

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

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A BILL

To

Amend the Toys and Children's Products Safety Ordinance to provide for safety standards for certain toys and children's products; and to make related and other minor amendments.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Toys and Children's Products Safety (Amendment) Ordinance 2013.
- (2) 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.

2. Toys and Children's Products Safety Ordinance amended

The Toys and Children's Products Safety Ordinance (Cap. 424) is amended as set out in sections 3 to 17.

3. Section 2 amended (interpretation)

- (1) Section 2—

Repeal the definition of *children's product*

Substitute

"*children's product* (兒童產品)—see section 2B;".

- (2) Section 2, definition of *Commissioner*—

Repeal

“and any”

Substitute

“or any”.

- (3) Section 2, English text, definition of *Commissioner*—

Repeal

“his powers”

Substitute

“the powers of the Commissioner of Customs and Excise”.

- (4) Section 2—

(a) definition of *children's product standard*;

(b) definition of *regulation*—

Repeal the definitions.

- (5) Section 2—

Add in alphabetical order

“*additional safety standard* (附加安全標準)—

(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; and

(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;

Schedule 2 product (附表 2 產品)—see section 2A;

Schedule 2 product standard (附表 2 產品標準), in relation to a product or material falling within a class of products set out in column 1 of Schedule 2, or the packaging of the product or material, means a standard specified in column 2 of that Schedule opposite to that class of products;”.

4. Sections 2A and 2B added

Part I, after section 2—

Add

“2A. What is Schedule 2 product

- (1) A product or material is a Schedule 2 product if it falls within a class of products set out in column 1 of Schedule 2.
- (2) The packaging of a Schedule 2 product within the meaning of subsection (1) is also a Schedule 2 product.

2B. What is children's product

- (1) A product or material is a children's product if—
 - (a) it is a Schedule 2 product within the meaning of section 2A(1); or
 - (b) it—
 - (i) is neither a Schedule 2 product within the meaning of section 2A(1) nor a product or material described in paragraph (a) of the definition of *toy* in section 2; and
 - (ii) is intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under 4 years of age and contains any plasticized material.
- (2) Each of the following is also a children's product—

- (a) a Schedule 2 product within the meaning of section 2A(2);
- (b) the packaging of a children's product within the meaning of subsection (1)(b).".

5. Part III heading amended (children's products)

Part III, heading—

Repeal

“CHILDREN'S PRODUCTS”

Substitute

“SCHEDULE 2 PRODUCT SAFETY”.

6. Section 5 amended (children's products must comply with children's product standards)

(1) Section 5, heading—

Repeal

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

Substitute

“Schedule 2 products must comply with Schedule 2 product standards”.

(2) Section 5—

Repeal subsection (1)

Substitute

“(1) If only one Schedule 2 product standard contains requirements that apply to a Schedule 2 product, a person must not manufacture, import or supply the product unless the product complies with all the applicable requirements contained in the standard.

(1A) If more than one Schedule 2 product standard contains requirements that apply to a Schedule 2 product, a person must not manufacture, import or supply the product unless the product complies with all the applicable requirements contained in at least one of those standards.”.

(3) Section 5(3)—

Repeal

“Subsection (1) does”

Substitute

“Subsections (1) and (1A) do”.

(4) Section 5(4), after “subsection (1)”—

Add

“or (1A)”.

7. Part IV heading amended (general safety requirement)

Part IV, heading, after “REQUIREMENT”—

Add

“AND ADDITIONAL SAFETY STANDARD”.

8. Section 8 amended (the general safety requirement)

(1) Section 8, heading, after “requirement”—

Add

“and additional safety standard”.

(2) Section 8(1)—

Repeal

“any additional safety standard established by regulation”

Substitute

“each additional safety standard”.

(3) Section 8(4)—

Repeal

everything after “section,”

Substitute

“a Schedule 2 product is regarded as complying with the general safety requirement if—

- (a) only one Schedule 2 product standard contains requirements that apply to the product, and the product complies with all the applicable requirements contained in the standard; or
- (b) more than one Schedule 2 product standard contains requirements that apply to the product, and the product complies with all the applicable requirements contained in at least one of those standards.”.

9. Section 9 amended (laboratories)

Section 9—

Repeal subsections (2) and (3)**Substitute**

- “(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 an applicable requirement contained in a toy standard, or with an additional safety standard;
 - (b) a Schedule 2 product, to determine whether it complies with an applicable requirement contained in a Schedule 2 product standard, or with an additional safety standard; or
 - (c) any other children's product, to determine whether it complies with an additional safety standard.

- (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 an applicable requirement contained in a toy standard, or with an additional safety standard;
 - (b) a Schedule 2 product that is seized under section 20 or purchased by the Commissioner, to determine whether it complies with an applicable requirement contained in a Schedule 2 product standard, or with an additional safety standard; or
 - (c) any other children's product that is seized under section 20 or purchased by the Commissioner, to determine whether it complies with an additional safety standard.”.

10. Section 11 amended (prohibition notice)

- (1) Section 11(1)(a), English text—

Repeal

“that it—”

Substitute

“that—”.

- (2) Section 11(1)(a)—

Repeal subparagraph (i)

Substitute

“(i) it does not comply with an applicable requirement contained in a toy standard, or with an additional safety standard; or”.

- (3) Section 11(1)(a)(ii), English text, before “may not”—

Add

“it”.

(4) Section 11(1)—

Repeal paragraph (b)**Substitute**

“(b) for a Schedule 2 product, the Commissioner reasonably believes that—

- (i) it does not comply with an applicable requirement contained in a Schedule 2 product standard, or with an additional safety standard; or
 - (ii) it may not comply with the general safety requirement under section 8; or
- (c) for any other children's product, the Commissioner reasonably believes that—
- (i) it does not comply with an additional safety standard; or
 - (ii) it may not comply with the general safety requirement under section 8.”.

11. Section 12 amended (recall notice)

(1) Section 12(1)(a), English text—

Repeal

“and that it—”

Substitute

“to a person and that—”.

(2) Section 12(1)(a)—

Repeal subparagraph (i)**Substitute**

“(i) it does not comply with an applicable requirement contained in a toy standard, or with an additional safety standard; or”.

(3) Section 12(1)(a)(ii), English text, before “may not”—

Add

“it”.

(4) Section 12(1)—

Repeal paragraph (b)

Substitute

“(b) for a Schedule 2 product, the Commissioner reasonably believes that there is a significant risk that it will cause a serious injury to a person and that—

(i) it does not comply with an applicable requirement contained in a Schedule 2 product standard, or with an additional safety standard; or

(ii) it may not comply with the general safety requirement under section 8; or

(c) for any other children's product, the Commissioner reasonably believes that there is a significant risk that it will cause a serious injury to a person and that—

(i) it does not comply with an additional safety standard; or

(ii) it may not comply with the general safety requirement under section 8.”.

12. Section 13 substituted

Section 13—

Repeal the section

Substitute

“13. Other powers of Commissioner

- (1) The Commissioner may 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—
 - (a) for a toy, the Commissioner reasonably believes that—
 - (i) it does not comply with an applicable requirement contained in a toy standard, or with an additional safety standard; or
 - (ii) it may not comply with the general safety requirement under section 8;
 - (b) for a Schedule 2 product, the Commissioner reasonably believes that—
 - (i) it does not comply with an applicable requirement contained in a Schedule 2 product standard, or with an additional safety standard; or
 - (ii) it may not comply with the general safety requirement under section 8; or
 - (c) for any other children's product, the Commissioner reasonably believes that—
 - (i) it does not comply with an additional safety standard; or
 - (ii) it may not comply with the general safety requirement under section 8.
- (2) The Commissioner may—
 - (a) require the manufacturer, importer or supplier of a toy to modify the toy, or its labelling or advertising—

- (i) to comply with an applicable requirement contained in a toy standard, or with an additional safety standard; or
 - (ii) to comply with the general safety requirement under section 8;
 - (b) require the manufacturer, importer or supplier of a Schedule 2 product to modify the product, or its labelling or advertising—
 - (i) to comply with an applicable requirement contained in a Schedule 2 product standard, or with an additional safety standard; or
 - (ii) to comply with the general safety requirement under section 8; or
 - (c) require the manufacturer, importer or supplier of any other children's product to modify the product, or its labelling or advertising—
 - (i) to comply with an additional safety standard; or
 - (ii) to comply with the general safety requirement under section 8.
- (3) The Commissioner may require a person who advertises a toy or children's product to include in the advertisement a warning notice specified by the Commissioner.
- (4) A person who fails or refuses to comply with a requirement imposed by the Commissioner under subsection (1), (2) or (3) commits an offence.”.

13. Section 14 amended (appeal to Appeal Board)

Section 14(4)—

Repeal

“of the Commissioner does not suspend the Commissioner’s decision unless he”

Substitute

“or action of the Commissioner does not affect the Commissioner’s decision or action, unless the Commissioner”.

14. Section 24 amended (destruction or release of seized goods)

Section 24(1)(b)—

Repeal

“children’s products”

Substitute

“Schedule 2 products”.

15. Section 27 amended (compensation for seizure and detention)

(1) Section 27(1), English text—

Repeal

“him”

Substitute

“the owner”.

(2) Section 27(1)(a), English text—

Repeal

“he”

Substitute

“the owner”.

(3) Section 27(1)(c)—

Repeal

“did not comply with”.

(4) Section 27(1)(c)—

Repeal subparagraph (i)

Substitute

“(i) did not comply with an applicable requirement contained in a toy standard or a Schedule 2 product standard, or with an additional safety standard; or”.

(5) Section 27(1)(c)(ii), before “the general”—

Add

“did not comply with”.

16. Section 35 substituted

Section 35—

Repeal the section

Substitute

“35. Regulations

(1) The Secretary may by regulation—

- (a) impose additional safety standards or requirements for toys, including more stringent standards or requirements in relation to a matter provided for in any one or more of the toy standards;
- (b) impose additional safety standards or requirements for Schedule 2 products, including more stringent standards or requirements in relation to a matter provided for in any one or more of the Schedule 2 product standards;
- (c) impose additional safety standards or requirements for other children's products;
- (d) prohibit the manufacture, importation or supply of toys or children's products; and

- (e) provide for incidental, consequential and transitional provisions that are necessary or expedient in consequence of the regulation.
- (2) Regulations under subsection (1) may—
 - (a) make different provisions for different circumstances and provide for a particular case or class of cases; and
 - (b) prescribe offences for contravention of the regulations, punishable by a fine, imprisonment or both.
- (3) The maximum fine that may be prescribed for an offence is \$500,000 and the maximum imprisonment is 2 years.”.

17. Schedule 2 amended (children's product standards)

- (1) Schedule 2, heading—
 - Repeal**
 - “Children's”
 - Substitute**
 - “Schedule 2”.
- (2) Schedule 2, after “[ss. 2]”—
 - Add**
 - “, 2A”.
- (3) Schedule 2, column 1, heading—
 - Repeal**
 - “Children's products”
 - Substitute**
 - “Classes of products”.

Explanatory Memorandum

The main purpose of this Bill is to amend the Toys and Children's Products Safety Ordinance (Cap. 424) (**TCPSO**) to broaden the scope of application of the TCPSO so that after the enactment of the Bill, the TCPSO as amended also applies to 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 (***new product***).

2. Clause 1 sets out the short title and provides for commencement.
3. Clause 3 amends section 2 of the TCPSO to amend the definition of **Commissioner** and add a number of new definitions. In addition, the clause expands the definition of ***children's product*** by replacing the existing definition by a new one. The new definition of ***children's product*** refers to new section 2B of the amended TCPSO which is the substantive interpretative provision for a children's product. Clause 3 also repeals the definitions of ***children's product standard*** and ***regulation***.
4. Clause 4 adds new sections 2A and 2B to the TCPSO. The 2 new sections are interpretative provisions. New section 2A defines ***Schedule 2 product***. A product that is referred to in the TCPSO as a children's product is a Schedule 2 product under the Bill. As for new section 2B, the expanded definition of ***children's product*** in that section covers a Schedule 2 product and a new product.
5. Clauses 9, 10, 11, 12 and 14 respectively amend sections 9, 11, 12, 13 and 24 of the TCPSO to extend the application of those sections to a new product.

6. Clause 16 replaces the existing section 35 of the TCPSO by a new section 35. The main purpose is to empower the Secretary for Commerce and Economic Development to make regulations in relation to new products, including imposing additional safety standards or requirements for new products.
7. The Bill also makes related and other minor amendments to the TCPSO.