

立法會
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Paper for the House Committee

**Report of the Subcommittee on Toys and Children's Products Safety
(Additional Safety Standards or Requirements) Regulation,
Toys and Children's Products Safety Regulation (Repeal) Regulation and
Toys and Children's Products Safety (Amendment)
Ordinance 2013 (Commencement) Notice**

Purpose

This paper reports on the deliberations of the Subcommittee on Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation, Toys and Children's Products Safety Regulation (Repeal) Regulation and Toys and Children's Products Safety (Amendment) Ordinance 2013 (Commencement) Notice.

Background

2. The Toys and Children's Products Safety Ordinance (Cap. 424) ("the Ordinance") provides for safety standards and requirements for children's toys and specified children's products. The Toys and Children's Products Safety Regulation (Cap. 424B) ("Safety Regulation"), made under the Ordinance, provides for requirements on identification marking and bilingual warning or caution for toys and specified children's products, and related penalties.

3. On 18 December 2013, the Legislative Council (LegCo) passed the Toys and Children's Products Safety (Amendment) Ordinance 2013 ("Amendment Ordinance") which seeks to—

- (a) expand 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) make other amendments to the Ordinance, in particular, to enable regulations to be made to control the concentration of six types of phthalates in certain toys and children's products.

4. The six types of phthalates are DEHP, DBP, BBP, DINP, DIDP and DNOP¹, which are chemicals commonly added to polyvinyl chloride products to improve their flexibility and durability. However, there has been public concern over the possible health hazards posed to children by phthalates that may be contained in plasticized materials in toys and children's products. According to the Administration, the main concern is over chronic exposure to these phthalates. As these phthalates in polyvinyl chloride products could leach out during periods of mouthing and migrate through saliva into the body, the Administration considers that from the precautionary perspective, children's exposure to sources of these phthalates, especially products which can be put into the mouth, should be avoided as far as possible. Advanced economies such as the European Union ("EU"), the United States ("US"), Canada and Singapore have imposed concentration limits on these six types of phthalates in certain toys and children's products².

5. To ensure that Hong Kong's regulatory regime is on par with those in advanced economies in protecting children from exposure to phthalates and prevent Hong Kong from becoming the dumping ground for non-compliant products, the Administration has proposed to impose similar controls on the concentration of the above six types of phthalates in certain toys and children's products, by way of making the Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation (L.N. 17) ("Additional Safety Requirements Regulation") under the Ordinance as amended by the Amendment Ordinance.

The Additional Safety Requirements Regulation (L.N. 17)

6. Pursuant to the new section 35 of the Ordinance which would replace the old section 35 (as amended by the Amendment Ordinance), the Secretary for Commerce and Economic Development ("SCED") has made the Additional Safety Requirements Regulation to incorporate the matters dealt with in the existing Safety Regulation and set out the control on the concentration of the above six types of phthalates in certain toys and children's products. Its main provisions are summarized below-

¹ DEHP means di(2-ethylhexyl) phthalate (also known as bis(2-ethylhexyl) phthalate or diethylhexyl phthalate), DBP means dibutyl phthalate, BBP means benzyl butyl phthalate, DINP means diisononyl phthalate, DIDP means diisodecyl phthalate, and DNOP means di-n-octyl phthalate.

² These are products intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of young children.

- (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 phthalates³ in toys and children's products respectively. Sections 8 and 14 specify the control on the concentration of Class 2 phthalates⁴ in toys and children's products respectively capable of being entirely placed into the mouth of a 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 the mouth of a child under four years of age.

7. The Additional Safety Requirements Regulation comes into operation on the day on which section 16⁵ of the Amendment Ordinance comes into operation (i.e. 1 July 2014).

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

8. The Repeal Regulation repeals the existing Safety Regulation in view of the making of the Additional Safety Requirements Regulation. The Repeal Regulation comes into operation immediately before section 16 of the Amendment Ordinance comes into operation, i.e. immediately before 1 July 2014.

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

9. By the Commencement Notice, SCED appoints 1 July 2014 as the day on which the Amendment Ordinance comes into operation.

³ Section 2(1) of the Additional Safety Requirements Regulation defines "Class 1 phthalate" to mean BBP, DBP or DEHP.

⁴ Section 2(1) of the Additional Safety Requirements Regulation defines "Class 2 phthalate" to mean DIDP, DINP or DNOP.

⁵ Section 16 of the Amendment Ordinance seeks to replace the existing section 35 (SCED's power to make regulations) of the Ordinance with the new section 35.

Scrutiny period

10. The Additional Safety Requirements Regulation, the Repeal Regulation and the Commencement Notice were gazetted on 14 February 2014 and tabled at LegCo on 19 February 2014. The scrutiny period is extended from 19 March 2014 to 9 April 2014 by resolution of the Council passed at its meeting of 19 March 2014.

The Subcommittee

11. At the House Committee meeting on 21 February 2014, Members agreed to form a subcommittee to study the Additional Safety Requirements Regulation, the Repeal Regulation and the Commencement Notice. The membership list of the Subcommittee is in **Appendix I**.

12. Under the chairmanship of Hon Jeffrey LAM, the Subcommittee has held two meetings with the Administration and received views from the relevant organizations at one of the meetings. A list of the organizations which have given views to the Subcommittee is in **Appendix II**.

Deliberations of the Subcommittee

Proposed phthalate control

13. The Subcommittee notes that the Additional Safety Requirements Regulation sets out the control on the concentration of six types (namely, DEHP, DBP, BBP, DINP, DIDP and DNOP) of phthalates in certain toys and children's products. The Administration has advised that the control in the Additional Safety Requirements Regulation is consistent with the Proposed Framework for Regulating the Concentration of Phthalates in Toys and Children's Products (Annex to LC Paper No. CB(2)209/13-14(01)) that had been submitted to the former Bills Committee on Toys and Children's Products Safety (Amendment) Bill 2013 for consideration. In the light of the Bills Committee's comments, the Administration has clearly stipulated in the Additional Safety Requirements Regulation that the phthalate control applies to toys and children's products, but not their packaging. Besides, any component part of a toy or a children's product that cannot come into contact with a child or a child's mouth through reasonably foreseeable use (including reasonably foreseeable improper use) of the toy or children's product is not to be taken into account in calculating the total weight of the phthalates and the total weight of the plasticized materials. In addition, having regard to the Bills Committee's view that sufficient time should be allowed for the trade to make the necessary

preparations for complying with the new legislative requirements, the Administration has proposed that the phthalate control under the Additional Safety Requirements Regulation will commence on 1 July 2014 after consulting major trade associations and organizations advocating children's welfare.

Provision of guidelines on the Additional Safety Requirements Regulation

14. The depositions which have given views to the Subcommittee have expressed concern on whether the phthalate control under the Additional Safety Requirements Regulation would be more stringent or less stringent than that implemented in other advanced economies (in particular, US and EU), and whether a testing certificate showing a product's compliance with the relevant requirement implemented in these advanced economies would be considered as proof of compliance with the provisions on the phthalate control in the Additional Safety Requirements Regulation. Members and the depositions have requested that guidelines should be drawn up for the trade's reference.

15. The Administration has explained that the phthalate control regime as set out in the Additional Safety Requirements Regulation is formulated after drawing reference from the regimes implemented in other advanced economies, including EU, US and Canada. The purpose is to ensure that the regulatory regime of Hong Kong is on par with those in the advanced economies in protecting children from exposure to phthalates, and prevent Hong Kong from becoming the dumping ground for non-compliant products. The Administration has advised that the calculation of the weight of the six types of phthalates concerned (i.e. BBP, DBP and DEHP as Class 1 phthalates; and DIDP, DINP and DNOP as Class 2 phthalates) as 0.1% of the total weight of the plasticized materials in a toy or children's product as stipulated in the Additional Safety Requirements Regulation is consistent with the provisions in the relevant EU and US legislation.

16. At the request of the Subcommittee, the Administration has agreed to draw up guidelines to provide technical guidance on the operation of the Additional Safety Requirements Regulation for the trade's reference. The aspects to be covered by the guidelines may include the scope of application of the Additional Safety Requirements Regulation, illustrative examples showing how a toy or children's product would be considered as "can be placed into the mouth", testing methods available, and how testing certificates produced by the trade would be handled, etc. The Subcommittee has requested the Administration to brief the Panel on Economic Development on the draft guidelines after they have been drawn up.

Commencement

17. The Subcommittee notes that under section 8(1) of the Ordinance as amended by the Amendment Ordinance, 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. If a person fails to comply with the additional safety standards or requirements under the Additional Safety Requirements Regulation, the person commits an offence under section 8 of the Ordinance as amended by the Amendment Ordinance. As noted in paragraph 9 above, the Amendment Ordinance comes into operation on 1 July 2014.

18. The Subcommittee has sought clarification on the legal liability of persons concerned who have manufactured or imported before 1 July 2014 toys or children's products which fail to comply with the new requirements on phthalates in the Additional Safety Requirements Regulation. The Administration has advised that upon commencement of the Additional Safety Requirements Regulation on 1 July 2014, toys or children's products manufactured, imported or supplied on or after that date which fail to comply with the requirements on phthalates in the Regulation will contravene section 8(1) of the Ordinance. Toys or children's products which are not manufactured, imported and supplied on or after 1 July 2014 will not be subject to those requirements. In order to strike a balance between enhancing protection of children's health and responding to the trade's concern, the Administration has advised that the Customs and Excise Department would, during the early stage upon the commencement of the Additional Safety Requirements Regulation, advise or warn the persons concerned if appropriate and practicable.

Referral to the Panel on Economic Development

19. The Subcommittee has agreed to refer the issue of the guidelines on the Additional Safety Requirements Regulation (see paragraph 16) to the Panel on Economic Development for follow-up.

Recommendation

20. The Subcommittee does not object to the Additional Safety Requirements Regulation, the Repeal Regulation and the Commencement Notice. The Subcommittee and the Administration will not propose any amendment.

Advice sought

21. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
31 March 2014

**Subcommittee on Toys and Children's Products Safety
(Additional Safety Standards or Requirements) Regulation,
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Membership list

Chairman Hon Jeffrey LAM Kin-fung, GBS, JP

Members Hon Abraham SHEK Lai-him, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, JP
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

Total : 10 Members

Clerk Ms Joanne MAK

Legal Adviser Mr Stephen LAM

Date 28 February 2014

《玩具及兒童產品安全(附加安全標準或規定)規例》、
《〈玩具及兒童產品安全規例〉(廢除)規例》及
《〈2013年玩具及兒童產品安全(修訂)條例〉(生效日期)公告》
小組委員會

**Subcommittee on Toys and Children's Products Safety
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曾向小組委員會表達意見的團體/個別人士名單
List of organizations/individual which/who have
submitted views to the Subcommittee

<u>名稱</u>	<u>Name</u>
* 1. 自由黨	Liberal Party
* 2. 東區區議員楊位醒先生	Mr YEUNG Wai-sing, member of Eastern District Council
3. 美泰玩具亞太有限公司	Mattel Asia Pacific Sourcing Limited
4. 香港玩具協會	Hong Kong Toys Council
5. 香港玩具廠商會	The Toys Manufacturers' Association of Hong Kong Ltd
6. 香港測檢認證協會	Hong Kong Association for Testing, Inspection and Certification
* 7. 消費者委員會	Consumer Council
* 8. 瑞華行	Daniel & Co.

* 只提交意見書
Provided submissions only