

立法會
Legislative Council

LC Paper No. LS 135/00-01

**Paper for the House Committee Meeting
of the Legislative Council
on 29 June 2001**

**Legal Service Division Report on
Resolution under Section 7 of the
Factories and Industrial Undertakings Ordinance (Cap. 59)**

The Secretary for Education and Manpower has given notice to move a motion at the Legislative Council meeting to be held on 11 July 2001. The motion seeks the Legislative Council to approve the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) (Amendment) Regulation 2001 ("the Amendment Regulation").

2. The main objects of the Amendment Regulation are to—
- (a) repeal the "grandfather" provision with immediate effect for the existing classes of designated industrial undertakings, i.e. construction sites and shipyards and "grandfather" other designated industrial undertakings (now proposed to be the container handling industry) but limit the period within which "grandfathers" may apply for registration as a safety officer (sections 2 and 3);
 - (b) provide that the registration of a person as a safety officer is valid for a period of 4 years from the date he is registered but may be renewed and a person whose registration as a safety officer has expired may apply for revalidation of his expired registration. The Commissioner for Labour ("the Commissioner") shall not approve an application for renewal or revalidation unless he is satisfied that the applicant has completed a total of not less than 100 hours of Continuing Professional Development Programme (section 4);
 - (c) allow a person whose registration as a safety officer the Commissioner has refused to renew or revalidate to lodge an appeal to the Administrative Appeals Board (section 8);
 - (d) require a proprietor of a designated industrial undertaking not to employ any person as a safety officer unless that person is a registered safety officer (section 9);

- (e) impose additional duties on a safety officer to implement safety management systems of industrial undertakings (section 10);
- (f) to expand the scope of application of the Principal Regulations to include the container handling industry (sections 12 and 15);
- (g) to revise the list of qualifications for registration as a safety officer to enable the Commissioner to determine recognized qualifications based on relevance of the degrees or courses (section 14); and
- (h) to make consequential amendments to the Administrative Appeals Board Ordinance (Cap. 442) (section 16).

3. According to paragraph 9 of the LegCo Brief: EMB CR 12/3231/86 of June 2001 from Education and Manpower Bureau, the Amendment Regulation will come into immediate operation, except that a grace period of 12 months will be given for the container handling industry to prepare for its compliance with the Principal Regulations.

4. Paragraph 15 of the LegCo Brief states that the Labour Advisory Board was consulted on the Amendment Regulation and endorsed the proposal.

5. The Administration also briefed the Panel on Manpower about the proposals in the Amendment Regulation in last LegCo term at its meeting held on 30 March 2000.

6. The Legal Service Division has raised certain questions with the Administration on the drafting aspect of the Amendment Regulation and has not yet received its reply. Members are recommended to defer their decision on the Amendment Regulation pending our further report.

Encl

Prepared by

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Legislative Council Secretariat
27 June 2001

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27 June 2001

BY FAX

Fax No. : 2899 2967
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(Attn : Mr Sampson Lai, AS(EM)(7))

Dear Mr Lai,

**Factories and Industrial Undertakings
(Safety Officers and Safety Supervisors) (Amendment) Regulation 2001**

We are scrutinising the legal and drafting aspects of the Amendment Regulation. We should be grateful for your clarification of the following points.

Section 2(a) of the Amendment Regulation

It is appreciated that the policy intent is to repeal the "grandfather clause" provision with immediate effect for the existing classes of designated industrial undertakings, i.e. the construction sites and shipyards. Would it be more precise to reflect your policy intent by adding the word "first" before "become applicable"?

Section 8 of the Amendment Regulation

Would you consider to allow a decision to refuse to renew registration as a safety officer under new regulation 7B that is appealed against under regulation 12(1) to be suspended from operation until the appeal is disposed of? In this regard, you may note that under regulation 12(2), a decision cancelling registration or suspending registration which is appealed against under regulation 12(1) will be suspended from operation until the appeal is disposed of.

Proposed new Third Schedule

Would you consider to publish the recognized courses by notice in the Gazette?

In facilitating us to report on the Amendment Regulation to the House Committee meeting to be held on 29 June 2001, we should be grateful for your reply, in both languages, by **5:00 pm today**.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

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(Attn : Mr Sampson Lai, AS(EM)(7))

Dear Mr Lai,

**Factories and Industrial Undertakings
(Safety Officers and Safety Supervisors) (Amendment) Regulation 2001**

Further to our earlier letter, we have two additional points for your clarification.

- (a) Since you are proposing to repeal the "grandfather" provision for the existing classes of designated industrial undertakings, could you furnish us with information about the number of "grandfathers" in those industrial undertakings who will be affected by the proposed amendment?
- (b) In the light of the proposed delay in commencement of sections 12 and 15, would it also be appropriate to delay commencement of section 11 which refers to new paragraphs (g) and (h)?

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser