

**立法會**  
**Legislative Council**

LC Paper No. LS80/20-21

**Paper for the House Committee Meeting  
on 18 June 2021**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 11 June 2021**

**Tabling in LegCo** : Council meeting of 16 June 2021

**Amendment to be made by** : Council meeting of 14 July 2021 (or that of 18 August 2021 if extended by resolution)

**Harmful Substances in Food (Amendment) Regulation 2021** (L.N. 86)

**Food and Drugs (Composition and Labelling) (Amendment) Regulation 2021** (L.N. 87)

L.N. 86 is made by the Secretary for Food and Health under section 55 of the Public Health and Municipal Services Ordinance (Cap. 132) to amend the Harmful Substances in Food Regulations (Cap. 132AF).

2. Cap. 132AF governs, among other things, the presence and concentration of harmful substances in food imported to and sold in Hong Kong. Pursuant to regulations 3 and 5 of Cap. 132AF, any person who imports, consigns, delivers, manufactures or sells for human consumption any food containing any harmful substance in greater concentration than that stipulated in Schedule 1 to Cap. 132AF commits an offence punishable by a fine at level 5 (i.e. HK\$50,000) and imprisonment for 6 months.

3. L.N. 86 mainly amends Schedule 1 to Cap. 132AF to update and introduce the maximum permitted concentration of certain harmful substances in food, namely three types of mycotoxins<sup>1</sup> and five other types of harmful substances<sup>2</sup> in edible fats and oils, condiments and formula products intended for

---

<sup>1</sup> Namely aflatoxins, deoxynivalenol and patulin.

<sup>2</sup> Namely erucic acid, melamine, benzo[a]pyrene, glycidyl fatty acid esters and 3-monochloropropane-1,2-diol.

infants (e.g. follow-up formula and infant formula as defined in regulation 2(1) of the Food and Drugs (Composition and Labelling) Regulations (Cap. 132W)). L.N. 86 also amends regulations 3A and 3B of Cap. 132AF to prohibit the import of any edible oil or fat (including a mixture of both) containing partially hydrogenated oil and the sale, consignment or delivery for sale for human consumption of any food containing partially hydrogenated oil, and to provide that such prohibition does not apply to air transit cargo or air transshipment cargo.<sup>3</sup>

4. L.N. 87 is made by the Director of Food and Environmental Hygiene pursuant to section 55(1) of Cap. 132. It amends Schedules 3 and 4 to Cap. 132W to provide for a marking and labelling requirement for prepackaged food containing hydrogenated oil. Under regulation 4A of Cap. 132W, prepackaged food shall be marked and labelled in the manner prescribed in Schedule 3 to Cap. 132W. Contravention of such marking and labelling requirement is an offence punishable by a fine at level 5 (i.e. HK\$50,000) and imprisonment for 6 months.<sup>4</sup>

5. According to paragraphs 5 and 8 of the Legislative Council ("LegCo") Brief (File Ref: FH CR 2/3231/05) issued by the Food and Health Bureau and the Food and Environmental Hygiene Department in June 2021, L.N. 86 and L.N. 87 align the local food safety standards with the relevant standards of the Codex Alimentarius Commission with a view to better protecting the health of the local population.

6. According to paragraph 17 of the LegCo Brief, the Administration conducted a three-month public consultation from December 2020 to March 2021, and consulted the Advisory Council on Food and Environmental Hygiene, the Wholesale and Retail Task Force and the Food Business and Related Services Task Force. The respondents generally supported the legislative proposals.

7. As advised by the Clerk to the Panel on Food Safety and Environmental Hygiene, the Panel was consulted on the proposals to strengthen the regulation of harmful substances in food at its meeting on 25 January 2021. The Administration briefed the Panel on the outcome of the public consultation exercise and the updated proposals at the meeting on 20 April 2021. Members

---

<sup>3</sup> Under section 2 of Cap. 132AF and by virtue of section 2 of the Import and Export Ordinance (Cap. 60), "air transit cargo" means any article in transit that is both imported and consigned for export in an aircraft, provided that the article is brought into Hong Kong solely for the purpose of taking it out of Hong Kong, and remains at all times in the aircraft in which it is brought into Hong Kong; and "air transshipment cargo" means transshipment cargo that is both imported and consigned for export in an aircraft and which, during the period between its import and export, remains within the cargo transshipment area of Hong Kong International Airport.

<sup>4</sup> Regulation 5 of Cap. 132W.

generally supported the proposals, but expressed concerns on various issues including (a) the impact of implementing the enhanced food safety standards on food supply in Hong Kong, (b) the capability of local laboratories in performing related food tests, and (c) the length of the grace period for the trade to get prepared for the new food safety standards.

8. L.N. 86 comes into operation in two phases: (a) for provisions relating to harmful substances other than hydrogenated oil – on 1 June 2023; and (b) for provisions relating to partially hydrogenated oil – on 1 December 2023 when L.N. 87, which relates to the marking and labelling requirement for hydrogenated oil, also comes into operation. According to paragraph 10 of the LegCo Brief, implementing the provisions in two phases as stated above would allow sufficient time for the trade to get prepared for the updated food safety standards, and for the local testing and laboratory sector to establish the capability for performing the related food tests.

**Chemical Weapons (Convention) Ordinance (Amendment of Schedule 1) Order 2021** (L.N. 88)

**Import and Export (Strategic Commodities) Regulations (Amendment of Schedules 1 and 2) Order 2021** (L.N. 89)

L.N. 88

9. The Chemical Weapons (Convention) Ordinance (Cap. 578) was enacted in 2004 to implement the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction ("the Convention")<sup>5</sup> in Hong Kong by controlling chemical weapons and certain chemicals capable of being used as chemical weapons. The list of toxic chemicals and their precursors subject to control under the Convention is set out in the Schedules to Cap. 578.

10. L.N. 88 is made by the Secretary for Commerce and Economic Development ("SCED") under section 40(1) of Cap. 578 to amend Schedule 1 to Cap. 578 to add four sets of toxic chemicals to reflect the latest changes adopted under Schedule 1 in the Annex on Chemicals to the Convention in relation to toxic chemicals. It also makes textual amendments regarding the control parameters of certain toxic chemicals in the English text of Schedule 1 to Cap. 578. The effect of L.N. 88 is that the use, development, production, acquisition, retention or transfer of the newly added toxic chemicals will be subject to the control and regulation under Cap. 578.

---

<sup>5</sup> The People's Republic of China is a signatory to the Convention and the Central People's Government has extended the application of the Convention to Hong Kong by virtue of Article 153 of the Basic Law.

L.N. 89

11. The Import and Export Ordinance (Cap. 60) and the Import and Export (Strategic Commodities) Regulations (Cap. 60G) provide for a regulatory regime for the import, export and transit of strategic commodities. The control lists of strategic commodities set out in Schedules 1 to 4 to Cap. 60G mirror the control lists adopted by various international non-proliferation regimes<sup>6</sup> and the Convention. Under section 6A(2) and (3) of Cap. 60, a person who imports or exports any article specified in Schedule 1, or an article in transit specified in Schedule 2, to Cap. 60G except under and in accordance with an import or export licence issued by the Director-General of Trade and Industry ("DGTI") commits an offence and is liable to a fine of HK\$500,000 and imprisonment for 2 years on summary conviction; and an unlimited fine and imprisonment for 7 years on conviction on indictment.

12. L.N. 89 is made by DGTI under section 6B of Cap. 60 to:

- (a) amend Schedule 1 to Cap. 60G by adding articles including the four sets of toxic chemicals added to Schedule 1 to Cap. 578 by L.N. 88 reported above and certain newly developed technologies, and relaxing the control threshold for certain items of dual-use strategic commodities, to reflect the latest changes adopted by various international non-proliferation regimes;
- (b) amend Schedule 2 to Cap. 60G to make the references to the items therein align with those in Schedule 1; and
- (c) make certain textual and presentational amendments to Schedules 1 and 2 to Cap. 60G.

13. The effect of L.N. 89 is to subject the articles or items added to Schedules 1 and 2 to Cap. 60G to the licensing control under Cap. 60G.

Consultation

14. According to paragraph 10 of the LegCo Brief (File Ref. : CIB CR 14/46/6/1 and TRA CR 1506/2) issued by the Commerce and Economic Development Bureau and the Trade and Industry Department on 9 June 2021, the Trade and Industry Department has briefed the trade representatives and informed the relevant facilities that may possibly deal with the scheduled chemicals about the

---

<sup>6</sup> According to paragraph 2 of the LegCo Brief (File Ref. : CIB CR 14/46/6/1 and TRA CR 1506/2), these regimes include the Wassenaar Arrangement, the Nuclear Suppliers Group, the Missile Technology Control Regime and the Australia Group.

addition of the four sets of toxic chemicals under L.N. 88 and L.N. 89. No objection or comments have been received.

15. As advised by the Clerk to the Panel on Commerce and Industry, the Panel has not been consulted on L.N. 88 and L.N. 89.

### Commencement

16. L.N. 88 and L.N. 89 come into operation on a day to be appointed by SCED and DGTI respectively by notices published in the Gazette. According to paragraph 8 of the LegCo Brief, the Administration plans to publish in the Gazette commencement notices in July 2021 to bring L.N. 88 and L.N. 89 into effect on 25 August 2021. Upon enquiry by the Legal Service Division, the Administration has clarified that the proposed commencement date is tentative, and that if a subcommittee is formed by the House Committee to study L.N. 88 and L.N. 89, or if the period for amending them is extended by LegCo, the proposed commencement date will be postponed.

### **Concluding Observations**

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

Prepared by

Clara WONG  
Assistant Legal Adviser  
Legislative Council Secretariat  
17 June 2021