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**Paper for the House Committee Meeting
of the Legislative Council
on 14 January 2000**

**Legal Service Division Report on
Factories and Industrial Undertakings
(Amendment) (No. 2) Bill 1999**

Object of the Bill

To extend the time limit for commencing prosecution for certain offences under the principal ordinance.

LegCo Brief Reference

2. EMBCR 2/2961/95 issued by the Education and Manpower Bureau and dated 23 December 1999.

Date of First Reading

3. 12 January 2000.

Comments

4. The sole purpose of the Bill is to extend the present time limit for commencement of prosecution for several offences under the principal ordinance.

5. These offences relate to failure to notify the Commissioner for Labour or other designated public officers of the commencement of certain types of industrial operation, process or work as provided in the principal ordinance. According to the LegCo Brief, it was found that over the past 5 years, no prosecution had been taken out for these offences because the average time needed

for the Labour Department to become aware of the existence of these offences was more than 8 months. By that time, prosecution was already time-barred under section 26 of the Magistrates Ordinance (Cap. 227), which provides that prosecution for such offences must be commenced within 6 months from the time of the offence.

6. Accordingly, the Director of Audit recommended in his Report No. 31 (paragraph 51 of Chapter 10) that positive action be taken to ensure that the notification requirements be complied with. The Public Accounts Committee, after consideration of the Report, noted the promise by the Commissioner for labour to amend the legislation to enhance the effectiveness of enforcement actions and expressed the wish to be kept informed of the timetable for introducing legislation in respect of the principal ordinance on compliance with the notification requirement (paragraph 23, Chapter 8, PAC Report No. 31, February 1999).

7. The Bill now proposes that prosecution for such offences may be commenced within 6 months from the offence being discovered by or coming to the notice of the Commissioner.

8. A total of 4 offences will be covered by the proposal, namely -

- (a) the person having the management or control of a notifiable workplace failing to notify the Commissioner before the first occasion on which any industrial process is commenced or any industrial operation is carried on in the workplace under section 9(1) of the principal ordinance, punishable with a fine up to \$10,000;
- (b) a contractor who undertakes construction work failing to notify the Commissioner within 7 days after the commencement of the work under regulation 56(1) of the Construction Sites (Safety) Regulations, punishable with a fine up to \$10,000;
- (c) a contractor failing to notify an occupation safety officer or some other designated public officer before commencing for the first time any construction work in compressed air at a pressure exceeding 14 pounds per square inch under regulation 30 of the Factories and Industrial Undertakings (Work in Compressed Air) Regulations, punishable with a fine up to \$50,000; and
- (d) a proprietor failing to notify the Commissioner not less than 28 days before he begins to carry out work with asbestos coating or asbestos insulation or other asbestos work under section 6(1) of the Factories and Industrial Undertakings (Asbestos) Regulation, punishable with a fine up to \$50,000.

Public Consultation

9. According to the LegCo Brief, the Labour Advisory Board and its Committee on Occupational Safety and Health have been consulted and both supported the proposal.

Consultation with LegCo Panel

10. The Panel on Manpower was consulted on 25 November 1999.

Conclusion

11. The legal and drafting aspects of the Bill are in order. Subject to Members' views, the Second Reading debate on the Bill may be resumed.

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