

LEGISLATIVE COUNCIL BRIEF

Factories and Industrial Undertakings Ordinance
(Chapter 59)

FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT) (No. 2) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 14 December 1999, the Council ADVISED and the Chief Executive ORDERED that the Factories and Industrial Undertakings (Amendment) (No. 2) Bill 1999 (Annex A) should be introduced to the Legislative Council.

BACKGROUND AND ARGUMENT

General Background

2. Under section 26 of the Magistrates Ordinance (Cap. 227), for any offence other than an indictable offence, where no time is limited by any enactment, prosecution must be commenced within six months from the date of the offence. As all of the offences under the Factories and Industrial Undertakings Ordinance (the Ordinance) and its subsidiary legislation fall within this category, all prosecution must be commenced within the said period of six months. Where the offence relates to the failure to notify the Commissioner for Labour (C for L) of the commencement of certain types of industrial operation, process or work, the period of six months runs from the date of such commencement.

3. In 1998, the Director of Audit conducted a review of the efficiency and effectiveness of Labour Department (LD) in reducing industrial accidents. The review found that about 70 percent of the undertakings surveyed had failed to notify C for L before they commenced certain types of industrial process, operation or work as required by the Ordinance. It was also found that over the past five years, no prosecution had been taken out for failing to comply with this legal requirement. The fact was that the average time taken for LD to become aware of the existence of these offences was more than eight months. By that time, prosecution was already time-barred. The Director of Audit recommended LD to take positive action to ensure that the notification requirements will be complied with.

The Legal Requirement of Notification

4. The intention of the notification requirements is to enable LD to have early information of the commencement of the industrial operation, process or work, so that timely inspections and advisory or enforcement actions can be taken. The gists of the relevant provisions are summarised as follows:-

(a) Factories and Industrial Undertakings Ordinance

Under section 9(1) of the Ordinance, the person in management or control of a notifiable workplace must, before any industrial process is commenced or any industrial operation is carried out, notify C for L of the particulars relating to the workplace, and the industrial process or operation. A notifiable workplace includes a manufacturing or catering establishment.

(b) Construction Sites (Safety) Regulations

Under Regulation 56(1), contractors of construction sites are required to furnish information to C for L in writing within seven days after the commencement of the construction work. Such information includes the contractor's name, location of the site and date of commencement, etc.

(c) Factories and Industrial Undertakings (Work in Compressed Air) Regulations

Regulation 30 requires every contractor to notify C for L before the commencement of any construction work in compressed air at a pressure exceeding one atmosphere.

(d) Factories and Industrial Undertakings (Asbestos) Regulation

Regulation 6(1) requires a proprietor to give C for L not less than 28 days notice before the commencement of certain asbestos work.

Copies of these provisions are at Annex B.

The Proposal

5. In response to the Director of Audit's recommendation at paragraph 3

above, the Administration has taken steps to publicise the legal requirement on notification and reviewed the relevant legislation. In respect of the latter, we propose to amend the Ordinance and the above three subsidiary legislation to the effect that prosecution against the said offences can be commenced within six months of the offence being discovered by or coming to the notice of C for L. The amendments should be brought into immediate effect after enactment.

THE BILL

6. The main provisions are:-
- (a) Clause 2 amends section 17 of the Ordinance by adding new subsection (5), which provides that prosecution for any of the offences specified in the new Fifth Schedule shall be commenced within six months from the offence being discovered by or coming to the notice of C for L.
 - (b) Clause 3 adds the new Fifth Schedule, which sets out the offences to which the new section 17(5) applies.

LEGISLATIVE TIMETABLE

7. The legislative timetable for the Bill is as follows:-

Publication in the Gazette	24 December 1999
First Reading and commencement of Second Reading debate	12 January 2000
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

BASIC LAW IMPLICATIONS

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

HUMAN RIGHTS IMPLICATIONS

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

BINDING EFFECT OF THE LEGISLATION

10. The amendments will not affect the current binding effect of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

11. There are no financial and staffing implications for Government.

ECONOMIC IMPLICATIONS

12. The proposed amendments to the legislation are intended to give the Administration more flexibility in initiating prosecution. There is no change to the penalty or coverage of the existing legislation. It should not result in additional cost on the part of the proprietors and contractors of the industries concerned.

PUBLIC CONSULTATION

13. The Labour Advisory Board and its Committee on Occupational Safety and Health were consulted on 29 October 1999 and 9 September 1999 respectively and both supported the proposal. The Legislative Council Panel on Manpower was consulted on 25 November 1999 and also gave its support.

PUBLICITY

14. A press release will be issued on 23 December and a spokesman will be available to handle media enquires.

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