

立法會

Legislative Council

LC Paper No. LS77/12-13

**Paper for the House Committee Meeting
on 4 October 2013**

Legal Service Division Report on Toys and Children's Products Safety (Amendment) Bill 2013

I. SUMMARY

- 1. The Bill**

The Bill proposes to amend the Toys and Children's Products Safety Ordinance (Cap. 424) to broaden its scope of application to cover, in addition to toys and certain specified children's product, any other product or material that is intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under 4 years of age and that contains any plasticized material. The amendment would facilitate the implementation of the proposed control of phthalates in certain toys and children's products.
- 2. Public Consultation**

The Administration consulted major trade associations and organizations advocating children's welfare on the proposed phthalates control in toys and children's products. The Administration also posted a gist of the proposal on the Government's websites for public consultation. No in-principle objection was received by the Administration.
- 3. Consultation with LegCo Panel**

The Panel on Economic Development was consulted on the phthalates control proposal on 26 November 2012. Members in general supported the proposal.
- 4. Conclusion**

In view of the fact that the proposed amendment would expand the scope of the application of the existing Ordinance and consequently the power to make subsidiary legislation for the control of substances in toys and children's products, Members may consider setting up a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 17 July 2013. Members may refer to the LegCo Brief (File Ref.: CITB CR 08/18/3) issued by Commerce and Economic Development Bureau dated 10 July 2013 for further details.

Object of the Bill

2. The object of the Bill is to amend the Toys and Children's Products Safety Ordinance (Cap. 424) (the Ordinance) to broaden its scope of application to cover, in addition to toys and children's products specified in the Ordinance, any other product or material that is intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under 4 years of age and that contains any plasticized material.

Background

3. Currently, the Ordinance regulates the safety of toys, 12 classes of children's products¹ as specified in Schedule 2 to the Ordinance and their packaging. Under the Ordinance, toys, specified children's products and their packaging are required to meet the general safety requirement² and any additional safety standard imposed by regulation made under section 35 of the Ordinance. Other children's products are regulated as consumer products under the Consumer Goods Safety Ordinance (Cap. 456).

4. According to the LegCo Brief, the Administration intends to amend the Ordinance to facilitate the implementation of the proposed controls on the maximum amount of phthalates (also called "plasticizers") in certain toys and children's products. After the enactment of the Bill, the Secretary for Commerce and Economic Development (the Secretary) intends to make specific regulations under the Ordinance to implement the control of phthalates in certain toys and children's products. Members may wish to refer to Annex C of the LegCo Brief for details of the proposed phthalates control.

¹ Classes of children's product are: babies' dummies, baby walking frames, bottle teats, bunk beds for domestic use, carry cots and similar handled products and stands, child safety barriers for domestic use, children's cots for domestic use, children's high chairs and multi-purpose high chairs for domestic use, children's paints, children's safety harnesses, playpens for domestic use, and wheeled child conveyances (column 1 of the Schedule 2 to the Ordinance).

² General safety requirement means a duty to ensure that a toy or children's product is reasonably safe having regard to all circumstances. If a toy or children's product meets all applicable requirements in any one set of the safety standards specified in the Ordinance, the toy or product is regarded as meeting the general safety requirement (section 8 of the Ordinance).

Provisions of the Bill

5. The Bill mainly proposes to expand the definition of "children's product" to cover -

- (a) a product or material that falls within a class of children's products specified in the existing Schedule 2 to the Ordinance;
- (b) a product or material that is intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under 4 years of age and that contains any plasticized material (newly added product); and
- (c) the packaging of the product or material mentioned in items (a) and (b) above (Clauses 3(1) and 4).

6. Consequential upon the expanded definition of "children's product", amendments are proposed to -

- (a) require that the newly added products must comply, in addition to the general safety requirement, each additional safety standard to be imposed by regulations made under section 35 of the Ordinance (Clauses 5 to 8);
- (b) replace the existing section 35 by a new section 35 so that the Secretary may make regulations to impose additional safety standards or requirements for the newly added products (Clause 16); and
- (c) extend the application of section 9 (laboratories), section 11 (prohibition notice), section 12 (recall notice) and section 13 (other powers of commissioner) of the Ordinance to the newly added products (Clauses 9 to 12).

7. The Bill also makes related and other minor textual amendments such as replacement of gender-specific expressions by gender-neutral ones (Clauses 3(3), 13 to 15 and 17).

8. The Bill, if passed, would come into operation on a date to be appointed by the Secretary by notice in the Gazette.

9. It is noted that the Bill does not directly impose any of the proposed phthalates control. The Legal Service Division has written to the Administration for clarifications on the intended coverage of the proposed definition of "children's product" as well as other drafting issues. The Administration replied that they will review if the formulation in the definition is sufficient for the intended purpose and prepare a Committee Stage amendment to replace the Chinese

expression "鬆馳" with "鬆弛" in the Bill. A copy of each of the replies from the Administration is at **Annex**.

Public Consultation

10. According to paragraph 13 of the LegCo Brief, the Administration consulted 47 major trade associations and organizations advocating children's welfare on the proposed control of phthalates in toys and children's products. The Administration also posted a gist of the proposal on the Government's website and the Public Affairs Forum administered by the Home Affairs Bureau for public information and discussion. Seven submissions and eleven messages were received by the Administration and no in-principle objection was raised on the proposal.

Consultation with LegCo Panel

11. As advised by the Clerk to the Panel on Economic Development, the Panel was consulted on 26 November 2012 in respect of the proposal to impose concentration limits of phthalates in toys and child care products by amending the Ordinance. Members in general supported the proposal. During deliberation, members called on the Administration to widely publicize and educate the public about the statutory requirements on the concentration limits of phthalates for different children's products.

Conclusion

12. In view of the fact that the proposed amendments would expand the scope of the application of the existing Ordinance and consequently the power to make subsidiary legislation for the control of substances in toys and children's products, Members may consider setting up a Bills Committee to study the Bill in detail.

Encl.

Prepared by

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25 September 2013

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Our Ref. : CITB CR 08/18/3



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By Fascimile (2877 5029)

24 September 2013

Ms Clara Tam
Assistant Legal Adviser
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Dear Ms Tam,

Re: Toys and Children's Products Safety (Amendment) Bill 2013

I refer to your letter of 11 September 2013 on the above Amendment Bill.

We would like to clarify that it is not our policy intention to impose the requirements for "children's product" under the Amendment Bill to regulate food or pharmaceutical products. We understand that such products are regulated under other existing legislation such as the Public Health and Municipal Services Ordinance (Cap. 132), the Food Safety Ordinance (Cap. 612) and the Pharmacy and Poisons Ordinance (Cap. 138).

In fact, plasticizers are substances mainly used in hard plastics to improve their flexibility and durability. They are used in many consumer products, primarily in polyvinyl chloride products including certain toys and children's products that can be mouthed by young children. Phthalates are among the types of plasticizers used. Our intention is to impose control on the maximum amount of six types of phthalates (namely DEHP, DBP, BBP, DINP, DIDP and DNOP) in certain toys and children's products that contain plasticized materials and that can be placed in the mouth of children under four years of age.

We understand that plasticized materials are not allowed to be added into food as ingredients. Medicine for children under four years of age should normally contain no plasticized materials. Therefore, we consider that, in practice, there would unlikely be any food and pharmaceutical products for children under four years old that would be caught by the definition of "children's product" under the proposed new section 2B(1)(b). That said, we will review if the formulation in the relevant definition is sufficient for our intended purpose.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Manda Chan', with a long horizontal flourish extending to the right.

(Manda Chan)

for Secretary for Commerce and Economic Development

c.c. DoJ (Attn.: Ms Frances Hui) (Fax No. 2869 1302)

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By Facsimile (2877 5029)

6 September 2013

Ms Clara Tam
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Central, Hong Kong

Dear Ms Tam,

Re: Toys and Children's Products Safety (Amendment) Bill 2013

I refer to your letter of 23 August 2013 on the above Amendment Bill.

Having discussed with the Drafting Counsel of the Department of Justice, we agree that the expression “鬆馳” should be replaced by “鬆弛”. We will prepare a Committee Stage Amendment in due course.

Regarding the expression “長牙”, we have noted your observation that it is capable of meaning “long teeth”. However, our view is that the expression should be read in the context of the proposed new section 2B(1)(b)(ii), and the context of that section clearly indicates that the expression “長牙” (“teething”) in “便利...長牙” (“to facilitate the ... teething of”) means the growth or development of teeth instead of “long teeth”. We therefore consider that the meaning of “長牙” in section 2B(1)(b)(ii) is clear and the use of the expression in that section would not give rise to any ambiguity.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Manda Chan', with a long horizontal stroke extending to the right.

(Manda Chan)
for Secretary for Commerce and Economic Development

c.c. DoJ (Attn.: Ms Frances Hui) (Fax No. 2869 1302)