

**Legislative Council Panel on Manpower
(for Meeting on 18 December 2002)**

**A Proposal to Amend
the Construction Sites (Safety) Regulations and Related Regulations**

PURPOSE

This paper informs Members of the Administration's proposal to amend the Construction Sites (Safety) Regulations, Cap. 59 ("**CSSR**") and other related regulations for the purposes of improving construction site safety performance and removing the ambiguities of some provisions of the CSSR.

BACKGROUND

Responsibilities of the Principal Contractors and Subcontractors

2. Safety at work in construction sites is regulated mainly by the CSSR made under the Factories and Industrial Undertakings Ordinance, Cap. 59 ("**FIUO**"). Under Regulation 2(2) of the CSSR:-

- (a) a contractor is responsible for a construction site if he is undertaking construction work there or, where there is more than one contractor undertaking construction work at the site, if he is the **principal contractor** undertaking work there;
- (b) a contractor is responsible for any plant referred to in these regulations if it is located at a construction site for which he is responsible.

3. By virtue of these provisions, the **principal contractor** is responsible for a construction site and for any plant on the site where there are multiple contractors. The principal contractor is held primarily responsible for site safety because he has the ultimate control over his sub-contractors to ensure that a safe and healthy environment is maintained.

4. Separately, under the general duties provisions of the FIUO , a proprietor has a general duty to ensure, as far as reasonably practicable, the safety and health of his employees. Both the principal contractor and subcontractors have to observe the provisions of the regulations made under this Ordinance.

Regulations 38A and 44 of the CSSR

5. Regulation 38A(1) of the CSSR provides that a contractor shall ensure that every place of work on the site is made and kept safe for any person working there. A copy of Regulation 38A is at **Annex I**.

6. Under Regulation 44(1) of the CSSR, a contractor shall ensure that every flywheel, every moving part of prime mover, every part of transmission machinery, and every dangerous part of other machinery is securely fenced to the satisfaction of the Commissioner of Labour (the Commissioner) unless it is in a safe position or of a safe construction. A copy of Regulation 44 is at **Annex II**.

THE PROBLEM

Responsibilities of the Principal Contractors and Subcontractors

7. Hitherto, the principal contractors have assumed overall responsibility for the safety and health at work in the whole construction site. However, in recent years, more developers and authorised persons have directly appointed specialist contractors to undertake specialised work, in parallel to the appointment of the principal contractor. In some cases, such specialist contractors may undertake up to 40% to 50% of the total volume of work. The principal contractor is not able to exercise control over the specialist contractors not appointed by him and have difficulty in monitoring their safety and health performance in the construction site.

8. There are also situations where no principal contractor has been designated to assume overall responsibility for a construction project, particularly in renovation work where it is common for the owner(s) of a site or premises to appoint different specialist contractors to undertake different work. Although offences can be charged under the general duties provisions of the FIUO, there is no one responsible for the safety in a renovation site.

9. There is, therefore, a need to amend the CSSR to hold the principal contractors and all other contractors or sub-contractors responsible for safety and health at work in construction sites.

Regulations 38A and 44 of the CSSR

10. On a separate note, another technical problem has been found with Regulation 44(1) of the CSSR. In an appeal case, HKSAR v. Lam Geotechnics Limited, HCMA 379 of 2000, the Court of First Instance ruled that Regulation 44(1) of the CSSR fell outside the enabling powers conferred on the Commissioner by Section 7 of the FIUO and quashed the conviction. Under Section 7 of the FIUO, the Commissioner may in respect of industrial undertakings make regulations to impose duties, restriction etc. on proprietors, contractors and persons employed.

11. The Court ruling points out, among other things, that

- (a) the elements of the offence purportedly set out in the Regulation are incompletely defined because of the uncertainty in the words “*to the satisfaction of the Commissioner*”;
- (b) those who are required to regulate their conduct according to the Regulation cannot ascertain, before a prosecution is brought, what fencing measure will satisfy the Commissioner; and
- (c) the Regulation is ultra vires the enabling powers conferred on the Commissioner by the FIUO.

12. In the light of the above ruling, the Department of Justice (“*DoJ*”) has advised that Regulation 44(1) of CSSR should be amended to clearly define the elements of offence so that those who are required to regulate their conduct according to the CSSR can ascertain what measures, standard or criteria would satisfy the Commissioner.

13. We have examined other provisions of the CSSR and identified that Regulation 38A should also be amended. Upon consultation, DoJ advised that this Regulation also fell outside the enabling provision of the FIUO as it did not indicate what measures ought to be taken to achieve the goal of ensuring the safety of workers. We, therefore, need to amend this Regulation as well.

THE PROPOSAL

14. To tackle the problems, we propose:-

- (a) To amend the CSSR to hold the principal contractor and the sub-contractors jointly and severally liable for safety offences;
- (b) To amend other related regulations including the Factories and Industrial Undertakings (Lifting Appliances and Lifting Gear) Regulations, the Factories and Industrial Undertakings (Suspended Working Platforms) Regulation and the Factories and Industrial Undertakings (Loadshifting Machinery) Regulation, which contain similar provisions on the responsibility of the principal contractor, to reflect corresponding changes; and
- (c) To amend Regulations 38A and 44 of the CSSR to remove the ambiguities of the provisions.

JUSTIFICATION

Responsibilities of the Principal Contractors and Subcontractors

15. Safety and health at work in construction sites requires the co-ordination and co-operation of all parties involved in the project. While the principal contractor should bear the primary responsibility for the co-ordination of the different contractors' activities and all safety issues on site, sub-contractors should also have the obligation towards safety and observe the law. We, therefore, propose to amend the CSSR such that apart from the principal contractor, all contractors and sub-contractors, whether or not appointed by the principal contractor, will be required to comply with the provisions of the CSSR. The principal contractor, contractors and sub-contractors will be liable, together and separately, to prosecution for offences committed on their own parts. With this amendment, sub-contractors will be more alert to the need to comply with safety and health legislative requirements. This will help to improve the overall safety performance in construction sites.

16. It should be stressed that the proposal will not diminish the existing responsibility of the principal contractor under the CSSR for the overall safety and health on a construction site. Nor will it increase the costs for either the principal contractor, the contractors or the sub-contractors in safety management, as they are already required to undertake their full responsibilities under the general duties provisions of the FIUO. The amendment will help to clarify their responsibilities under the CSSR.

17. The contractor who has direct control over the construction work will be held primarily responsible for the safety of the work. By “direct control”, we mean “control the way in which construction work is carried out”. The provisions under the CSSR, which a contractor is required to comply with, should relate to all matters (including safety matters) that are under his control. There may be instances where more than one contractor has direct control over the construction work.

Amendment of Other Related Regulations

18. If amendment is made to the CSSR, a number of regulations will require consequential amendments. The Factories and Industrial Undertakings (Lifting Appliances and Lifting Gear) Regulations, the Factories and Industrial Undertakings (Suspended Working Platforms) Regulation and the Factories and Industrial Undertakings (Loadshifting Machinery) Regulation made under the FIUO contain provisions holding the contractor responsible for a construction site as a duty holder for those machines situated or used in connection with work on the construction site. The principal contractor will be held responsible if there is more than one contractor undertaking construction work at the site. It is, therefore, necessary to make corresponding amendments to these Regulations to reflect the proposed changes in the CSSR.

Amendment of Regulations 38A and 44 of the CSSR

19. Having consulted the DoJ, we propose to amend Regulation 38A(1) by prescribing measures to be taken by contractors to ensure that every place of work is, so far as is reasonably practicable, made and kept safe for any person working there.

20. On the advice of the DoJ, we also propose to amend Regulation 44(1) of the CSSR by deleting the qualifying clause “*to the satisfaction of the Commissioner*”, and prescribing measures to effectively guard the dangerous parts of machinery.

ECONOMIC IMPLICATIONS

Amendment of the CSSR and Other Related Regulations

21. The proposal will not have any economic implications on principal contractors as, under the CSSR, they already have a duty to ensure the safety and health on a construction site. As for contractors and sub-contractors, they already have a general duty to ensure the safety and health of their employees and to

observe, where appropriate, the other safety regulations made under the FIUO.

Amendment of Regulations 38A and 44 of the CSSR

22. The proposed amendments are only technical in nature. They seek to remove the ambiguities in the CSSR and make them enforceable. There is no change to the responsibilities of the existing duty holders, the penalty for offences and coverage of the current legislation. The proposed amendments will not bring about additional operating costs to the construction industry or financial implications to the Administration.

CONSULTATION

23. The Construction Industry Review Committee has put forward the recommendation to prosecute the sub-contractors for non-compliance with safety requirements in its report published in early 2001.

24. The Labour Advisory Board has been consulted and agreed to the proposed amendments.

LEGISLATIVE TIME TABLE

25. We aim to introduce the proposed amendments to the Legislative Council within the 2002-03 legislative session.

ADVICE SOUGHT

26. Members are invited to note the proposed amendments set out in paragraph 14.

Economic Development and Labour Bureau
December 2002

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Section of Enactment

Chapter:	Title:	CONSTRUCTION SITES (SAFETY) REGULATIONS	Gazette Number:	L.N. 240 of 1999
Regulation: 38A	Heading:	Safety of places of work	Version Date:	01/10/1999

PART VA

SCAFFOLDS, WORKING PLATFORMS AND LADDERS, ETC.

- (1) Without prejudice to the other provisions of this Part, the contractor responsible for any construction site shall ensure that every place of work on the site is, so far as is reasonably practicable, made and kept safe for any person working there.
- (2) The contractor responsible for any construction site shall ensure that, so far as is reasonably practicable, suitable and adequate safe access to and egress from every place of work on the site is provided and properly maintained.
- (3) Subject to paragraph (4), the contractor responsible for any construction site shall take suitable and adequate steps to ensure that, so far as is reasonably practicable, no person gains access to any unsafe place on the site.
- (4) Paragraph (3) shall not apply in relation to a person engaged in work for the purpose of making any place safe if all practicable steps have been taken to ensure the safety of that person whilst engaged in that work.

(Part VA replaced L.N. 76 of 1999)

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Section of Enactment

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Chapter:	Title:	CONSTRUCTION SITES (SAFETY) REGULATIONS	Gazette Number:
Regulation: 44	Heading:	Fencing of machinery	Version Date: 30/06/1997

- (1) A contractor shall ensure that-
- (a) every flywheel and moving part of any prime mover;
 - (b) every part of transmission machinery; and
 - (c) every dangerous part of other machinery (whether or not driven by mechanical power), for which he is responsible is securely fenced to the satisfaction of the Commissioner unless it is in such a position or of such construction as to be as safe to every workman on the construction site as it would be if it were securely fenced.
- (2) Where under paragraph (1) parts of any machinery are required to be fenced, the contractor shall ensure that the fencing is kept in position while the parts are in motion or in use, except where the parts are necessarily exposed for examination or for any lubrication or adjustment shown by the examination to be immediately necessary.

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