

LEGISLATIVE COUNCIL BRIEF

Factories and Industrial Undertakings Ordinance
(Chapter 59)

FACTORIES AND INDUSTRIAL UNDERTAKINGS (GAS WELDING AND FLAME CUTTING) REGULATION

INTRODUCTION

At the meeting of the Executive Council on 19 June 2001, the Council ADVISED and the Chief Executive ORDERED that, subject to the approval of the Legislative Council, the Factories and Industrial Undertakings (Gas Welding and Flame Cutting) Regulation (at Annex A) should be made by the Commissioner for Labour (the Commissioner) under section 7 of the Factories and Industrial Undertakings Ordinance (the Ordinance).

BACKGROUND AND ARGUMENTS

2. Gas welding and flame cutting¹ work is common in various trades and industries including construction and interior renovation, shipbuilding and repair, vehicle repair, air-conditioning and refrigerating service, etc. Despite the relative ease of its operation, gas welding and flame cutting equipment is prone to cause fire or explosion if not handled properly. To quote an example, a tragic accident occurred in Yuen Long in February 2000 and claimed the lives of three workers.

3. At present, the promotion of safety and health in respect of gas welding and flame cutting work largely relies on publicity and public education; there is no specific legislation to regulate the safety of gas welding and flame cutting work. Since inadequate safety training in operating the equipment for gas welding and flame cutting has been a common and an important contributory factor of safety problems in the workplace, the Administration considers it necessary to introduce mandatory safety training requirements to enable operators to achieve the desired safety standards in performing gas welding and flame cutting work in industrial undertakings.

4. We propose that the Factories and Industrial Undertakings (Gas Welding and Flame Cutting) Regulation should be made to introduce the requirement for mandatory safety training for operators of gas welding and

¹ Gas welding and flame cutting means welding or cutting work carried on with a flame produced by mixing a fuel gas and an oxidant gas in appropriate proportions in a blowpipe.

flame cutting equipment. Under the proposed Regulation, a proprietor will be required to provide safety training to an operator who is instructed to perform gas welding and flame cutting work and ensure that such work is only performed by –

- (a) a person who has attained the age of 18 and holds a valid certificate or
- (b) a person who is undergoing safety training or any other kind of training in the performance of such work provided by the proprietor under the supervision of a holder of a valid certificate.

5. If the operator does not satisfy the requirements in (a) and (b) above, he will be required to attend the safety training. Such training would last for one day and must be recognised by the Commissioner. The Commissioner will by administrative means ensure that certificates issued for the purpose of the proposed Regulation would be valid for five years.

THE PROPOSED REGULATION

6. Major provisions of the proposed Regulation include -

- (a) **Section 3:** the proprietor shall ensure that gas welding and flame cutting work is only performed by a person aged 18 or above and holds a valid certificate, or by a person who is undergoing training under the supervision of a holder of a valid certificate;
- (b) **Section 4:** the proprietor shall make provisions for the employees who are instructed to perform gas welding and flame cutting work to attend recognised training course;
- (c) **Section 5:** the employee who is instructed by the proprietor to perform gas welding and flame cutting work shall attend the training course provided for him;
- (d) **Section 6:** the employee performing gas welding and flame cutting work shall produce his certificate for inspection when required; and
- (e) **Section 7:** the maximum fines for breaching the Regulation by a proprietor and employee who performs gas welding and flame cutting work are \$50,000 and \$10,000 respectively.

LEGISLATIVE TIMETABLE

7. The Secretary for Education and Manpower will move a motion in the Legislative Council on 11 July 2001 seeking approval of the proposed

Regulation to be made by the Commissioner.

IMPLEMENTATION

8. After consulting employers' associations, trade unions of the affected industries and major training providers, Labour Department has estimated that the number of employees to be affected under the proposed Regulation would be as many as 40,000. The Vocational Training Council, the Construction Industry Training Authority and the Occupational Safety and Health Council have pledged their support for running the training courses required under the proposed Regulation. The combined training capacity will be 20000 places per year. On that basis, the proposed Regulation is expected to come into effect 24 months after enactment.

BASIC LAW IMPLICATIONS

9. The Department of Justice advises that the proposed Regulation does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

10. The Department of Justice advises that the proposed Regulation is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

11. The proposed Regulation will not affect the current binding effect of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

12. The proposed Regulation will have no additional financial or staffing implications for Government. Specifically, Labour Department will cope with additional workload arising from the implementation of the proposed Regulation within their existing resources. The training providers will run the mandatory safety training courses on gas welding and flame cutting on a cost-recovery basis.

ECONOMIC IMPLICATIONS

13. As the mandatory safety training course will last for one day, the cost burden on the affected industries should not be significant. Against this cost, there will be clear benefits accruing from enhanced training for the workers engaged in gas welding and flame cutting work.

PUBLIC CONSULTATION

14. The Labour Advisory Board was consulted on the proposed Regulation and endorsed the proposal.

PUBLICITY

15. Press releases will be issued. A spokesman will be available to handle media enquiries.

Education and Manpower Bureau

Subject Officer: Mr K K Lam

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June 2001

DRAFT

**Speech by Mrs Fanny Law, JP
Secretary for Education and Manpower
in moving the Motion on the
Factories and Industrial Undertakings
(Gas Welding and Flame Cutting) Regulation
at the Legislative Council on 11 July 2001**

Madam President,

I move that the Factories and Industrial Undertakings (Gas Welding and Flame Cutting) Regulation made by the Commissioner for Labour be approved.

2. The proposed Regulation seeks to require operators of gas welding and flame cutting equipment to undergo safety training and to obtain a certificate. Gas welding and flame cutting work is commonly used in various trades, and is prone to cause serious accidents if not handled properly. In February 2000, a tragic accident occurred in Yuen Long and claimed the lives of three workers. Mandatory safety training will improve safety at the workplace and offer better protection for of gas welding and flame cutting equipment.

3. Under the proposed Regulation, the proprietor of an industrial undertaking concerned will be required to provide safety training to an operator who is instructed to perform gas welding and flame cutting work. He will also be required to ensure that such work is only performed by a

person who has attained the age of 18 and holds a valid certificate; or a person who is undergoing training under the supervision of a holder of a valid certificate.

4. The safety training required under the proposed Regulation will have to be recognised by the Commissioner for Labour. The Commissioner will by administrative means ensure that certificates issued for the purpose of the proposed Regulation would be valid for five years. The Construction Industry Training Authority, the Occupational Safety and Health Council and the Vocational Training Council have pledged their support for running the required safety training. To allow time for operators to undergo the required training, we plan to provide a grace period of 24 months after the enactment of the proposed Regulation.

5. The Labour Advisory Board has been consulted and supports the proposal. I recommend the proposed Regulation to Honourable Members.

6. Thank you, Madam President.

FACTORIES AND INDUSTRIAL UNDERTAKINGS (GAS WELDING AND FLAME CUTTING) REGULATION

(Made under section 7 of the Factories and Industrial Undertakings Ordinance (Cap. 59) subject to the approval of the Legislative Council)

1. Commencement

(1) Subject to subsection (2), this Regulation shall come into operation on the day on which this Regulation is published in the Gazette.

(2) Sections 3, 6 and 7 shall come into operation on a day to be appointed by the Commissioner for Labour by notice published in the Gazette.

2. Interpretation

In this Regulation, unless the context otherwise requires -

"blowpipe" (吹管) means the burner device in which separate supplies of fuel gas and oxidant gas are mixed in appropriate proportions to produce the required flame for welding or cutting work;

"certificate" (證書) means a certificate issued to a person by the organizer of a training course which evidences that, by virtue of his attendance at the training course designed for that purpose, he is trained and competent to perform gas welding and flame cutting work;

"gas welding and flame cutting" (氣體焊接及火焰切割) means welding or cutting work carried on in industrial undertakings with a flame produced by mixing a fuel gas and an oxidant gas in a blowpipe;

"training course" (訓練課程) means a training course that is -

- (a) recognized by the Commissioner;
 - (b) conducted for the purpose of instructing a person the necessary safety precautions to be observed in gas welding and flame cutting work;
- and

- (c) designed to ensure that a person is adequately trained and competent to perform gas welding and flame cutting work.

3. Duty of proprietor to ensure that gas welding and flame cutting work is performed by competent persons

(1) A proprietor shall ensure that gas welding and flame cutting work is only performed by -

- (a) a person who has attained the age of 18 years and holds a valid certificate; or
- (b) a person who is undergoing training in performing gas welding and flame cutting work and the performance of such work is under the supervision of a person who has attained the age of 18 years and holds a valid certificate.

(2) For the purpose of this section, "training" (訓練) means any training provided under a training course or other kinds of training provided by the proprietor.

4. Duty of proprietor to provide training course

(1) Subject to subsection (3), a proprietor shall ensure the provision of a training course to each of his employees who is instructed (whether directly or indirectly) by him to perform gas welding and flame cutting work.

(2) In case the employee fails to obtain a certificate after attending the training course, the proprietor shall ensure the provision of an additional training course for the employee.

(3) A proprietor is not obliged to comply with subsection (1) in relation to an employee if the employee holds a valid certificate.

5. Duty of person to attend training course

An employee referred to in section 4(1) is required to attend such training course as may be provided by the proprietor unless he holds a valid certificate.

6. Production of certificate

(1) A person who performs gas welding and flame cutting work referred to in section 3(1)(a) shall, on being so required by an occupational safety officer, produce his valid certificate to the officer for inspection.

(2) A person who is unable to produce his valid certificate for inspection when required to do so under subsection (1), shall produce it for inspection by the officer within such reasonable time and at such reasonable place as required by the officer.

7. Offences and penalties

(1) A proprietor who without reasonable excuse contravenes section 3(1) commits an offence and is liable to a fine at level 5.

(2) A proprietor who without reasonable excuse contravenes section 4(1) commits an offence and is liable to a fine at level 5.

(3) An employee referred to in section 4(1) who without reasonable excuse contravenes section 5 commits an offence and is liable to a fine at level 3.

(4) Any person who performs gas welding and flame cutting work and who without reasonable excuse contravenes section 6 commits an offence and is liable to a fine at level 3.

Mrs Pamela TAN
Commissioner for Labour

21 June 2001

Explanatory Note

The purpose of this Regulation is to ensure that gas welding and flame cutting work is performed by competent persons. It imposes a duty on the proprietor to ensure that gas welding and flame cutting work is only performed by a person who has attained the age of 18 years and holds a valid certificate or is undergoing training in performing gas welding and flame cutting work and the performance of such work is under the supervision of a certificate holder. It further imposes a duty on the proprietor to provide training courses designed to ensure that his employees are adequately trained and competent to perform gas welding and flame cutting work. Employees of proprietors are required to attend training courses provided by proprietors. The Regulation also provides for ancillary matters such as the duty to produce certificates for inspection and specifies the offences and penalties for contravention of the provisions.