

**TOYS AND CHILDREN'S PRODUCTS SAFETY
(AMENDMENT) BILL 2009**

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A BILL

To

Amend the Toys and Children's Products Safety Ordinance to replace the standards for toys and children's products with new standards, to revise the definitions of toys and children's products, to enable the Secretary for Commerce and Economic Development to amend the standards by notice published in the Gazette, to simplify the reference to the Secretary, and to update the references to penalties.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Toys and Children's Products Safety (Amendment) Ordinance 2009.

2. Commencement

This Ordinance comes into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.

PART 2

AMENDMENTS TO TOYS AND CHILDREN'S PRODUCTS
SAFETY ORDINANCE

3. Interpretation

(1) Section 2 of the Toys and Children's Products Safety Ordinance (Cap. 424) is amended by repealing the definition of "children's product" and substituting—

““children's product” (兒童產品) means a product specified in column 1 of Schedule 2, or the packaging of that product;”.

(2) Section 2 is amended by repealing the definition of “standards institution”.

(3) Section 2 is amended by repealing the definition of “toy” and substituting—

““toy” (玩具) means—

(a) a product or material that is designed or clearly intended for use in play by a child; or

(b) the packaging of that product or material;”.

(4) Section 2 is amended by adding—

““children's product standard” (兒童產品標準), in relation to a children's product, means a standard specified in column 2 of Schedule 2 opposite the children's product—

(a) as in force at the commencement of section 21 of the Toys and Children's Products Safety (Amendment) Ordinance 2009 (of 2009); or

(b) if the standard is amended by any amendment specified in column 3 of Schedule 2 opposite the standard, as so amended;

“regulation” (規例) means a regulation made under this Ordinance;

“Secretary” (局長) means the Secretary for Commerce and Economic Development;

“toy standard” (玩具標準) means a standard specified in column 1 of Schedule 1—

(a) as in force at the commencement of section 20 of the Toys and Children's Products Safety (Amendment) Ordinance 2009 (of 2009); or

(b) if the standard is amended by any amendment specified in column 2 of Schedule 1 opposite the standard, as so amended;”.

4. Section substituted

Section 3 is repealed and the following substituted—

“3. Toys must comply with toy standards

(1) This section applies to a toy to which any requirements contained in at least one toy standard are applicable, but does not apply to goods in transit, goods in the course of transshipment or goods manufactured for export.

(2) A person must not manufacture, import or supply a toy unless—

- (a) if only one toy standard contains any requirements that apply to the toy, the toy complies with all the applicable requirements contained in that standard; or
- (b) if more than one toy standard contains any requirements that apply to the toy, the toy complies with all the applicable requirements contained in any one of those standards.

(3) A person who contravenes subsection (2) commits an offence.”.

5. Amendment of safety standards

Section 4 is repealed.

6. Requirement to meet safety standards for specified children's products

(1) The heading of section 5 is repealed and the following substituted—

“Children's products must comply with children's product standards”.

(2) Section 5(1) is repealed and the following substituted—

“(1) A person must not manufacture, import or supply a children's product unless the product complies with all the requirements contained in at least one children's product standard that is specific to the product.”.

7. Amendment to Schedule

Section 6 is repealed.

8. The general safety requirement

- (1) Section 8(1) is repealed and the following substituted—

“(1) 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 any additional safety standard established by regulation.”.

- (2) Section 8(3) is repealed and the following substituted—

“(3) For the purposes of this section, a toy is regarded as complying with the general safety requirement if—

- (a) only one toy standard contains any requirements that apply to the toy, and the toy complies with all the applicable requirements contained in that standard; or
- (b) more than one toy standard contains any requirements that apply to the toy, and the toy complies with all the applicable requirements contained in any one of those standards.”.

- (3) Section 8(4) is repealed and the following substituted—

“(4) For the purposes of this section, a children’s product is regarded as complying with the general safety requirement if the product complies with all the requirements contained in at least one children’s product standard that is specific to the product.”.

9. Laboratories

- (1) Section 9(2) is repealed and the following substituted—

“(2) A person may, at the person’s own expense, have tested by an approved laboratory—

- (a) a toy, to determine whether it complies with any applicable requirements contained in a toy standard, or any additional safety standard established by regulation;
- (b) a children’s product, to determine whether it complies with any requirements contained in a children’s product standard that is specific to the product, or any additional safety standard established by regulation.”.

- (2) Section 9(3) is repealed and the following substituted—

“(3) The Commissioner may have tested by the Government Chemist—

- (a) a toy that is seized under section 20 or purchased by the Commissioner, to determine whether it complies with any applicable requirements contained in a toy standard, or any additional safety standard established by regulation;
- (b) a children's product that is seized under section 20 or purchased by the Commissioner, to determine whether it complies with any requirements contained in a children's product standard that is specific to the product, or any additional safety standard established by regulation.”.

10. Prohibition notice

Section 11(1) is repealed and the following substituted—

“(1) The Commissioner may serve a notice on a person prohibiting the person from supplying a toy or children's product for a specified period not exceeding 6 months, if—

- (a) for a toy, the Commissioner reasonably believes that it—
 - (i) does not comply with any applicable requirements contained in a toy standard, or any additional safety standard established by regulation; or
 - (ii) may not comply with the general safety requirement under section 8;
- (b) for a children's product, the Commissioner reasonably believes that it—
 - (i) does not comply with any requirements contained in a children's product standard that is specific to the product, or any additional safety standard established by regulation; or
 - (ii) may not comply with the general safety requirement under section 8.”.

11. Recall notice

Section 12(1) is repealed and the following substituted—

“(1) The Commissioner may serve a notice on a person requiring the immediate withdrawal of a toy or children's product from being supplied and the retrieval, to the extent reasonably possible, of the toys or children's products already supplied, if—

- (a) for a toy, the Commissioner reasonably believes that there is a significant risk that it will cause a serious injury and that it—

- (i) does not comply with any applicable requirements contained in a toy standard, or any additional safety standard established by regulation; or
- (ii) may not comply with the general safety requirement under section 8;
- (b) for a children's product, the Commissioner reasonably believes that there is a significant risk that it will cause a serious injury and that it—
 - (i) does not comply with any requirements contained in a children's product standard that is specific to the product, or any additional safety standard established by regulation; or
 - (ii) may not comply with the general safety requirement under section 8.”.

12. Other powers of the Commissioner

Section 13(1)(a) and (b) is repealed and the following substituted—

- “(a) require the manufacturer, importer or supplier of a toy or children's product to have it tested in the form and manner specified by the Commissioner, if—
- (i) for a toy, the Commissioner reasonably believes that it—
 - (A) does not comply with any applicable requirements contained in a toy standard, or any additional safety standard established by regulation; or
 - (B) may not comply with the general safety requirement under section 8;
 - (ii) for a children's product, the Commissioner reasonably believes that it—
 - (A) does not comply with any requirements contained in a children's product standard that is specific to the product, or any additional safety standard established by regulation; or
 - (B) may not comply with the general safety requirement under section 8;
- (b) require the manufacturer, importer or supplier of a toy or children's product to modify it or its labelling or advertising to comply with—
- (i) for a toy—
 - (A) any applicable requirements contained in a toy standard, or any additional safety standard established by regulation; or
 - (B) the general safety requirement under section 8;
 - (ii) for a children's product—

- (A) any requirements contained in a children's product standard that is specific to the product, or any additional safety standard established by regulation; or
- (B) the general safety requirement under section 8; and”.

13. Appeal to Appeal Board

Section 14(3) is amended by repealing “for Commerce and Economic Development”.

14. Appeal Board panel

Section 15(1) and (3) is amended by repealing “for Commerce and Economic Development”.

15. Appeal Board

Section 16(1) and (3) is amended by repealing “for Commerce and Economic Development”.

16. Compensation for seizure and detention

Section 27(1)(c)(i) is repealed and the following substituted—

- “(i) any applicable requirements contained in a toy standard, any requirements contained in a children's product standard that is specific to the goods, or any additional safety standard established by regulation; or”.

17. Penalties

(1) Section 31(1)(a) is amended by repealing “of \$100,000” and substituting “at level 6”.

(2) Section 31(3) is amended by repealing “of \$10,000” and substituting “at level 3”.

18. Regulations

(1) Section 35(1) is amended by repealing “for Commerce and Economic Development”.

(2) Section 35(1)(a) is repealed.

(3) Section 35(2)(a) is amended by repealing “of \$100,000” and substituting “at level 6”.

19. Section 37 added

The following is added—

“37. Power to amend Schedules

The Secretary may, by notice published in the Gazette, amend Schedule 1 or 2.”.

20. Schedule substituted

The Schedule is repealed and the following substituted—

“SCHEDULE 1

[ss. 2 & 37]

TOY STANDARDS

Column 1

Column 2

Standards

Amendment to standards

1. International Standard

The International Standard is established by the International Organization for Standardization and the International Electrotechnical Commission, and the requirements contained in the Standard are specified in—

(a) ISO 8124-1:2009

“Safety of toys—Part 1: Safety aspects related to mechanical and physical properties”

(b) ISO 8124-2:2007

“Safety of toys—Part 2: Flammability”

(c) ISO 8124-3:1997

“Safety of toys—Part 3: Migration of certain elements”

Column 1

Column 2

Standards

Amendment to standards

- (d) **IEC 62115 Edition 1.1**
(2004-11) [IEC 62115 Edition
1:2003 consolidated with
amendment 1:2004]
“Electric Toys—Safety”

2. **European Standard**

The European Standard is established by the European Committee for Standardization, and the requirements contained in the Standard are specified in—

- (a) **BS EN 71-1:2005 + A8:2009**
“Safety of toys—Part 1:
Mechanical and physical
properties”
- (b) **BS EN 71-2:2006 + A1:2007**
“Safety of toys—Part 2:
Flammability”
- (c) **BS EN 71-3:1995**
BS 5665-3:1995
(incorporating Amendment No. 1
and Corrigendum No. 1)
“Safety of toys—Part 3: Migration
of certain elements”
- (d) **BS EN 71-4:1998 + A3:2007**
“Safety of toys—Part 4:
Experimental sets for chemistry
and related activities”
- (e) **BS EN 71-5:1993**
BS 5665-5:1993
(incorporating Amendment No. 1)
“Safety of toys—Part 5: Chemical
toys (sets) other than experimental
sets”

Column 1

Column 2

Standards

Amendment to standards

- (f) **BS EN 71-6:1995**
BS 5665:Part 6:1995
“Safety of toys—Part 6: Graphical symbol for age warning labelling”
- (g) **BS EN 71-7:2002**
“Safety of toys—Part 7: Finger paints—Requirements and test methods”
- (h) **BS EN 71-8:2003**
(incorporating Amendment Nos. 1 and 2)
“Safety of toys—Part 8: Swings, slides and similar activity toys for indoor and outdoor family domestic use”
- (i) **BS EN 62115:2005**
“Electric toys—Safety”

3. **ASTM Standard**

The ASTM Standard is established by ASTM International, and the requirements contained in the Standard are specified in—

ASTM F963-08

“Standard consumer safety specification for toy safety” ”.

21. **Schedule 2 added**

The following is added—

“SCHEDULE 2

[ss. 2 & 37]

CHILDREN'S PRODUCT STANDARDS

Column 1	Column 2	Column 3
Children's products	Standards	Amendments to standards
1. Babies' dummies	<p>European Standard</p> <p>The European Standard is established by the European Committee for Standardization, and the requirements contained in the Standard are specified in—</p> <p>(a) BS EN 1400-1:2002 “Child use and care articles—Soothers for babies and young children—Part 1: General safety requirements and product information”</p> <p>(b) BS EN 1400-2:2002 “Child use and care articles—Soothers for babies and young children—Part 2: Mechanical requirements and tests”</p> <p>(c) BS EN 1400-3:2002 “Child use and care articles—Soothers for babies and young children—Part 3: Chemical requirements and tests”</p>	

Column 1	Column 2	Column 3
Children's products	Standards	Amendments to standards

ASTM Standard

The ASTM Standard is established by ASTM International, and the requirements contained in the Standard are specified in—

ASTM F963-08

“Standard consumer safety specification for toy safety”

Australian Standard

The Australian Standard is established by Standards Australia, and the requirements contained in the Standard are specified in—

AS 2432:2009

“Babies’ dummies”

2. Baby walking frames

European Standard

The European Standard is established by the European Committee for Standardization, and the requirements contained in the Standard are specified in—

BS EN 1273:2005

“Child use and care articles—
Baby walking frames—
Safety requirements and test methods”

Column 1	Column 2	Column 3
Children's products	Standards	Amendments to standards

ASTM Standard

The ASTM Standard is established by ASTM International, and the requirements contained in the Standard are specified in—

ASTM F977-07

“Standard consumer safety specification for infant walkers”

3. Bottle teats

European Standard

The European Standard is established by the European Committee for Standardization, and the requirements contained in the Standard are specified in—

(a) **BS EN 14350-1:2004**

“Child use and care articles—Drinking equipment—Part 1: General and mechanical requirements and tests”

(b) **BS EN 14350-2:2004**

“Child use and care articles—Drinking equipment—Part 2: Chemical requirements and tests”

Column 1	Column 2	Column 3
Children's products	Standards	Amendments to standards
4. Bunk beds for domestic use	<p>European Standard</p> <p>The European Standard is established by the European Committee for Standardization, and the requirements contained in the Standard are specified in—</p> <p>(a) BS EN 747-1:2007 “Furniture—Bunk beds and high beds for domestic use— Part 1: Safety, strength and durability requirements”</p> <p>(b) BS EN 747-2:2007 “Furniture—Bunk beds and high beds for domestic use— Part 2: Test methods”</p>	
	<p>ASTM Standard</p> <p>The ASTM Standard is established by ASTM International, and the requirements contained in the Standard are specified in—</p> <p>ASTM F1427-07 “Standard consumer safety specification for bunk beds”</p>	

Column 1	Column 2	Column 3
Children's products	Standards	Amendments to standards

Joint Australian/New Zealand Standard

The Joint Australian/New Zealand Standard is established by Standards Australia and Standards New Zealand, and the requirements contained in the Standard are specified in—

AS/NZS 4220:2003

“Bunk beds”

International Standard

The International Standard is established by the International Organization for Standardization, and the requirements contained in the Standard are specified in—

(a) ISO 9098-1:1994

“Bunk beds for domestic use—Safety requirements and tests—Part 1: Safety requirements”

(b) ISO 9098-2:1994

“Bunk beds for domestic use—Safety requirements and tests—Part 2: Test methods”

Column 1	Column 2	Column 3
Children's products	Standards	Amendments to standards
5. Carry cots and similar handled products and stands	<p>European Standard</p> <p>The European Standard is established by the European Committee for Standardization, and the requirements contained in the Standard are specified in—</p> <p>BS EN 1466:2004 + A1:2007 “Child care articles—Carry cots and stands—Safety requirements and test methods”</p>	
6. Child safety barriers for domestic use	<p>European Standard</p> <p>The European Standard is established by the European Committee for Standardization, and the requirements contained in the Standard are specified in—</p> <p>BS EN 1930:2000 (incorporating Amendment No. 1) “Child care articles—Safety barriers—Safety requirements and test methods”</p> <p>ASTM Standard</p> <p>The ASTM Standard is established by ASTM International, and the requirements contained in the Standard are specified in—</p>	

Column 1	Column 2	Column 3
Children's products	Standards	Amendments to standards
7. Children's cots for domestic use	<p>ASTM F1004-07 “Standard consumer safety specification for expansion gates and expandable enclosures”</p> <p>European Standard The European Standard is established by the European Committee for Standardization, and the requirements contained in the Standard are specified in—</p> <p>(a) BS EN 716-1:2008 “Furniture—Children's cots and folding cots for domestic use—Part 1: Safety requirements”</p> <p>(b) BS EN 716-2:2008 “Furniture—Children's cots and folding cots for domestic use—Part 2: Test methods”</p> <p>ASTM Standard The ASTM Standard is established by ASTM International, and the requirements contained in the Standard are specified in—</p> <p>ASTM F1169-07 “Standard specification for full-size baby crib”</p>	

Column 1	Column 2	Column 3
Children's products	Standards	Amendments to standards

International Standard

The International Standard is established by the International Organization for Standardization, and the requirements contained in the Standard are specified in—

- (a) **ISO 7175-1:1997**
“Children's cots and folding cots for domestic use—Part 1: Safety requirements”
- (b) **ISO 7175-2:1997**
“Children's cots and folding cots for domestic use—Part 2: Test methods”

8. Children's high chairs and multi-purpose high chairs for domestic use

European Standard

The European Standard is established by the European Committee for Standardization, and the requirements contained in the Standard are specified in—

- (a) **BS EN 14988-1:2006**
“Children's high chairs—Part 1: Safety requirements”
- (b) **BS EN 14988-2:2006**
“Children's high chairs—Part 2: Test methods”

Column 1	Column 2	Column 3
Children's products	Standards	Amendments to standards

ASTM Standard

The ASTM Standard is established by ASTM International, and the requirements contained in the Standard are specified in—

ASTM F404-08

“Standard consumer safety specification for high chairs”

International Standard

The International Standard is established by the International Organization for Standardization, and the requirements contained in the Standard are specified in—

(a) ISO 9221-1:1992

“Furniture—Children's high chairs—Part 1: Safety requirements”

(b) ISO 9221-2:1992

“Furniture—Children's high chairs—Part 2: Test methods”

9. Children's paints

European Standard

The European Standard is established by the European Committee for Standardization, and the requirements contained in the Standard are specified in—

Column 1	Column 2	Column 3
Children's products	Standards	Amendments to standards
	<p>BS EN 71-3:1995 BS 5665-3:1995 (incorporating Amendment No.1 and Corrigendum No. 1) “Safety of toys—Part 3: Migration of certain elements”</p>	
	<p>ASTM Standard</p> <p>The ASTM Standard is established by ASTM International, and the requirements contained in the Standard are specified in—</p>	
	<p>ASTM F963-08 “Standard consumer safety specification for toy safety”</p>	
	<p>Joint Australian/New Zealand Standard</p> <p>The Joint Australian/New Zealand Standard is established by Standards Australia and Standards New Zealand, and the requirements contained in the Standard are specified in—</p>	
	<p>AS/NZS ISO 8124.3:2003 “Safety of toys—Part 3: Migration of certain elements”</p>	

Column 1	Column 2	Column 3
Children's products	Standards	Amendments to standards

International Standard

The International Standard is established by the International Organization for Standardization, and the requirements contained in the Standard are specified in—

ISO 8124-3:1997

“Safety of toys—Part 3: Migration of certain elements”

10. Children's safety harnesses

European Standard

The European Standard is established by the European Committee for Standardization, and the requirements contained in the Standard are specified in—

BS EN 13210:2004

“Child use and care articles—Children's safety harnesses, reins and similar type articles—Safety requirements and test methods”

11. Playpens for domestic use

European Standard

The European Standard is established by the European Committee for Standardization, and the requirements contained in the Standard are specified in—

Column 1	Column 2	Column 3
Children's products	Standards	Amendments to standards
	<p>(a) BS EN 12227-1:1999 “Playpens for domestic use—Part 1: Safety requirements”</p> <p>(b) BS EN 12227-2:1999 “Playpens for domestic use—Part 2: Test methods”</p>	
	<p>ASTM Standard</p> <p>The ASTM Standard is established by ASTM International, and the requirements contained in the Standard are specified in—</p>	
	<p>ASTM F406-08a “Standard consumer safety specification for non-full-size baby cribs/play yards”</p>	
12. Wheeled child conveyances	<p>European Standard</p> <p>The European Standard is established by the European Committee for Standardization, and the requirements contained in the Standard are specified in—</p> <p>BS EN 1888:2003 (incorporating Amendment No. 1 and Corrigenda Nos. 1, 2 and 3) “Child care articles—Wheeled child conveyances—Safety requirements and test methods”</p>	

Column 1	Column 2	Column 3
Children's products	Standards	Amendments to standards

ASTM Standard

The ASTM Standard is established by ASTM International, and the requirements contained in the Standard are specified in—

ASTM F833-08

“Standard consumer safety performance specification for carriages and strollers”

Joint Australian/New Zealand Standard

The Joint Australian/New Zealand Standard is established by Standards Australia and Standards New Zealand, and the requirements contained in the Standard are specified in—

AS/NZS 2088:2000

“Prams and Strollers— Safety requirements” ”.

PART 3

RELATED AMENDMENTS

**Division 1—Toys and Children's Products Safety
(Safety Standards) Notice**

22. Repeal

The Toys and Children's Products Safety (Safety Standards) Notice (Cap. 424 sub. leg. A) is repealed.

Division 2—Toys and Children's Products Safety Regulation

23. Section 1A added

The Toys and Children's Products Safety Regulation (Cap. 424 sub. leg. B) is amended by adding—

“1A. Interpretation

In this Regulation—

“children's product” (兒童產品) means a product specified in column 1 of Schedule 2 to the Ordinance;

“toy” (玩具) means a product or material that is designed or clearly intended for use in play by a child.”.

Explanatory Memorandum

The object of this Bill is to amend the Toys and Children's Products Safety Ordinance (Cap. 424) (“the Ordinance”)—

- (a) to replace the standards for toys and children's products in the Ordinance with new standards contained respectively in the new Schedules 1 and 2 to the Ordinance;
- (b) to revise the definitions of toys and children's products in the Ordinance by including the packaging of those toys and children's products; and
- (c) to provide that the Secretary for Commerce and Economic Development (“the Secretary”) may amend the new standards for toys and children's products by notice published in the Gazette.

2. Clauses 1 and 2 provide respectively for the short title and the commencement of the Bill when enacted.

3. Clause 3 adds the new definitions of “children's product standard”, “regulation”, “Secretary” and “toy standard” to the Ordinance, and amends the definitions of “children's product” and “toy” in the Ordinance by including the packaging of toys and children's products.

4. Clauses 4, 6, 8, 9, 10, 11, 12 and 16 amend sections 3, 5, 8, 9, 11, 12, 13 and 27 of the Ordinance respectively, by replacing the standards for children's products and toys in the Ordinance with new standards.

5. Clauses 5 and 7 consequentially repeal sections 4 and 6 of the Ordinance respectively on the repeal of section 3 of and the Schedule to the Ordinance.
6. Clauses 13, 14, 15 and 18 amend respectively sections 14(3), 15(1) and (3), 16(1) and (3) and 35(1) of the Ordinance to change the reference of “the Secretary for Commerce and Economic Development” to “the Secretary”.
7. Clauses 17 and 18(3) amend respectively sections 31 and 35(2) of the Ordinance to update the references to penalties.
8. Clause 18 repeals section 35(1)(a) of the Ordinance which empowers the Secretary to designate a product as a children’s product. This power is subsumed under a new section 37 added to the Ordinance by clause 19, which provides that the Secretary may amend the toy standard and children’s product standard by notice published in the Gazette.
9. Clauses 20 and 21 add the new Schedules 1 and 2 to the Ordinance, which contain the new toy standards and children’s product standards respectively.
10. Clause 22 repeals the obsolete Toys and Children’s Products Safety (Safety Standards) Notice (Cap. 424 sub. leg. A).
11. Clause 23 adds new definitions of “children’s product” and “toy” to the Toys and Children’s Products Safety Regulation (Cap. 424 sub. leg. B).