

Legislative Council Panel on Manpower

Meeting on 15 February 2001

**Proposed Factories and Industrial Undertakings
(Medical Examinations) Regulation**

PURPOSE

This paper informs Members of the Administration's plan to take forward the proposed Factories and Industrial Undertakings (Medical Examinations) Regulation (the proposed Regulation) and related amendments to the Industrial Training (Construction Industry) Ordinance (Cap. 317).

2. The proposed Regulation was introduced into the Legislative Council in 1999, but for the reasons explained in paragraph 9 below, examination of the draft could not be completed before the end of the 1999-2000 session. The proposed Regulation would therefore need to be re-introduced within the 2000-01 legislative session. Separately, in order to enable the Construction Industry Training Authority (CITA) to arrange medical examinations for construction workers under the proposed Regulation, there is a need to amend the Industrial Training (Construction Industry) Ordinance (Cap. 317).

BACKGROUND

3. At present, workers engaged in asbestos work, compressed air work, underground work and work with certain carcinogenic substances are required to undergo pre-employment and periodic medical examinations. Medical examinations currently required under various regulations under the Factories and Industrial Undertakings Ordinance (Cap. 59) may be performed by any registered medical practitioner.

4. The scope of the current statutory medical examinations is somewhat narrow. Certain other hazardous substances and physical agents, if not properly used at work, also have the potential to cause permanent health damage. It is necessary to broaden the scope to cover these hazards. Moreover, medical examinations for workers in hazardous occupations are rather specialised, and general medical practitioners may not have the expertise

to carry out such examinations and give appropriate health advice. In this regard, the Expert Working Group on Occupational Health Services (established by the Director of Health) recommended that statutory medical examinations be extended to other hazardous occupations where appropriate, and be conducted by medical practitioners with recognised training in occupational medicine. Following the Working Group's recommendation, the proposed Regulation was prepared.

5. The proposed Regulation provides a framework for medical examinations for workers engaged in 17 designated hazardous occupations, including the existing four as mentioned in paragraph 2 above. A list is provided at the **Annex**. It further requires these medical examinations to be conducted by only appointed medical practitioners (AMPs). It is estimated that about 195 000 workers will be affected by the proposed Regulation, of whom 182 000 are exposed to the hazard of excessive noise.

6. The legislative intent of the proposed Regulation is to protect the health of workers engaged in the designated hazardous occupations. Through regular medical examinations, occupational diseases can be detected early so that timely treatment can be instituted and preventive measures taken at the workplace to avoid permanent health damage to these workers. If a worker is found by a medical examination to be unfit for a particular job, he would be temporarily or permanently suspended from that job as the case may be. In doing so, the ultimate objective is to protect the worker from further exposure to the hazardous agent.

7. When consulted on the proposed Regulation in 1998, the Labour Advisory Board and its Committee on Occupational Safety and Health expressed their support.

THE PROPOSED REGULATION

8. The proposed Regulation requires that employees engaged in the designated occupations should submit themselves for medical examinations periodically. Such medical examinations should be conducted by AMPs and arranged at the expenses of the proprietors. In a medical examination, an AMP may make a recommendation to the proprietor, after considering the safety and health of the employee concerned, for -

- (a) employing the employee in his particular occupation subject to certain conditions or limitations (e.g. provision of personal protective

equipment);

- (b) suspending the employee from employment in his particular occupation for a period to be specified by the AMP;
- (c) suspending the employee from employment in his particular occupation until he is certified fit to work in that occupation; or
- (d) permanently suspending the employee from employment in his particular occupation.

A proprietor shall not employ any person who has not been medically examined and certified fit to work by an AMP in the designated occupation concerned.

9. The proposed Regulation was introduced into the Legislative Council on 14 July 1999 for examination by the then Subcommittee on Regulations relating to Occupational Safety and Health (the Subcommittee). In response to an enquiry raised at the Subcommittee in April 2000, the Department of Justice advised that temporary suspension under the proposed Regulation may have the effect of breaking the continuity of employment of the employee concerned, and could disqualify the employee concerned from certain entitlements under the Employment Ordinance (Cap. 57). As this was not the intention of the proposed Regulation and because of the impending closure of the legislative session, examination of the proposed Regulation could not be completed.

10. The Administration has since reviewed the issues relating to temporary suspension under the proposed Regulation. The Department of Justice has advised that for the purpose of preserving the continuity of employment for employees on suspension and clarifying the policy intention outlined in paragraph 6 above, it is necessary to include a savings provision in the proposed Regulation, such that no provisions in the proposed Regulation affect any right or liabilities of any employer or employee under any law. The Department of Justice has confirmed that such savings provision can be added to the proposed Regulation as the making of such a savings provision in the Regulation is already within the ambit of the regulation making provision in the Factories and Industrial Undertakings Ordinance (Cap. 59). Amendment of the principal Ordinance is not necessary.

11. Having clarified the issue of continuity of employment for employees recommended for suspension, the Administration intends to re-introduce the

proposed regulation into the Legislative Council shortly.

MEDICAL EXAMINATIONS FOR CONSTRUCTION WORKERS

12. The majority of the employees (153 000 out of 195 000) to be covered by the proposed Regulation are in the construction industry. Depending on the job nature, employees of the construction industry are exposed to hazards such as excessive noise, silica, tar, pitch, bitumen, lasers, lead, cadmium, manganese, compressed air and asbestos.

13. When consulted, the Hong Kong Construction Association (HKCA) indicated that individual proprietors in the construction industry would have difficulty in meeting the requirements under the proposed Regulation for arranging periodic medical examinations for employees who are engaged in designated occupations. This is due to the unique characteristics of the construction industry in having a multi-layered sub-contracting system and a high mobility of construction workers. The HKCA proposed that an agency should be empowered to arrange medical examinations of construction workers on behalf of proprietors in the construction industry, and to pay for the cost of medical examinations which should be met through a levy on the construction industry.

14. We propose to engage the CITA as the agent for arranging medical examinations in the construction industry. At present, a levy of 0.4% on the value of all construction works exceeding \$1 million is imposed on contractors to meet the cost of services provided to construction industry by the CITA. If the CITA is to be engaged as the agent for arranging medical examinations in the construction industry, a suitable increase to the existing levy rate could be introduced to recover costs. To this end, agreement has been reached between the HKCA and the CITA that the latter would act as the agent for contractors/proprietors in the construction industry to arrange for medical examinations of construction workers. This new role for the CITA and the collection of the additional levy would require amendment to the Industrial Training (Construction Industry) Ordinance (Cap. 317).

15. The cost of medical examination per worker is about \$400 for those exposed to excessive noise and ranges from \$200 to \$600 for those exposed to the other hazards. CITA has estimated that an additional levy at 0.03% on top of the existing 0.4% levy on the value of all construction works exceeding \$1 million will be required to meet the costs for complying with the medical examination requirement. This will give rise to a marginal increase in the total operating cost of main contractors in the industry.

16. The HKCA and the Real Estate Developers Association of Hong Kong were also consulted and indicated support for engaging the CITA as the agent for arranging medical examinations for the construction industry and acceptance of the consequential adjustment to the levy rate.

17. We plan to introduce the proposed amendments to the Industrial Training (Construction Industry) Ordinance (Cap. 317) into the Legislative Council in March 2001. The proposed amendments, if enacted, shall come into operation prior to the coming into effect of the proposed Factories and Industrial Undertakings (Medical Examinations) Regulation, ensuring that the CITA has the requisite statutory authority to arrange and pay for medical examinations under the proposed Regulation. The 0.03% levy will be collected through the existing levy collecting mechanism of the CITA after the commencement of the proposed Regulation.

PROPOSED AMENDMENTS TO THE INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE

18. It is proposed that section 5 of the Industrial Training (Construction Industry) Ordinance (Cap. 317) should be amended such that the CITA shall perform the function imposed upon it by the proposed Regulation, i.e. to arrange and pay for medical examinations of construction workers conducted by AMPs. A minor amendment to the long title is also required.

WAY FORWARD

19. We will introduce the proposed Regulation after the enactment of the proposed amendments to the Industrial Training (Construction Industry) Ordinance (Cap. 317). Upon approval by the Legislative Council, we intend to bring the proposed Regulation into operation by phases.

20. For the designated occupations already covered by existing legislation for medical examinations, we propose a six-month grace period so as to allow time for proprietors to arrange for their new intakes to undergo the necessary examinations by AMPs. Workers already in employment in these occupations before the commencement of the proposed Regulation would need to undergo medical examinations by AMPs only when their current medical certificates expire.

21. For the 13 new occupations for statutory medical examinations,

including those exposed to excessive noise, which involve a large number of workers, we propose that the Commissioner for Labour will monitor the supply of AMPs and bring the relevant provisions into effect by phases. It is expected that statutory medical examinations for workers exposed to excessive noise will be covered in the last phase. The suggested phased approach has been agreed by the Labour Advisory Board.

22. Upon enactment of the proposed Regulation, LD will issue practical guidelines to assist proprietors and employees in complying with the new requirements. The guidelines will provide guidance on the types of work processes in various industries where workers involved will require medical examinations, and the respective medical examination requirements under the new Regulation. To facilitate the appointment of AMPs by proprietors, LD will maintain a list of medical practitioners qualified for such appointment for their reference. A set of guidance notes for AMPs will also be issued. Apart from these, publicity activities will be launched to raise general awareness of industries of the new medical examination requirements.

Education and Manpower Bureau
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**Occupations covered by the proposed
Factories and Industrial Undertakings
(Medical Examinations) Regulation**

1. *Employment in mines, quarries and tunnelling operations.
2. *Employment involving work in compressed air.
3. *Employment involving the use or handling of or exposure to asbestos.
4. *Employment involving the use or handling of or exposure to carcinogenic substances (controlled substances).
5. Employment involving the use or handling of or exposure to silica.
6. Employment involving the use or handling of or exposure to arsenic.
7. Employment involving the use or handling of or exposure to cadmium.
8. Employment involving the use or handling of or exposure to manganese.
9. Employment involving the use or handling of or exposure to lead.
10. Employment involving the use or handling of or exposure to mercury.
11. Employment involving the use or handling of or exposure to organophosphates.
12. Employment involving the use or handling of or exposure to tar, pitch, bitumen or creosote.
13. Employment involving the use or handling of or exposure to raw cotton dust.
14. Employment involving the use or handling of or exposure to benzene.
15. Employment involving the use or handling of or exposure to methylenediphenyl diisocyanate or toluene diisocyanate.
16. Employment involving the use or handling of or exposure to lasers (class 3B and 4).
17. Employment involving exposure to excessive noise (daily personal noise exposure of 85dB(A) or above).

* Medical examinations already required under subsidiary legislation of the Factories and Industrial Undertakings Ordinance (Cap. 59)