

立法會 *Legislative Council*

LC Paper No. LS 140/00-01

Paper for the House Committee Meeting of the Legislative Council on 6 July 2001

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

Members will recall that the Legal Service Division made a report to the House Committee on 29 June 2001 on the motion to seek the Legislative Council's approval of the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) (Amendment) Regulation 2001 ("the Amendment Regulation") (LC Paper No. LS 135/00-01 refers). The Amendment Regulation aims to extend the coverage of the Principal Regulations to the container handling industry and to enhance the professionalism and training of safety officers.

2. At the House Committee meeting, we informed members that we had raised certain questions with the Administration on the Amendment Regulation and were awaiting the Administration's reply.

3. We have received the Administration's replies. Copies of the correspondence are annexed for members' reference. The gist of the replies is as follows—

Section 2

We have asked the Administration to furnish information about the number of persons in the existing classes of designated industrial undertakings, i.e. the construction sites and shipyards who will likely be affected by the repeal of the "grandfather" provision. The Administration replies that safety personnel in the two trades have had 15 (in respect of the construction sites) and 7 (in respect of the shipyards) years to register as safety officers under the "grandfather" provision. The Administration says that so far 67 safety officers have been registered in this manner but no such application has been received since 1997. The Administration further says that the two trades have been informed of the proposal to repeal the "grandfather" provision since 1996, the absence of such application in these few years would suggest that all safety personnel who are interested to be registered under the "grandfather" provision have already done so.

Section 8

We have asked the Administration to consider whether it would be appropriate 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, we have drawn the Administration's attention to the existing arrangement under regulation 12(2) for the suspension of a decision to cancel or suspend registration which is under appeal until the appeal is disposed of. In reply, the Administration distinguishes a decision not to renew registration from a decision to cancel or suspend registration by reason of the period of time that applies to each of the three processes. The Administration says that under new regulation 7B, applications for renewal of registration may be made up to nine months before expiry. The Administration is of the view that an applicant is given ample time to apply for renewal of their registration and to pursue whatever remedies they may wish. Therefore, the Administration is of the view that it is neither necessary nor appropriate to suspend a decision to refuse to renew in the event of an appeal. In contrast, the Administration is of the view that registration can under regulation 9 be cancelled immediately and under regulation 10 be suspended with 14 days notice. Therefore, the Administration is of the view that it is appropriate to provide for suspension of operation of a decision which cancels or suspends registration pending disposal of the appeal.

Technical amendments

A number of technical amendments to the Amendment Regulation suggested by the Legal Service Division, have been agreed to by the Administration. They are set out in the Administration's replies.

4. We are satisfied that, subject to the proposed amendments being effected, the Amendment Regulation is legally in order.

Encl

Prepared by

Lam Ping-man, Stephen
Assistant Legal Adviser
Legislative Council Secretariat
5 July 2001

EMB 12/3231/86

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3 July, 2001

Mr Stephen Lam
Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council
8 Jackson Road
Central

Dear Mr Lam,

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

Thank you for your letters of 27 and 28 June 2001. Our response to your questions is as follows –

Section 2(a)

Having consulted the Department of Justice, we consider that it is not necessary to include “first” in the phrase “these regulations (first) become applicable”. This is because in the relevant section, whether the Regulations become applicable is a question of fact and the question of “when” (i.e. first, second or third time) is less important.

Section 8

You may wish to note that a decision not to renew registration is distinguishable from a decision to cancel registration and a decision to suspend registration by reason of the period of time that applies to each of the three processes. Under the proposed Regulation 7B, applications for renewal of registration may be made up to 9 months before expiry. We are of the view that an applicant is given ample time to apply for renewal of their registration and to pursue whatever remedies he may wish. It is neither necessary nor appropriate to suspend a decision to refuse to renew in the event of an appeal. In contrast, registration can, under Regulation 9, be cancelled immediately and under Regulation 10, suspended with 14 days of notice. There is an immediacy in the cessation of registration. It is therefore appropriate to provide for suspension of operation of a decision which cancels or suspend registration, pending the disposal of the appeal.

Proposed new Third Schedule

Labour Department would issue guidebooks, leaflets etc to publicise various recognised courses and upload the information to the website of the Department for online browsing by the public. These channels are considered more accessible to the public than Gazette notices. You may wish to note that this approach is adopted in the case of the Factories and Industrial Undertakings (Loadshifting Machinery) Regulation under which operators of loadshifting machines are required to undergo recognised safety training.

“Grandfather clause” provision

The Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations, which initially covered construction sites only, were enacted in 1986. Their application was further extended to shipyards in 1994. In other words, safety personnel in the two trades have had 15 and 7 years respectively to register as safety officers under the “grandfather clause” provision. So far, 67 safety officers have been registered in this manner, but no such application has been received since 1997. As the two trades have been informed of the proposal to repeal the “grandfather clause” provision since 1996, the absence of such application in these few years would suggest that all safety personnel who are interested to be registered under the “grandfather clause” provision have already done so.

Commencement of section 11

Having consulted the Department of Justice, we agree that it is appropriate to defer the commencement of the section and therefore section 1(2) should be amended accordingly.

Comments on the Chinese text

We have sought the advice of the Department of Justice on your comments. Having considered their advice, we agree that in the proposed Regulation 5(3)(a), adding “開始” before “適用於某類別的工業經營之前” is appropriate for better reflecting the meaning of “become applicable”.

Regarding the proposed Regulation 7(1)(b), we consider your comments agreeable and the provision should be amended as –

“在.....有資格註冊為安全主任的情況下，須在本規例開始適用於有關.....提出。”

We also agree that in the proposed Regulation 7B(8), the punctuation mark before “提高專業才能” should be “、” instead of “；”.

We consider, however, that “安全及健康計劃、活動” in the proposed Regulation 15(1)(k)(iv) are the most appropriate Chinese equivalents for “safety and health plans, programmes”. You may wish to note that the context of “programmes” in the proposed Regulation 15(1)(k)(iv) is different from that of “safety and health training programme” (安全及健康訓練計劃) in the proposed Regulation 15(1)(k)(ii). No amendment is therefore required.

As for sections 1C and D of the proposed new Third Schedule, we consider that the discrepancy you have noted does not affect the legal meaning of the provisions. Similarly, omission of “某人” in the consequential amendments to the Administrative Appeals Board Ordinance does not affect the jurisdiction of the Administrative Appeals Board over the Commissioner for Labour’s decision/refusal made under the proposed Regulation 7B. In this regard, no amendment is required.

Subject to the views of the House Committee, we will propose the amendments accordingly.

Yours sincerely,

(K K Lam)
for Secretary for Education and Manpower

c.c. DoJ (Attn: Ms Anastasia Kwong, Ms Cindy Yau,
Ms Marie Siu, Ms Carmen Chu)
C for L (Attn: Mr Tsang Kin-woo)

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4 July 2001

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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 refer to your letter of 3 July 2001.

In relation to the proposed consequential amendment to item 6 of the Schedule to the Administrative Appeals Board Ordinance (Cap. 442) ("the Ordinance") (section 16 of the Amendment Regulation), you are of the view that the omission of the term "某人" does not affect the jurisdiction of the Administrative Appeals Board over the Commissioner for Labour's decision or refusal made under new regulation 7B and hence the term "某人" is not necessarily to be added to the Chinese text of the Amendment Regulation. However, we are of the view that the term "某人" should be included in the Chinese text on the following grounds. First, the omission of the term "某人" in the Chinese text does not reflect use of the term "a person's" in the English text. It would therefore appear that the drafting approach adopted in the two texts of the term concerned does not conform to the drafting policy agreed upon at the meeting of the LegCo Panel on Administration of Justice and Legal Services on 20 March 2001. At that meeting, it was agreed that as part of the drafting policy, the Chinese and English texts should match as far as possible. Secondly, you may note that the Chinese rendition for similar formulation "... a person's registration ..." in item 6(b) of the Schedule to the Ordinance is "...某人作為..." (**Annex**). Therefore, in achieving consistency in the two languages within the same item of the Schedule to the Ordinance, it would be desirable that the term "某人" be added to the Chinese text of the proposed paragraph (d).

We look forward to receiving your reply, in both languages, by **close of play today**.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

Encl

c.c. Ms Carmen Chu, SGC
(Fax No. : 2845 2215)

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4 July 2001

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Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council
8 Jackson Road

Dear Mr Lam,

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

I refer to our tele-conversation this morning and your letter of today. Taking into account your further arguments, we have re-considered, in consultation with the Department of Justice, the Chinese text of the captioned and concluded that your suggestions regarding section 1C of the proposed new Third Schedule and section 16 of the captioned Regulation are agreeable.

Subject to the views of the House Committee, we will propose to amend (a) section 1C of the proposed new Third Schedule as “.....必須於考取上述學術資格後獲得。” and (b) the consequential amendments to the Administrative Appeals Board Ordinance as “.....根據第 7B 條將某人作為安全主任的註冊.....”。

Yours sincerely,

(LAI Yiu-kei, Samson)
for Secretary for Education and Manpower

c.c. Department of Justice (Attn: Ms Carmen Chu)
Commissioner for Labour (Attn: Mr Tsang Kin-woo)