

For discussion on
16 November 2009

Legislative Council Panel on Economic Development

PROPOSED AMENDMENTS TO TOYS AND CHILDREN'S PRODUCTS SAFETY ORDINANCE

Purpose

This paper seeks Members' views on amendments which the Government intends to propose to the Toys and Children's Products Safety Ordinance (Cap. 424) ("the Ordinance") for the purpose of updating the safety standards therein.

Background

2. Ensuring product safety, in particular the safety of toys and products designed for use by children, is of paramount importance. The Ordinance was enacted in 1992 to prohibit the import, manufacture and supply of unsafe toys and children's products. A toy or children's product is deemed to be safe only when it complies with the safety requirements stipulated in the Ordinance. Any person who manufactures, imports or supplies ("a supplier") an unsafe toy or children's product is, on first conviction, liable to a fine of \$100,000 and to imprisonment for one year and, on subsequent conviction, to a fine of \$500,000 and to imprisonment for two years.

3. The Customs and Excise Department enforces the Ordinance. Apart from acting on complaints, the Department stays alert to safety advice issued in places outside Hong Kong and conducts regular test purchases on products available in the market. In addition to taking out prosecutions against suspected offenders, the Department is empowered under the Ordinance to issue notices requiring a supplier to publish a warning that a product may be unsafe unless certain steps are taken. The Department is also empowered to issue prohibition notices prohibiting the supply of unsafe products and recall notices mandating the withdrawal of unsafe products from the market.

Safety Standards

4. We adopt a multiple safety standards regime for toys and children's products, that is to say, more than one safety standard (usually international safety standards or standards adopted by major economies) is stipulated, and a toy or children's product is regarded as safe if it complies with any one of the relevant standards. This regime not only ensures that the level of safety accorded to children is on par with that in advanced societies, but also avoids the costs of having to establish a separate set of standards for our small local market. In view of the small size of the Hong Kong market, it would be in our interest to adopt a regime which anchors on international safety standards or standards adopted by major economies.

5. At present, the Ordinance stipulates three sets of safety standards for toys –

- (a) International Voluntary Toy Safety Standard (IVTSS) established by the International Committee of Toy Industries;
- (b) European Standard EN 71 established by the European Committee for Standardization; and
- (c) ASTM F963 established by the American Society for Testing and Materials.

EN 71 and ASTM F963 are safety standards for toys adopted by the European Union and the United States respectively, whereas the IVTSS used to be an international standard which has already been withdrawn.

6. In addition, 13 types of children's products which are commonly used by babies and very young children are listed under the Ordinance with specified safety standard requirements. For each type of the designated products, more than one set of safety standards are named (except for "baby nests" for which only one set of standards is applicable) (Annex I).

Proposed Amendments

7. In response to product changes arising from technological developments, manufacturing technologies, consumer demands, latest information pertaining to safety (such as accident data and scientific reports) and other factors, standards institutions update or replace safety standards from time to time.

8. There are now discrepancies between the standards named in the Ordinance and the most up-to-date, operative safety standards promulgated by the standards institutions. To keep up with these changes, we intend to propose the following amendments to the Ordinance –

For toys (see Annex II)

- (a) adopting the International Standard ISO 8124 series established by the International Organization for Standardization supplemented by IEC 62115 standard (for electric toys) established by the International Electrotechnical Commission, to replace the IVTSS which has been withdrawn;
- (b) adopting the most up-to-date, operative versions of the European Standard EN 71 series, and also the EN 62115 standard for electric toys;
- (c) adopting the most up-to-date, operative version of ASTM standards; and
- (d) improving the drafting of the Ordinance by making beyond doubt that a toy is regarded as safe if it complies in all aspects with any one applicable set of the three named sets of standards. The Bill also seeks to improve the mechanism for updating the safety standards for toys by putting them in a Schedule to the Ordinance so that future changes can be effected by way of subsidiary legislation subject to the “negative vetting” by this Council¹.

¹ At present, the safety standards are named in the principal Ordinance. Any replacement has to be done by way of a Bill.

For designated children's products (see Annex III)

- (e) adopting the most up-to-date, operative standards, adding new ones and deleting outdated one for various children's products; and
- (f) removing "baby nests" from the list of designated children's products under the Ordinance as the only named safety standard for this product has been withdrawn by the British Standards Institution. Suppliers of this product should then be still required to comply with the general safety requirement applicable to general consumer goods².

Public Consultation

9. We consulted major trade associations and other interested organizations on our proposed amendments in September 2009. A gist of our proposed amendments was also posted on our website for public information and comments during the month. Organizations and individuals who have responded all support our proposed amendments.

Advice Sought

10. Members are invited to offer views on the proposed amendments. Subject to Members' views, we plan to introduce the amendments into this Council in the first half of the current legislative session.

Commerce and Economic Development Bureau
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² Section 4 of the Consumer Goods Safety Ordinance (Cap. 456) applies the general safety requirement to consumer goods. After the removal of "baby nests" from the list of children's products designated under the Toys and Children's Products Safety Ordinance, "baby nests" will be subject to the general safety requirement provided for under section 4 of Cap. 456 if they fall within the definition of "consumer goods".

**Children's Products Designated in the
Toys and Children's Products Safety Ordinance**

1. Babies' dummies
2. Baby nests
3. Baby walking frames
4. Bottle teats
5. Bunk beds for domestic use
6. Carry cots and similar handled products and stands
7. Child safety barriers for domestic use
8. Children's cots for domestic use
9. Children's high chairs and multi-purpose high chairs
for domestic use
10. Children's paints
11. Children's safety harness
12. Playpens for domestic use
13. Wheeled child conveyances

Toys:

Major Differences between the Existing and the Amended Safety Standards

	Existing Version	Amended Version	Major Differences/Remarks
1.	International Voluntary Toy Safety Standard (IVTSS) established by the International Committee of Toy Industries	To be deleted without replacement	This standard has been withdrawn by the standards institution without replacement.
2.	–	<p>To adopt the following standards established by the International Organization for Standardization</p> <p>Safety of toys – ISO 8124-1:2009 ISO 8124-2:2007 ISO 8124-3:1997</p> <p>To adopt the following International Standard established by the International Electrotechnical Commission</p> <p>Electric Toys- Safety IEC 62115 Edition 1.1 (2004-11) [IEC 62115 Edition 1:2003 consolidated with amendment 1:2004]</p>	<p>ISO 8124-1, 2 &3 test standards address the safety aspects of toys related to mechanical and physical properties, flammability and migration of certain elements. The scope of tests is similar to that of ASTM F963 and EN71 Part I, II and III respectively.</p> <p>A new standard to stipulate the safety requirements and test procedures for electric toys.</p>

	Existing Version	Amended Version	Major Differences/Remarks
	(iii) EN 71-3:1994	BS EN 71-3:1995 BS 5665-3:1995 (incorporating Amendment No. 1 and Corrigendum No. 1)	The new version is basically similar to the existing version, except the following: i) to address the issue of EN71-7: 2002 which is a dedicated safety test standard for finger paints, the safety requirements and test procedures for finger paints samples have been deleted; and ii) the organic solvent used in sample preparation has been changed.
	(iv) EN 71-4:1990	BS EN 71-4:1998 + A3:2007	A new test standard to address the safety requirements for experimental sets for chemistry and related activities.
	(v) EN 71-5:1993	BS EN 71-5:1993 BS 5665- 5: 1993 (incorporating Amendment No. 1)	A new test standard to address the safety requirements for chemical toys (sets) other than experimental sets.
	(vi) EN 71-6:1994	BS EN 71-6:1995 BS 5665: Part 6: 1995	The standard stipulates the requirements with respect to the graphical symbol for age warning labeling.
	(vii) –	BS EN 71-7:2002	A new test standard to stipulate the safety requirements and test procedures for finger paints
	(viii) –	BS EN 71-8:2003 (incorporating Amendment Nos. 1 and 2)	A new test standard to stipulate the safety requirements and test procedures for swings, slides and similar activity toys for indoor and outdoor family domestic use.
	Electric toys – Safety (ix) –	BS EN 62115:2005	A new standard to stipulate the safety requirements and test procedures for electric toys.

	Existing Version	Amended Version	Major Differences/Remarks
4.	ASTM F963 established by the American Society for Testing and Materials Standard consumer safety specification for toy safety ASTM F963-96a	ASTM Standard established by the ASTM International Standard consumer safety specification for toy safety ASTM F963-08	The new version is basically similar to the existing one, except the following: <ul style="list-style-type: none"> i) addition of new safety requirements on yo yo elastic tether toys, hemispheric-shaped objects, sound producing toys, and toys containing magnets; ii) addition of safety requirements to address the risk of jaw entrapment for toys containing openings in handles and steering wheels; iii) addition of safety requirements and test procedures in relation to flammability testing of toys containing fabrics; iv) amendment to and addition of warning label requirements for battery-operated toys, toys containing magnets. <p>Furthermore, there are additional requirements for promotional materials in the new standards.</p>

**Children's Products:
Major Differences between the Existing and the Amended Safety Standards**

	Existing Versions	Amended Versions	Major Differences/Remarks
1. Babies' dummies			
(i)	British Standard BS 5239:1988 -	European Standard (EN) as set out in: BS EN 1400-1:2002 BS EN 1400-2:2002 BS EN 1400-3:2002	<p>The relevant standard institution has replaced the existing standard by a new one with a corresponding EN standard.</p> <p>The safety requirements of the existing and the new standard are basically similar.</p> <p>The new standard –</p> <ul style="list-style-type: none"> ● includes new safety requirements on biting endurance and rotation endurance, and permissible levels of mercury, selenium, mercaptobenzothiazole, antioxidants and volatile components; ● imposes more stringent requirements on construction, performance of soother in respect of impact resistance, puncture resistance and tear resistance, marking, and instructions for use; ● tightens the maximum limits for migration of antimony, arsenic, barium, cadmium, chromium and lead.
(ii)	ASTM Standard ASTM F963-96a	ASTM F963-08	The amendment in the updated standard only involves minor editorial changes.
(iii)	Australian Standard AS 2432:1991	AS 2432:2009	<p>The updated standard differs from the existing version in that:</p> <ul style="list-style-type: none"> ● the off-set requirement in the shield template test has been removed;

	Existing Versions	Amended Versions	Major Differences/Remarks
			<ul style="list-style-type: none"> the method of analysis for acid-soluble has been removed and replaced by a reference to AS/NZS ISO 8124.3; the requirements concerning protruding components and the impact test have been harmonized with the EN 1400-1: 2002.
(iv)	New Zealand Standard NZS 5857:1993	To delete the existing standard as it has been withdrawn by the relevant standards institution.	N.A.
2. Baby nests			
	British Standard BS 6595:1985	To delete the item as the standard currently specified has been withdrawn by the relevant standards institution.	N.A.
3. Baby walking frames			
(i)	British Standard BS 4648:1989	European Standard (EN) as set out in: BS EN 1273:2005	<p>The relevant standard institution has replaced the existing standard to a new one with a corresponding EN standard.</p> <p>The safety requirements of the existing and the new standard are basically similar.</p> <p>The new standard –</p> <ul style="list-style-type: none"> adds new requirements on marking, flammability, limit for migration of selenium, prevention of fall down steps, dynamic stability and parking device;

	Existing Versions	Amended Versions	Major Differences/Remarks
			<ul style="list-style-type: none"> imposes more stringent safety requirements on material, construction requirements for opening, edges, decals, cords, seats and wheels of baby walking frames, performance requirements on folding mechanisms and strength, marking, and instructions for use; tightens maximum limits for migration of antimony, arsenic, barium, cadmium, chromium, mercury and lead.
(ii)	ASTM Standard ASTM F977-96	ASTM F977-07	The two versions are almost identical, except that the updated one adds safety requirements for protective components and requires more detailed descriptions on warning labels.
4. Bottle teats			
(i)	British Standard BS 7368:1990	European Standard (EN) as set out in: BS EN 14350-1:2004 BS EN 14350-2:2004	<p>The new standard differs greatly from the existing standard. It –</p> <ul style="list-style-type: none"> covers the following items: re-usable feeding teats and drinking accessories, re-usable feeding bottles and drinking cups, and single-use feeding bottles, feeding teats, feeding bags and drinking accessories; instead of only “bottle teats” in the existing standard; adds new mechanical requirements on points, edges, small parts, resistance to tearing, resistance to boiling water and thermal shock; adds new chemical requirements on the release of antioxidants, mercaptobenzothiazole, bisphenol A, and volatile compounds;

	Existing Versions	Amended Versions	Major Differences/Remarks
			<ul style="list-style-type: none"> tightens the upper limits for release of nitrosamines, and migration of antimony, arsenic, barium, cadmium, chromium, mercury, lead and selenium.
5. Bunk beds for domestic use			
(i)	British Standard BS EN 747-1:1993 BS EN 747-2:1993	European Standard (EN) as set out in: BS EN 747-1:2007 BS EN 747-2:2007	The updated standard is almost identical to the existing one except that it strengthens the requirements on instruction for use and the test procedures are more detailed.
(ii)	ASTM Standard ASTM F1427-96	ASTM F1427-07	The updated standard is almost identical to the existing one except that there are some changes in the definition of the bunk bed and the performance requirements on bed end structure, guardrail and warning labelling.
(iii)	Australian/New Zealand Standard AS/NZS 4220:1994	AS/NZS 4220:2003	The updated standard is almost identical to the existing one except that it imposes more stringent performance requirements on mattress support elements, guardrail, climbing access, protrusions and snag points, and marking.
(iv)	International Standard ISO 9098-1:1994 ISO 9098-2:1994	No proposed amendments.	N.A.
6. Carry cots and similar handled products and stands			
(i)	British Standard BS7551:1992	European Standard (EN) as set out in: BS EN 1466:2004 +A1:2007	<p>The relevant standard institution has replaced the existing standard by a new one with a corresponding EN standard.</p> <p>The safety requirements of the existing and the new standards are basically similar.</p> <p>The new standard –</p> <ul style="list-style-type: none"> adds new requirements on flammability and limit for migration of selenium;

	Existing Versions	Amended Versions	Major Differences/Remarks
			<ul style="list-style-type: none"> imposes more stringent safety requirements on material, gap sizes, detachable components, retaining function of the sides of non-rigid cots, length of cords, cot height, stability, durability of handle, strength of stands, marking, and instructions on use and maintenance; tightens maximum limits for migration of antimony, arsenic, barium, cadmium, chromium, mercury and lead.
(ii)	Australian Standard AS 2196:1978	To delete the existing standard as it has been withdrawn by the relevant standards institution.	N.A.
(iii)	New Zealand Standard NZS 5844:1989 (identical to AS 2196:1978)	To delete the existing standard as it has been withdrawn by the relevant standards institution.	N.A.
7. Child safety barriers for domestic use			
(i)	British Standard BS 4125:1991	European Standard (EN) as set out in: BS EN 1930:2000 (incorporating Amendment No. 1)	<p>The new standard is basically similar to the existing standard. It –</p> <ul style="list-style-type: none"> adds new requirements on flammability, abuse tests, and limit for migration of selenium; imposes more stringent safety requirements on material, construction, locking mechanisms, marking, and instructions on use and maintenance; tightens upper limits for migration of antimony, arsenic, barium, cadmium, chromium, mercury and lead.

	Existing Versions	Amended Versions	Major Differences/Remarks
			The amendment has revised the requirements on the weight-bearing areas, product marking, warning statements and users' instructions.
(ii)	ASTM Standard ASTM F1004-92	ASTM F1004-07	<p>The safety requirements of the existing and the updated standards are basically similar.</p> <p>The new standard adds new general requirements on exposed coil springs, scissoring, shearing, pinching, gate push-out, labelling, and performance requirements on protective components.</p>
8. Children's cots for domestic use			
(i)	British Standard BS EN 716-1:1996 BS EN 716-2:1996	European Standard (EN) as set out in: BS EN 716-1:2008 BS EN 716-2:2008	<p>The safety requirements of the existing and the updated standards are basically similar.</p> <p>The updated standard adds and amends safety requirements on 'Materials' such as flammability of textiles, coated textiles and plastic coverings, 'Construction' such as, labels and decals, holes, gaps and openings on the inside of the cot, head entrapment on the outside of the cot, cot rim, etc., and 'Instructions for use'.</p>
(ii)	ASTM Standard ASTM F1169-88	ASTM F 1169-07	<p>The safety requirements of the existing and the updated standards are basically similar.</p> <p>The updated standard adds and amends safety requirements on 'surface coatings, small parts, crib side tests, labeling and instructional literature.</p>
(iii)	International Standard ISO 7175-1:1997 ISO 7175-2:1997	No proposed amendments.	N.A.

	Existing Versions	Amended Versions	Major Differences/Remarks
9. Children's high chairs and multi-purpose high chairs for domestic use			
(i)	British Standard BS 5799:1986	European Standard (EN) as set out in: BS EN 14988-1:2006 BS EN 14988-2:2006	<p>The existing standard stipulates the safety requirements for children's high chairs and multi-purpose high chairs for domestic use, while the new standard limits the scope to the high chairs only.</p> <p>The new standard imposes more stringent requirements with respect to the toxic elements contents in the materials of the product, and has more detailed safety requirements and test procedures for the product.</p>
(ii)	ASTM Standard ASTM F404-89	ASTM F 404-08	<p>The safety requirements of the existing and updated standards are basically similar.</p> <p>The new standard adds and amends general requirements for non-paper labels, toy components provided with or attached to the high chair, all paints and surface coatings on the products and performance requirements for passive crotch restraint system, side containment, labelling and warnings, and instructional literature.</p>
(iii)	International Standard ISO 9221-1:1992 ISO 9221-2:1992	No proposed amendments.	N.A.
(iv)	New Zealand Standard NZS/BS 5799:1986	To delete the existing New Zealand Standard as it is equivalent to BS 5799: 1986 which has been withdrawn.	N.A.
10. Children's paints			
(i)	British Standard BS 5665-3:1995	European Standard (EN) as set out in: BS EN 71-3:1995 BS 5665-3:1995 (incorporating Amendment No.1 and Corrigendum No. 1)	The two versions are almost identical except that the updated standard changes the extraction solvent used in certain testing procedures from "1,1,1-trichloroethane" to "n-heptane".

	Existing Versions	Amended Versions	Major Differences/Remarks
(ii)	ASTM Standard ASTM F963-96a	ASTM F963-08	The safety requirements of the existing and the updated standards for children's paint are the same.
(iii)	Australian Standard AS 1647.3:1995	Australian/New Zealand Standard AS/NZS ISO 8124.3:2003	The relevant standard institution has replaced the existing standard by a new one with a corresponding ISO standard. The new standard raises the migration limit of Barium from 500 to 1000 ppm and involves minor editorial changes.
(iv)	New Zealand Standard NZS 5820:1982	Australian/New Zealand Standard AS/NZS ISO 8124.3:2003	Though still a current standard, the existing standard has not been updated since 1985. The AS/NZS ISO 8124 is also a current joint national standard with Australia. The Ministry of Consumer Affairs of New Zealand was going through procedures to revise NZS 5820:1982 to the new joint national standard AS/NZS ISO 8124. The new standard adds the requirements for Antimony and Chromium in coating materials and changes all migration limits according to ISO 8124.3.
(v)	International Standard ISO 8124-3:1997	No proposed amendments.	N.A.
11. Children's safety harnesses			
(i)	British Standard BS 6684:1989	European Standard (EN) as set out in: BS EN 13210:2004	The new standard is basically similar to the existing standard. It – <ul style="list-style-type: none"> ● adds new requirements on migration of selenium, total content and migration of nickel, small parts and durability of marking;

	Existing Versions	Amended Versions	Major Differences/Remarks
			<ul style="list-style-type: none"> imposes more stringent safety requirements on shoulder straps, rein, slippage, dynamic strength, marking, and instructions on use; tightens maximum limits for migration of lead, antimony, arsenic, cadmium, chromium, and mercury, but loosens the limit for barium and deletes the requirement on extractable chromium and ageing test for polypropylene materials.
(ii)	Australian Standard AS 3747-1989	To delete the existing standard as it has been withdrawn by the relevant standards institution.	N.A.
12. Playpens for domestic use			
(i)	British Standard BS 4863:1991	European Standard (EN) as set out in: BS EN 12227-1:1999 BS EN 12227-2:1999	<p>The relevant standard institution has replaced the existing standard by a new one with a corresponding EN standard.</p> <p>The new standard imposes more stringent safety requirements on material, construction requirements on opening, holes, gaps, edges, points, corners, moving parts, dimensions, detachable components, rim, base, sides, castors, screws, as well as stability, packaging, marking, and instructions for use.</p>
(ii)	ASTM Standard ASTM F406-97	ASTM F406-08a	The updated standard is almost identical to the existing one except it adds and amends requirements on toy accessories come with the product, the mattress support testing, dropline latch testing, entrapment in attachments, marking and labelling, and instructional literature.

	Existing Versions	Amended Versions	Major Differences/Remarks
13. Wheeled child conveyances			
(i)	British Standard BS 7409:1996	European Standard (EN) as set out in: BS EN 1888:2003 (incorporating Amendment No. 1 and Corrigenda Nos. 1, 2 and 3)	The new standard is basically similar to the existing standard. It – <ul style="list-style-type: none"> • adds new requirements on flammability, dimensions, shrinkage pushchair fitted with platform, and wheeled child conveyances with triangular shaped chassis; • imposes more stringent safety requirements on material, construction, locking mechanisms, handles, parking and braking device, restraint system and fasteners, marking, and instructions on use and maintenance; and • tightens maximum limits for migration of lead, antimony, arsenic, cadmium, chromium, and mercury.
(ii)	ASTM Standard ASTM F833-97	ASTM F833-08	The updated standard is almost identical to the existing one except it adds and amends general requirements on non-paper labels, seat recline measurement, toy accessories come with the product as well as the performance requirements on products with combination unit, harness system, impact test, passive containment/foot opening, and marking and labelling
(iv)	Australian /New Zealand Standard AS/NZS 2088:1993	AS/NZS 2088:2000	The two versions are almost identical except that the updated standard adds new construction requirements for shoulder straps and waist straps.