

立法會 *Legislative Council*

LC Paper No. LS101/01-02

**Paper for the House Committee Meeting
on 24 May 2002**

**Legal Service Division Report on
Proposed Resolution under Section 7 of the Factories and Industrial
Undertakings Ordinance (Cap. 59) and section 35 of the Interpretation and
General Clauses Ordinance (Cap. 1)**

The Secretary for Education and Manpower ("the Secretary") has given notice to move a motion at the Legislative Council meeting to be held on 5 June 2002. The motion seeks the Legislative Council to approve the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) (Amendment) Regulation 2001 ("the Amendment Regulation") subject to certain amendments.

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. Members may recall that the Secretary intended to move the motion on the Amendment Regulation at the Legislative Council meeting held on 11 July 2001. The Legal Service Division reported on this item vide LC Paper No. LS 135/00-01. In the report, we mentioned that we had raised certain questions with the Administration on the drafting aspect of the Amendment Regulation, which the Administration took time to consider. Members deferred their decision on the Amendment Regulation pending a further report from the Legal Service Division. Eventually, the Administration accepted in principle some of the Legal Service Division's proposed amendments without preparing the actual amendments yet. The Legal Service Division further reported on the item vide LC Paper No. LS 140/00-01 to the House Committee meeting held on 10 July 2001. As Members would need time to consider the proposed amendments to the Amendment Regulation, the Secretary was requested to, and she did, withdraw the notice of motion. The Administration in its reply of 23 May 2002 to our enquiries explained that it was unable to re-introduce the motion containing the Amendment Regulation earlier due to other more pressing issues. Copies of the correspondence between the Legal Service Division and Administration are annexed for Members' reference.

4. 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. The Administration confirmed in its reply of 23 May 2002 that the information in the LegCo Brief is still valid.

5. Paragraph 15 of the LegCo Brief states that the Labour Advisory Board was consulted on the Amendment Regulation and endorsed the proposal. The Administration confirmed in its reply of 23 May 2002 that the Labour Advisory Board has been further kept informed of the proposed amendments and has raised no objection.

6. The Administration also briefed the Panel on Manpower about the policy aspect of the Amendment Regulation in last LegCo term at its meeting held on

30 March 2000. Apart from seeking clarification on the registration of safety officers and the discretionary power of the Commissioner to order individual industrial undertaking of high risk to employ full-time registered safety officers, members did not express any views on the legislative proposal. The Panel has not been briefed about the proposed amendments to the Amendment Regulation.

7. With the proposed amendments, which are technical in nature, to the Amendment Regulation, the legal and drafting aspects of the Amendment Regulation are in order.

Encl

Prepared by

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Legislative Council Secretariat
23 May 2002

LS/R/09/01-02

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Secretary for Education and Manpower
Education and Manpower Bureau
Manpower Development Division
(Attn: Mr Tony CHENG
Prin AS EM (7))
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Revised
By Fax (2899 2967)

22 May 2002

Dear Mr CHENG,

Safety Officers and Safety Supervisors (Amendment) Regulation 2001

We are scrutinising the legal and drafting aspects of the Amendment Regulation. We have the following comments on the Amendment Regulation.

- (1) Would you explain the reason for taking about 10 months time to re-introduce the motion containing the Amendment Regulation (with proposed amendments)?
- (2) Has the Labour Advisory Board been consulted on the proposed amendments to the Amendment Regulation?
- (3) Have circumstances mentioned in LegCo Brief File Reference: EMB CR 12/3231/86 of June 2001 leading to the introduction of the Amendment Regulation been changed since then? Is the information in the LegCo Brief still valid?

In facilitating us to report on this item to the House Committee meeting to be held on 24 May 2002, it is appreciated that your reply, in both languages, could reach us by 10 am tomorrow morning.

Yours sincerely,

Stephen LAM
Assistant Legal Adviser



LABOUR DEPARTMENT (Headquarters)

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23 May 2002

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Legislative Council Secretariat
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Central
Hong Kong

Dear Mr. Lam,

**Safety Officers and Safety Supervisors
(Amendment) Regulation 2001**

Thank you for your letter of 22 May, 2002.

Our response to your comments are set out below:

- (1) The motion to introduce the Amendment Regulation, originally scheduled for 11 July 2001, was withdrawn because there were some technical amendments proposed by the Legal Service Division of the Legislative Council Secretariat. By the time the technical amendments were resolved and incorporated into the legislative proposal, the Regulation missed the 2000-2001 Legislative Council session. We were not able to re-introduce the motion containing the Amendment Regulation earlier due to other more pressing issues.
- (2) The Labour Advisory Board has been consulted on the proposed amendments, which were also supported by the LegCo Manpower Panel in March 2000. The Labour Advisory Board has also been kept informed of the proposed amendments to the Amendment Regulation and has raised no objection.
- (3) There has been no change to the circumstances leading to the introduction of the Amendment Regulation and the information in the Legislative Council Brief is still valid.

Yours sincerely,

(CHOW Tung-shan)
for Commissioner for Labour