

立法會
Legislative Council

LC Paper No. LS23/01-02

**Paper for the Meeting of the House Committee
of the Legislative Council on 16 November 2001**

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

The Factories and Industrial Undertakings (Gas Welding and Flame Cutting) Regulation ("the Regulation") was made by the Commissioner for Labour pursuant to section 7 of the Factories and Industrial Undertakings Ordinance (Cap. 59). All regulations so made are required to be submitted to the Chief Executive and subject to the approval of the Legislative Council. To seek the approval of the Legislative Council, the Secretary for Education and Manpower has given notice to move a motion in the Legislative Council on 28 November 2001.

Provisions of the Regulation

2. The Regulation requires a proprietor to 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 issued by the organizer of a training course; or
 - (b) a person who is undergoing training in performing gas welding and flame cutting work, and the work is supervised by a person mentioned in (a) above.

In addition, the Regulation also requires a proprietor to provide training courses to employees who are instructed to perform gas welding and flame cutting work. A proprietor who, without reasonable excuse, fails to comply with the above two requirements commits an offence and is liable to a fine at level 5 (\$50,000).

3. For an employee who is instructed to perform gas welding and flame cutting work but does not hold a certificate, the Regulation imposes a duty to attend training courses provided by his proprietor. A person who performs gas welding and flame cutting work is also required to produce his certificate for inspection when required by an occupational safety officer. An employee who fails to comply with these requirements commits an offence and is liable to a fine at level 3 (\$10,000).

Commencement

4. Sections 3, 6 and 7 of the Regulation (which relate to duty of proprietor to ensure work is performed by competent persons, production of certificate and offences respectively) would come into operation on a day to be appointed by the Commissioner for Labour by notice in the gazette. The rest of the Regulation would come into operation on the day the Regulation is published in the Gazette.

Previous Consideration by the Legislative Council

5. The Regulation had been considered by the House Committee and the Panel on Manpower at the end of the last session. In that occasion the Secretary for Education and Manpower gave notice to move a motion on 11 July 2001 to seek the Legislative Council to approve the Regulation. At the meeting on 29 June 2001, the House Committee decided that the Regulation should first be discussed by the Panel on Manpower, and that the Secretary should withdraw the notice. The Panel had subsequently discussed the Regulation and made a report to the House Committee, expressing its support of the Regulation (LC Paper No. CB(2)2030/00-01 refers). At its meeting on 10 July 2001, the House Committee agreed that it was not necessary to form a subcommittee to study the Regulation, and that the Secretary could give a fresh notice to move a motion in the next session. The Education and Manpower Bureau issued a LegCo Brief issued in June 2001 (File Ref: EMB CR 1/2961/01) to which Members may refer for background and details.

Public Consultation

6. According to the draft speech of the Secretary for Education and Manpower, the Labour Advisory Board has been consulted and endorsed the proposal.

Conclusion

7. The motion and the Regulation are in order from the legal point of view.

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