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

Contents

Section	Page
1.	Short title and commencement A909
2.	Toys and Children's Products Safety Ordinance amended A909
3.	Section 2 amended (interpretation) A909
4.	Sections 2A, 2B and 2C added A913
2A.	Application of Ordinance..... A913
2B.	What is Schedule 2 product..... A913
2C.	What is children's product A913
5.	Part III heading amended (children's products) A915
6.	Section 5 amended (children's products must comply with children's product standards) A915
7.	Part IV heading amended (general safety requirement) A917
8.	Section 8 amended (the general safety requirement) A917
9.	Section 9 amended (laboratories) A919
10.	Section 11 amended (prohibition notice) A921
11.	Section 12 amended (recall notice) A923
12.	Section 13 substituted A927
13.	Other powers of Commissioner..... A927
13.	Section 14 amended (appeal to Appeal Board) A931

Section	Page
14. Section 24 amended (destruction or release of seized goods)	A931
15. Section 27 amended (compensation for seizure and detention).....	A931
16. Section 35 substituted	A933
35. Regulations.....	A933
17. Schedule 2 amended (children's product standards).....	A935

HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 18 OF 2013



C. Y. LEUNG
Chief Executive
24 December 2013

An Ordinance 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 2C;”.

- (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 2B;

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, 2B and 2C added

Part I, after section 2—

Add

“2A. Application of Ordinance

This Ordinance does not apply to—

- (a) food as defined by section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132);
- (b) medicine as defined by section 2(1) of the Pharmacy and Poisons Ordinance (Cap. 138); or
- (c) Chinese herbal medicine, or proprietary Chinese medicine, as defined by section 2(1) of the Chinese Medicine Ordinance (Cap. 549).

2B. 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.

2C. 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 2B(1); or

- (b) it—
 - (i) is neither a Schedule 2 product within the meaning of section 2B(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 2B(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—**

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- (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.

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- (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**
“, 2B”.
- (3) Schedule 2, column 1, heading—
- Repeal**
“Children's products”

Substitute

“Classes of products”.