonable and practicable <b>in the circumstances of the case</b> to ensure that the person was not depicted as a child; and</p> <p>(iii) he believed on reasonable grounds that the person was not a child when originally depicted and that the person was not depicted as a child.</p>
4	Construction Sites (Safety) Regulations (Cap. 59 sub. leg. I) Regulation 38H(1)	<p><b>It shall be a defence</b> for a contractor charged with an offence under regulation 38B(1) or (1A) or 38C to show—</p> <p>(a) that <b>in all the circumstances of the case</b>, it was impracticable to comply with all or any of the requirements of that regulation;</p> <p>(b) that—</p> <p>(i) the contractor provided suitable and adequate safety nets and safety belts in lieu of complying with those requirements; or</p> <p>(ii) <b>in all the circumstances of the case</b>, it was impracticable to provide such safety nets and the contractor provided suitable and adequate safety belts in lieu of complying with those requirements; and</p> <p>...</p>

5	Electronic Transactions Ordinance (Cap. 553) Section 7(2)	For the purposes of subsection (1)(a) <sup>2</sup> — ... (b) <b>the standard for reliability of the assurance is to be assessed having regard to the purpose for which the information was generated and all the other relevant circumstances.</b>
6	Civil Aviation Ordinance (Cap. 448) Section 8(1)	<b>No action shall lie in respect of trespass or in respect of nuisance, by reason only of the flight of an aircraft over any property at a height above the ground, which, having regard to wind, weather and all the circumstances of the case,</b> is reasonable, or the ordinary incidents of such flight so long as such of the provisions ... which are applicable in the particular case are complied with and there has been no breach of section 4.
<b>(2) Provisions regarding application of provisions (e.g. definition)</b>		
7	Sale of Goods Ordinance (Cap. 26) Section 2(5)	<b>Goods of any kind are of merchantable quality within the meaning of this Ordinance if they are—</b> (a) as fit for the purpose or purposes for which goods of that kind are commonly bought; (b) of such standard of appearance and finish; (c) as free from defects (including minor defects); (d) as safe; and (e) as durable, as it is reasonable to expect <b>having regard to any description applied to them, the price (if relevant) and all the other relevant circumstances...</b>

<sup>2</sup> Section 7(1)(a) of that Ordinance provides that “where a rule of law requires that certain information be presented or retained in its original form, the requirement is satisfied by presenting or retaining the information in the form of electronic records if (a) there exists a reliable assurance as to the integrity of the information from the time when it was first generated in its final form”.



8	Race Discrimination Ordinance (Cap. 602) Section 37(2)	<p><b>In determining whether the main object of a club is as stated in subsection (1)<sup>3</sup>, regard shall be had to—</b></p> <p>(a) the essential character of the club;</p> <p>(b) the extent to which the affairs of the club are so conducted that the persons primarily enjoying the benefits of membership are of the racial group in question; and</p> <p>(c) <b>any other relevant circumstances.</b></p>
9	Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) Section 2(3)	<p>For the purposes of this Ordinance, a thing (including a thing contained in any receptacle)—</p> <p>(a) that is claimed, represented or held out by any person, whether by advertisement or in any other way, to be or to contain a specimen; or</p> <p>(b) that <b>appears</b> from an accompanying document, packaging, mark or label, or <b>from other circumstances</b>, to be or to contain a specimen, <b>shall be treated as such a specimen.</b></p>
10	Undesirable Medical Advertisements Ordinance (Cap. 231) Section 3B(3)	<p>For the purposes of this section—</p> <p>...</p> <p>(c) <i>any similar claim</i> (任何類似的聲稱) means a claim that can reasonably be understood to be to the like effect as the specified claim, <b>by reference to all the relevant circumstances.</b></p>
11	Construction Sites (Safety) Regulations (Cap. 59 sub. leg. I) Regulation 39(4)(a)	<p><b>This regulation shall not apply—</b></p> <p>(a) to an excavation or earthwork where, <b>having regard to</b> the nature and slope of the sides of the excavation or earthwork and <b>other circumstances</b>, no fall or dislodgment of earth, rock, or other material is liable to occur—</p> <p>(i) so as to bury or trap a workman or other person employed in or near the excavation</p>

<sup>3</sup> Section 37(1) of that Ordinance provides that “section 36 does not apply to, or in relation to, a club the main object of which is to enable the benefits of membership to be enjoyed by persons of a particular racial group defined otherwise than by reference to colour”.



		<p>or earthwork; or</p> <p>(ii) so as to strike any such workman or person from a height of more than 1.2 metres;</p> <p>...</p>
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法例中就(1)法律權利或責任或(2)條文的適用(如定義)  
提述“其他有關情況”或有類似提述的例子

例子	條文出處	條文內容
<b>(1) 關於法律權利或責任的條文</b>		
1	《 刑事罪行條例 》 (第 200 章) 第 147A(3)條	就本條而言— …… (b) 在決定標誌可如何合理地理解 <sup>1</sup> 時，可顧及以下各點— (i) 該標誌的各方面，包括其大小、顏色、形狀及設計； (ii) 該標誌的位置； (iii) 該標誌所宣傳的任何地方的用途；及 (iv) 提供該標誌所宣傳服務的人所提供的服務， 以及其他有關情況。
2	《 種族歧視條例 》 (第 602 章) 第 13(1)條	如某僱主於在設於香港的機構僱用任何人時，或在與該項僱用有關連的情況下，為了該人的利益而作出任何作為，而— …… (c) 在顧及以下事項後，該項作為屬合理地為自香港以外地方招聘或調職的人而作出的一 (i) 擁有該等技能、知識或經驗的人在香港以外地方獲提供的現行僱用條款；及 (ii) 任何其他有關情況(該人的種族除外)， 則第 10 條並不將該項作為定為違法。
3	《 防止兒童色情物品條例 》 (第 579 章) 第 4(2)條	被控犯第 3 條(第 3(3)條除外)所訂罪行的被告人，如證明以下情況，可以此作為免責辯護— …… (d) (i) 他已採取一切在有關個案的情況下屬合理和切實可行的步驟，以確定在有關的兒童色情物品中屬色情描劃對象的人在原先被描劃之時的年齡； (ii) 在被告人能夠以任何方式影響如何描劃

<sup>1</sup> 該條例第 147A(1)條訂明：“任何人公開地展示……可合理地被理解為宣傳由娼妓……所提供的服務的標誌，即屬犯罪”。

		<p>該人的範圍內，他已採取一切在有關個案的情況下屬合理和切實可行的步驟，以確保該人並非被描劃為兒童；及</p> <p>(iii) 他基於合理理由相信該人在原先被描劃之時並非兒童，且基於合理理由相信該人並非被描劃為兒童。</p>
4	<p>《 建築地盤(安全)規例 》 (第 59 章，附屬法例 I) 第 38H(1)條</p>	<p>任何被控第 38B(1)或(1A)或 38C 條所訂罪行的承建商如證明有以下情況，則可以此作為免責辯護—</p> <p>(a) 在該個案的所有情況下，遵從該條所有或任何規定均不屬切實可行；</p> <p>(b) (i) 該承建商已提供適當和足夠的安全網及安全帶以代替遵從該等規定；或</p> <p>(ii) 在該個案的所有情況下，提供該等安全網不屬切實可行，而有關承建商已提供適當和足夠的安全帶以代替遵從該等規定；及</p> <p>.....</p>
5	<p>《 電子交易條例 》 (第 553 章) 第 7(2)條</p>	<p>為施行第(1)(a)款<sup>2</sup>—</p> <p>.....</p> <p>(b) 評估上述保證的可靠性的標準時，須顧及產生該等資訊的目的及所有其他有關情況。</p>
6	<p>《 民航條例 》 (第 448 章) 第 8(1)條</p>	<p>如有飛機在離地面某一高度飛過任何財產，只要……適用於該情況的條文已獲遵從，以及第 4 條沒有被違反，而該高度是在顧及該情況中的風、天氣及所有情況下是屬合理的高度，則不得單以如此的飛行或其中所發生的一般事故為理由而提起侵犯訴訟或妨擾訴訟。</p>
(2)關於條文的適用的條文(如定義)		
7	<p>《 貨品售賣條例 》 (第 26 章) 第 2(5)條</p>	<p>任何一種貨品，如其—</p> <p>(a) 對於通常購買該種貨品所作用途的適用性；</p> <p>(b) 外觀及最終修飾的水準；</p> <p>(c) 並無缺點(包括輕微缺點)的程度；</p> <p>(d) 安全程度；及</p>

<sup>2</sup> 該條例第 7(1)(a)條訂明：“凡任何法律規則規定某些資訊須以其原狀出示或保留，如(a)自該等資訊的最終狀態首次產生之時起，其完整性有可靠保證……則以電子紀錄形式出示或保留該等資訊即屬符合該規定”。



		(e) 耐用程度， 是在顧及就該貨品所作的貨品說明、貨價(如屬有關者)及其他一切有關情況後可合理預期者，則該貨品即具本條例所指的可商售品質……
8	《種族歧視條例》 (第 602 章) 第 37(2)條	在斷定某會社的主要宗旨是否屬第(1)款 <sup>3</sup> 所述者時，須顧及到— (a) 該會社的主要性質； (b) 該會社事務的進行方式，在甚麼程度上是使主要享有其成員利益的人，均是屬於有關的種族群體的；及 (c) 任何其他有關情況。
9	《保護瀕危動植物物種條例》 (第 586 章) 第 2(3)條	就本條例而言，任何物品(包括載於任何容器內的物品)，如— (a) 被人藉廣告或任何其他方式聲稱、表示或顯示為某標本或包含某標本；或 (b) 從連同的文件、包裝、標記或標籤或從其他情況看來，屬某標本或包含某標本， 則該物品須視為該標本。
10	《不良廣告(醫藥)條例》 (第 231 章) 第 3B(3)條	就本條而言— …… (c) 任何類似的聲稱 (any similar claim) 指在參照所有屬相干的情況下，可合理地被理解為與有關的指明聲稱具有相同意思的聲稱。
11	《建築地盤(安全)規例》 (第 59 章，附屬法例 I) 第 39(4)(a)條	如在顧及挖掘工程或泥土工程側旁的性質及斜度以及其他情況下，不會發生泥土、巖石或其他物料墮下或脫落— (i) 以致埋沒或困着在該挖掘工程或泥土工程或附近受僱的工人或其他人；或 (ii) 以致從超過 1.2 米的高度墮下擊中任何上述工人或其他人， 則本條不適用於該項挖掘工程或泥土工程； ……

<sup>3</sup> 該條例第 36(1)條訂明：“第 36 條不適用於主要宗旨是使屬於某特定種族群體(非藉參照膚色而界定者)的人能享有成員利益的會社，亦不就該等會社而適用”。