

Information Paper for the LegCo Panel on Manpower

Proposed amendments to the Factories and Industrial Undertakings Ordinance and its Regulations

Purpose

This paper informs Members of the Administration's proposal to amend the Factories and Industrial Undertakings Ordinance (FIUO) and three of its regulations to strengthen the requirements for notification of commencement of industrial operations.

Background

2. Under the FIUO, a proprietor of a notifiable workplace must, before any industrial process or operation commences, notify the Commissioner for Labour (CL) of the particulars of the workplace. The definition of a "notifiable workplace" is given in **Annex A** which includes a manufacturing or catering establishment.

3. In 1998, the Director of Audit (DA) conducted a review of the Labour Department's (LD) efficiency and effectiveness in reducing industrial accidents. The review found that about 70% of the undertakings surveyed had failed to notify LD before they commenced an industrial process or operation. It also found that over the past five years, no prosecution had been taken out against any proprietor for failing to comply with this legal requirement. DA recommended that LD should take positive action to ensure compliance with the notification requirements.

The Problem

4. By virtue of a requirement under the Magistrates Ordinance, Cap. 227, all summary offences prosecuted under the FIUO should be initiated within 6 months. Currently, the average time taken for LD to become aware of the existence of a notifiable workplace is more than eight months. By the time the Department is made aware of their operation, it is already time-barred to take out prosecution against the proprietors and contractors. Even if a workplace is discovered fairly soon after its commencement, it is still difficult to ascertain the exact

date of its commencement of operation, but such a date is crucial in establishing the offence in prosecution.

5. The intention of the notification requirements is to enable LD to have early information of an industrial undertaking to make timely inspections and to take advisory or enforcement action where appropriate. Relevant legislation that requires proprietors and/or contractors to notify CL of the commencement of work at their workplaces are as follows:

(a) *Factories and Industrial Undertakings Ordinance*

Under Section 9(1) of the Ordinance, proprietors of every notifiable workplace must, before any industrial process is commenced or any industrial operation is carried on, notify CL of the particulars relating to the workplace, the industrial process or operation.

(b) *Construction Sites (Safety) Regulations*

Regulation 56 of the Regulations requires the contractors of construction sites to furnish information to CL in writing within 7 days after the commencement of the construction work. Such information includes the contractor's name, location of the site and date of commencement.

(c) *Factories and Industrial Undertakings (Asbestos) Regulation*

Section 6(1) of the Regulation requires every proprietor to give CL not less than 28 days' notice before the asbestos work commences.

(d) *Factories and Industrial Undertakings (Work in Compressed Air) Regulations*

Regulation 30 of the Regulations requires every contractor to notify CL before the commencement of work in compressed air at a pressure exceeding one atmosphere.

Extracts of these pieces of legislation are given in **Annex B**.

The Proposal

6. In response to DA's recommendation in paragraph 3 above, we propose to amend the FIUO and the three regulations quoted above to the effect that CL may take prosecution action against failure to give notification within six months when the said establishment is discovered or has come to his notice. In other words, the time bar of six months will

not be counted from the date of commencement of operation but from the date the workplace is discovered or known, whichever is the later.

Economic Implications

7. The proposed amendments 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 bring about additional operating cost on the part of the industries, nor staffing cost to the Administration.

Consultation

8. The Labour Advisory Board and its Committee on Occupational Safety and Health have been consulted and they supported the proposal.

Education and Manpower Bureau
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"notifiable workplace" (應呈報工場) means-

- (a) any factory, mine or quarry; and
- (b) any premises or place in which a dangerous trade or scheduled trade is carried on or is proposed to be carried on, but does not include a construction site within the meaning of the Construction Sites (Safety) Regulations (Cap. 59 sub. leg.)

**Legislation Requiring Notification to
the Commissioner for Labour**

FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE

9. Notification of workplaces

(1) The person having the management or control of a notifiable workplace shall, before the first occasion on which any industrial process is commenced or any industrial operation is carried on in the notifiable workplace, notify the Commissioner in the prescribed form of such particulars relating to the workplace and the industrial process or industrial operation proposed to be carried on there as may be specified in the prescribed form.

(2) The person having the management or control of a notifiable workplace in respect of which any change in the location or name of the notifiable workplace or in the nature of the industrial process or industrial operation carried on there is proposed shall notify the Commissioner in the prescribed form of the proposed change before it takes effect.

(3) Where there has been a change in the identity of the person having the management or control of a notifiable workplace, that person shall notify the Commissioner of the fact of such change within 21 days after it takes effect.

CONSTRUCTION SITES (SAFETY) REGULATIONS

56. Information to be furnished to Commissioner

(1) Subject to paragraph (2), a contractor who undertakes construction work shall, within 7 days after the commencement of the work, furnish in writing to the Commissioner the following information—

- (a) *the contractor's name and address;*
 - (b) *if the contractor is a firm, the name under which it carries on business and the name and address of every partner in the firm;*
 - (c) *the name and address of every subcontractor employed on the work;*
 - (d) *the location of the construction site;*
 - (e) *the nature of the work;*
 - (f) *the date upon which the work was commenced;*
 - (g) *whether any mechanical power is being or will be used in connection with the work and, if so, the nature of the mechanical power; and*
 - (h) *the expected duration of the work.*
- (2) *Paragraph (1) shall not apply if—*
- (a) *at the date of commencement of the work-*
 - (i) *the contractor has reasonable grounds for believing that the work will be completed in a period of less than 6 weeks from that date; or*
 - (ii) *any other construction work is being undertaken at the same construction site and the information specified in paragraph (1) has been furnished to the Commissioner in respect of that construction work; or*
 - (b) *not more than 10 workmen are or will be employed on the work at any one time.*

FACTORIES AND INDUSTRIAL UNDERTAKINGS (ASBESTOS) REGULATION

6. Notification

(1) Subject to subsection (2), before a proprietor begins to carry out work with asbestos coating or asbestos insulation or other asbestos work, he shall give the Commissioner not less than 28 days' notice, or such shorter notice as the Commissioner may agree to accept, of the work.

(2) Notification is not required in respect of work with asbestos other than work with asbestos coating and asbestos insulation if the

extent of exposure of that asbestos work neither exceeds nor is liable to exceed the action level.

(3) Where there is a material change in the asbestos work which might affect the particulars notified under subsection (1), the proprietor shall, within 7 days after he becomes aware of the change, notify the Commissioner of that change.

(4) Notification under subsections (1) and (3) shall be in the approved form.

FACTORIES AND INDUSTRIAL UNDERTAKINGS (WORK IN COMPRESSED AIR) REGULATIONS

30. Notification of work in compressed air

A contractor shall, before he commences for the first time any construction work in compressed air at a pressure exceeding 14 pounds per square inch, notify in Form 7 of the Fourth Schedule—

- (a) an occupational safety officer;*
- (b) the Senior Occupational Health Officer;*
- (c) the police station nearest to the construction site; and*
- (d) the fire services station nearest to the construction site.*