



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

本函檔案 Our ref. : FH CR1/3231/13  
來函檔案 Your ref. : LS/S/15/12-13

電話號碼 Tel nos. : (852) 3509 8925  
傳真號碼 Fax nos. : (852) 2136 3281

12 April 2013

Mr Arthur CHEUNG  
Senior Assistant Legal Adviser  
Legislative Council Complex,  
1 Legislative Council Road,  
Central, Hong Kong

Dear Mr CHEUNG,

**Administration's motion to amend the Import and Export (General)  
(Amendment) Regulation 2013 (L.N. 25 of 2013)**

Thank you for your letter of 11 April 2013.

In paragraph 4 of your letter, you pointed out that “[w]hen taking effect after gazettal, the revised definition would replace the existing one in L.N. 25, which will be amended accordingly.”. I would like to clarify the technical effect of the resolution to be moved by the Secretary for Food and Health (SFH). The resolution seeks to introduce an amendment to amend the definition of “powdered formula” in the Import and Export (General) Regulation added by Regulation 3 of the Import and Export (General) (Amendment) Regulation 2013 (the Amendment Regulation). As no commencement date is specified in the proposed resolution, you suggested that the new definition appeared to take retrospective effect from 1 March 2013.

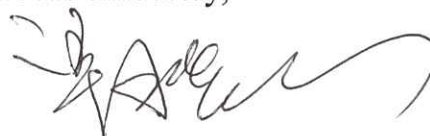
The substance of the resolution is to amend the definition of “powdered formula”. As you have quite rightly pointed out, the revised

definition has been thoroughly discussed by Members of the Subcommittee. In response to your enquiry at the meeting, the Administration has also responded that the policy intention is for the revised definition to take effect on the date of gazettal of the resolution (if passed) in accordance with section 34(2) of the Interpretation and General Clauses Ordinance (Cap.1).

The Amendment Regulation came into operation on 1 March 2013, and its commencement provision (i.e. Section 1) is now spent and has ceased to be capable of being amended. We do not consider it to be necessary or appropriate to amend the Section. We are of the view that the present situation falls squarely within section 34(2) of Cap. 1, which provides that "... if any such resolution is so passed the subsidiary legislation shall, without prejudice to anything done thereunder, *be deemed to be amended as from the date of publication in the Gazette of such resolution*". We consider that there is no need to specify in the proposed resolution a commencement date unless it is intended that the policy is to be implemented on a later date. We will include the commencement date in the speech of SFH for moving the proposed resolution in the Legislative Council.

As you may be aware, a similar question was raised by your colleague when examining the Administration's proposed resolution to amend the Food Business (Amendment) Regulation 2008 (L.N. 185 of 2008). You may wish to refer to the Administration's response at the time. LC Paper No. CB(2) 174/08-09(02) is relevant.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Leung', with a long, sweeping flourish extending to the right.

(Jeff LEUNG)

for Secretary for Food and Health

c.c. Clerk to Subcommittee on the Import and Export (General)  
(Amendment) Regulation 2013  
Law Draftsman (Attn: Gilbert MO)