

**立法會**  
*Legislative Council*

LC Paper No. LS26/13-14

**Paper for the House Committee Meeting  
on 21 February 2014**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 14 February 2014**

**Tabling in LegCo** : Council meeting of 19 February 2014

**Amendment to be made by** : Council meeting of 19 March 2014 (or that of 9 April 2014 if extended by resolution)

**Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation** (L.N. 17)

**Toys and Children's Products Safety Regulation (Repeal) Regulation** (L.N. 18)

**Toys and Children's Products Safety (Amendment) Ordinance 2013 (Commencement) Notice** (L.N. 19)

Background

The Toys and Children's Products Safety Ordinance (Cap. 424) (the Ordinance) provides for safety standards for children's toys and specified children's products. Pursuant to section 35 of the Ordinance, the Secretary for Commerce and Economic Development (SCED) has made the Toys and Children's Products Safety Regulation (Cap. 424B) (Safety Regulation). The Regulation provides for identification marking for toys and children's products, and related penalties.

2. The Ordinance is amended by the Toys and Children's Products Safety (Amendment) Ordinance 2013 (18 of 2013) (Amendment Ordinance), which among other things—

- (a) expands the definition of "children's product" in the Ordinance to cover, in addition to the 12 classes of children's products in Schedule 2, other products that are intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under four years of age and that contain any plasticized material; and
- (b) replaces the existing section 35 by a new section 35 to empower SCED to make regulations, including imposing additional safety standards or requirements for the expanded scope of "children's product".

3. Members may refer to the LegCo Brief (File Ref: CITB CR 08/18/3) issued by Commerce, Industry and Tourism Branch, Commerce and Economic Development Bureau on 12 February 2014 for background information.

#### L.N. 17

4. L.N. 17 is made by SCED under the new section 35 of the Ordinance to impose additional safety standards or requirements for toys and children's products (other than their packaging) in addition to the existing requirements under the Safety Regulation. The provisions of L.N. 17 are summarised below-

- (a) sections 5 and 6 set out the requirements on identification marking and warning or caution for toys respectively. Sections 10 and 11 set out the requirements on identification marking and warning or caution for children's products respectively. The requirements are essentially the same as those under the Safety Regulation and additionally permit the identification marking and warning or caution to be put on a label affixed to a toy or children's product; and
- (b) sections 7 and 13 specify the control on the concentration of Class 1 phthalates<sup>1</sup> in toys and children's products respectively. Sections 8 and 14 specify the control on the concentration of Class 2 phthalates<sup>2</sup> in toys and children's products respectively capable of being entirely placed into mouth of child under four years of age. Sections 9 and 15 specify the control on the concentration of Class 2 phthalates in toys and children's products respectively capable of being partly placed into mouth of child under four years of age.

5. According to paragraph 10 of the LegCo Brief, the Administration intends to incorporate the matters dealt with in the Safety Regulation into L.N. 17.

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<sup>1</sup> Section 2(1) of L.N. 17 defines "Class 1 phthalate" to mean BBP, DBP or DEHP.

<sup>2</sup> Section 2(1) of L.N. 17 defines "Class 2 phthalate" to mean DIDP, DINP or DNOP.

However, it is noted that the penalty provision in section 5 of the Safety Regulation is not incorporated into L.N. 17 and no express penalty provision is provided in L.N. 17 although there is a power provided in the Ordinance to prescribe penalty under a regulation<sup>3</sup>. This means that if a person fails to comply with the additional safety standards or requirements under L.N. 17, the person commits an offence under section 8(1) as amended by the Amendment Ordinance<sup>4</sup>. The legal effect is as follows-

- (a) a person charged with an offence under L.N. 17 would be liable to the same penalties as those for contravention of the amended section 8 of the Ordinance. Though these penalties as provided in section 31(1) of the Ordinance are the same as those in section 5 of the Safety Regulation, section 31(2) provides for an additional fine of \$1,000 for a continuing offence which is not provided for in the Safety Regulation; and
- (b) the statutory defence under section 8(7) of the Ordinance would apply to an offence under L.N. 17, but no similar defence is available to a person charged with an offence under the Safety Regulation;<sup>5</sup>

6. In response to our enquiries on the reasons for the different approaches for dealing with offences under the Safety Regulation and L.N. 17, the Administration explained as follows-

"The 2010 Amendment Ordinance (i.e. the Toys and Children's Products Safety (Amendment) Ordinance 2010) amended, amongst others, section 8(1) of the Ordinance to provide that a toy or children's product must comply with the general safety requirement and any additional safety standard established

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<sup>3</sup> The new section 35 of the Ordinance provides that the maximum fine that may be prescribed for an offence under a regulation made under the provision is \$500,000 and the maximum imprisonment is 2 years.

<sup>4</sup> Section 8(1) of the Ordinance, as amended by the Amendment Ordinance reads as follows: "A person must not manufacture, import or supply a toy or children's product unless the toy or children's product complies with the general safety requirement and each additional safety standard." The Amendment Ordinance also adds a new definition to section 2 of the Ordinance by providing the following:

"additional safety standard

(a) in relation to a toy—means an additional safety standard or requirement imposed by regulations made under section 35 and applicable to the toy;

(b) in relation to a children's product—means an additional safety standard or requirement imposed by regulations made under section 35 and applicable to the product;"

<sup>5</sup> Section 8(7) of the Ordinance provides that:

"In any proceedings against any person for an offence under this section in respect of any toys or children's products it shall be a defence for that person to show-

(a) that he reasonably believed that they would not be used or consumed in Hong Kong;

(b) that-

(i) he supplied them in the course of carrying on a retail business; and

(ii) at the time he supplied them, he neither knew nor had reasonable grounds for believing that they failed to comply with the general safety requirement; or

(c) that the terms on which he sold them indicated that they were not being sold as new goods."

by regulation made under section 35. The policy intention was that a failure to comply with any additional safety standard established by regulation should attract the offence provision under section 8 of the Ordinance. As a result of the amendment to section 8(1), non-compliance with the general safety requirement or any additional safety standards established by regulation would constitute an offence under section 8(6). Such offence is subject to the penalties under section 31, and defence under section 8(7) is available.

In line with the above, and as both the Toys and Children's Products Safety Regulation (Cap. 424B) and the new regulation on the proposed phthalate control involve additional safety standards or requirements for toys and children's products, we have taken the opportunity of introducing the Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation to make it clear that non-compliance of these additional safety standards or requirements breaches section 8(1), constitutes an offence under section 8(6) where defence under section 8(7) is available, and which is subject to the penalties under section 31."<sup>6</sup>

7. L.N. 17 comes into operation on the day on which section 16 (which repeals the existing section 35 (SCED's power to make regulations) of the Ordinance by substituting it with a new section 35) of the Amendment Ordinance comes into operation, i.e. 1 July 2014.

#### L.N. 18

8. L.N. 18 repeals the Safety Regulation in view of the making of L.N. 17. L.N. 18 comes into operation immediately before section 16 of the Amendment Ordinance comes into operation, i.e. immediately before 1 July 2014.

#### L.N. 19

9. By L.N. 19, SCED appoints 1 July 2014 as the day on which the Amendment Ordinance comes into operation.

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<sup>6</sup> There is no Bills Committee formed to scrutinize the Toys and Children's Products Safety (Amendment) Bill 2009 (enacted as the Toys and Children's Products Safety (Amendment) Ordinance 2010). It does not appear that the "policy intention" referred to in the Administration's reply was mentioned in the LegCo Brief on the Bill (File Ref.: CITB CR 08/18/3) issued by Commerce, Industry and Tourism Branch, Commerce and Economic Development Bureau of 9 December 2009).

10. A Bills Committee was formed to scrutinize the Toys and Children's Products Safety (Amendment) Bill 2013. As advised by the Clerk to the Bills Committee, members requested the Administration to consult the trade, particularly the small and medium enterprises of the toy manufacturing sector, and take into account their views in proposing the commencement date. The Administration advised the Bills Committee that the proposed regulatory framework was expected to come into operation around mid-2014. The Administration also advised that the non-application of the proposed phthalate control to the packaging and the internal/inaccessible parts of toys and children's products would be reflected in the relevant subsidiary legislation. Members may refer to the report of the Bills Committee for further information (LC Paper No. CB(2) 425/13-14).

11. According to paragraph 14 of the LegCo Brief, in January 2014, the Administration consulted 47 major trade associations and organizations advocating children's welfare on the commencement of the above control on the six types of phthalates in July 2014. The Administration received no objection to such commencement.

12. The Panel on Economic Development has not been consulted on L.N. 17 to L.N. 19.

**Public Health and Municipal Services Ordinance (Public  
Pleasure Grounds) (Amendment of Fourth Schedule)  
Order 2014**

**(L.N. 20)**

13. L.N. 20 is made by the Director of Leisure and Cultural Services (the Director) under section 106 of the Public Health and Municipal Services Ordinance (Cap. 132).

14. L.N. 20 sets aside 15 places for use as public pleasure grounds and adds these places to the list of public pleasure grounds in the Fourth Schedule to Cap. 132 (the Fourth Schedule). The effect is to vest the general management and control of these 15 places in the Director.

15. L.N. 20 also provides that four places cease to be set aside for use as public pleasure grounds.

16. L.N. 20 comes into operation on the day it was published in the Gazette, i.e. 14 February 2014.

17. Members may refer to the LegCo Brief (File Ref: L/M (1) in LCS 19/HQ 813/00(21) issued by Leisure and Cultural Services Department on 11 February 2014 for background information.

18. According to paragraph 8 of the LegCo Brief, the Administration has consulted the respective District Councils which supported the proposals.

19. As advised by the Clerk to the Panel on Home Affairs, the Panel has not been consulted on L.N. 20.

**Air Pollution Control (Amendment) Ordinance 2014  
(Commencement) Notice**

**(L.N. 21)**

20. By L.N. 21, the Secretary for the Environment appoints 4 April 2014 as the day on which the Air Pollution Control (Amendment) Ordinance 2014 (1 of 2014) (Amendment Ordinance) comes into operation.

21. The Amendment Ordinance amends the Air Pollution Control Ordinance (Cap. 311) to, among other things, prohibit the use, supply, import and transshipment of asbestos or asbestos containing materials.

22. A Bills Committee was formed to scrutinize the Air Pollution Control (Amendment) (No. 2) Bill 2013 (enacted as the Air Pollution Control Ordinance 2014). As advised by the Clerk to the Bills Committee, members did not have any comments about the commencement of the Bill, if enacted.

23. The Panel on Environmental Affairs has not been consulted on L.N. 21.

**Concluding Observations**

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

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