

CONSTRUCTION WORKERS REGISTRATION BILL

《建造業工人註冊條例草案》

Committee Stage Amendments

Mark up for the newly proposed amendments in the

English CSAs – 4th (2nd revised) Draft

(compared to English CSAs – 3rd (revised) draft)

[Note: amendments made to Long Title and clauses 2(1), 17A, 17B, 17C, 18(1), 18C(5), 30A, 42(6), 42(6A), 42(9), 57(3), 60, 61(1), 61(3), 61A and Schedule 1]

A BILL

To

Provide for the registration of construction workers; the establishment of a Construction Workers Registration Authority; a levy to be paid by contractors in respect of ~~certain kinds of construction work~~construction operations; the regulation of construction workers personally carrying out construction work; and for related matters.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Construction Workers Registration Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for the Environment, Transport and Works by notice published in the Gazette.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires –

“Appeal Board” (上訴委員會) means a Construction Workers Appeal Board appointed under section 55(1);

“Appeal Board panel” (上訴委員團) means the Appeal Board panel appointed under section 54(1);

“Authority” (管理局) means the Construction Workers Registration Authority established by section 7(1);

“authorized officer” (獲授權人員) means a person who is appointed under section ~~17A(1)~~60(1);

~~“Complaints Committee” (投訴委員會) means the Construction Workers Complaints Committee established by section 14(1);~~

“construction site” (建造工地) means a place where construction work is, or is to be, carried out but, except in relation to sections **17B and 17C-49 and 60(2)(a) and (d)**, excludes such a place where –

(a) in the case of construction work falling within paragraph (a) or (b) of the definition of “construction work” in this section –

(i) in respect of which the Buildings Ordinance (Cap. 123) applies; and

(ii) which may not, by virtue of section 41(3) or (3A) of that Ordinance, be carried out without application to or approval from the Building Authority,

a certificate, referred to in paragraph (2) or (3) of regulation 25, or in paragraph (2) of regulation 26, of the Building (Administration) Regulations (Cap. 123 sub. leg.), in respect of the construction work has been sent to the Building Authority in accordance with that paragraph, or a certificate, referred to in paragraph (4) of regulation 25 of those Regulations, in respect of the construction work has been made in accordance with that paragraph;

(b) in the case of any other construction work falling within paragraph (a) or (b) of that definition, a certificate of substantial completion of contract has been issued in accordance with the terms of the contract under which the construction work is carried out;

Clause 2(1)

“designated trade” (指定工種) means a trade or an occupation set out in column 1 of Part 1, 2 or 3 of Schedule 1;

"domestic premises" (住用處所) means premises used or intended to be used solely or principally for residential purposes and constituting a separate household unit;

“extra low voltage” (特低壓) means voltage normally not exceeding –

- (a) 50V root mean square alternating current; or
- (b) 120V direct current,

between conductors or between a conductor and earth;

“further penalty” (附加罰款) means the further penalty payable under section 25(3);

“levy” (徵款) means the levy imposed under section 19;

~~“levy inspector” (徵款督察) means a person who is appointed under section 60(3);~~

“low voltage” (低壓) means voltage normally exceeding extra low voltage but normally not exceeding –

- (a) between conductors, 1 000V root mean square alternating current or 1 500V direct current; or
- (b) between a conductor and earth, 600V root mean square alternating current or 900V direct current;

“officer” (高級人員), in relation to a body corporate, includes a director, manager or secretary;

“penalty” (罰款) means the penalty payable under section 25(2);

PART 3A

AUTHORIZED OFFICERS

17A. Appointment of authorized officers

(1) The Authority may, subject to the approval of the Secretary, appoint in writing a person to be an authorized officer for the purposes of this Ordinance (other than Part 4).

(2) The Authority shall issue to each authorized officer a certificate of appointment that –

(a) gives the name of the authorized officer to whom it is issued; and

(b) states that it is issued by or on behalf of the Authority under this Ordinance.

(3) When performing or exercising a function or power under this Ordinance, an authorized officer shall, if requested to do so, produce for inspection his certificate of appointment.

(4) An authorized officer may perform or exercise any of his functions or powers under this Ordinance with the assistance of such other persons as the officer thinks fit.

17B. Powers of authorized officers to enter construction site

(1) Where a warrant has been issued under subsection (2) in respect of a construction site, or where subsection (4) applies in respect of a construction site, an authorized officer may –

(a) at any time, using such force as may be necessary, enter and search the site;

(b) remove anything that obstructs the entry and search;

- (c) detain any person found on the site, during such period as is reasonably required to permit the search to be carried out, where that person might prejudice the purpose of the search if he were not so detained; and
- (d) inspect, seize, detain and remove from the site anything that is or contains, or appears to the officer to be or to contain, or to be likely to be or to contain, evidence of the commission of an offence under this Ordinance.

(2) A magistrate may issue a warrant authorizing an authorized officer to enter and search a construction site if the magistrate is satisfied by information on oath that there are reasonable grounds to suspect that –

- (a) an offence under this Ordinance is being or has been committed on the site; or
- (b) there is or may be on the site anything that is or contains, or is likely to be or to contain, evidence of the commission of an offence under this Ordinance.

(3) A warrant issued under subsection (2) continues in force for 1 month or until the purpose for which entry is required has been fulfilled, whichever first occurs.

(4) An authorized officer may, without a warrant issued under subsection (2), exercise any of the powers referred to in subsection (1) in respect of a construction site (other than domestic premises) if –

- (a) he reasonably suspects that –
 - (i) an offence under this Ordinance is being or has been committed on the site; or
 - (ii) there is or may be on the site anything that is or contains, or is likely to be or to contain, evidence of the commission of an offence under this Ordinance;
and

(b) it is not practicable to obtain such a warrant in respect of the site before exercising those powers.

(5) For the purposes of ascertaining whether the provisions of this Ordinance have been or are being complied with, an authorized officer may enter a construction site at all reasonable times.

(6) This section does not prejudice any power of entry and search conferred on police officers under any other law.

17C. Other powers of authorized officers

(1) An authorized officer who has entered a construction site under section 17B(1) or (5) may –

- (a) inspect and examine the site;
- (b) inspect and examine any plant, equipment or substance found on the site;
- (c) take photographs of the site or of any plant, equipment or substance found on the site;
- (d) require any person found on the site –
 - (i) to state whether he is a registered construction worker; and
 - (ii) if the person states that he is a registered construction worker, to produce his registration card;
- (e) in relation to any person found on the site whom the officer reasonably suspects of committing, or having committed, an offence under this Ordinance –
 - (i) require the person –
 - (A) to give to the officer the person's name, address and telephone number and such other personal particulars as the officer may reasonably require; and

(B) to produce to the officer for inspection the person's identity card issued under the Registration of Persons Ordinance (Cap. 177) or the person's other documentary evidence of identity; and

(ii) detain the person for a reasonable period while the officer inquires about the suspected commission of the offence;

(f) require any person found on the site to provide information that may enable the officer to identify –

(i) the principal contractor for the site; or

(ii) any person who personally carries out on the site construction work or the employer of such person;

(g) examine the records referred to in section 59(7)(a) and make copies of all or any part of those records; and

(h) require the principal contractor for the site, or any person who is apparently an employee or agent of that contractor, to provide the officer with such assistance and facilities as are reasonably necessary to enable the officer to perform or exercise his functions or powers.

(2) An authorized officer may, in relation to anything that the officer seizes, detains or removes from a construction site under section 17B(1)(d) –

(a) retain the thing for such period as may be reasonably necessary; and

(b) if he reasonably believes that the thing is evidence of the commission of an offence under this Ordinance, retain the thing until proceedings for the offence have been heard and finally determined.

- (3) An authorized officer may –
- (a) in order to make copies of records referred to in section 59(7)(a), remove the records from the construction site and retain them for such period as may be reasonably necessary; and
 - (b) if he reasonably believes that the records are evidence of the commission of an offence under this Ordinance, remove the records from the construction site and retain them until proceedings for the offence have been heard and finally determined.

PART 4

LEVY

18. Interpretation

- (1) In this Part, unless the context otherwise requires –
- “authorized person” (獲授權人) has the meaning assigned to it in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap. 317);
- "construction operations" (建造工程), subject to section 18C, has the meaning assigned to it in Schedule 1 to the Industrial Training (Construction Industry) Ordinance (Cap. 317); ~~“construction works” (建造工程) means the construction works within the meaning of section 2(2), (3) and (4) of the Industrial Training (Construction Industry) Ordinance (Cap. 317);~~
- “contractor” (承建商) has the meaning assigned to it in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap. 317);

“employer” (僱主) has the meaning assigned to it in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap. 317);

“value” (價值), in relation to construction operations, has the meaning assigned to it in section 18A; ~~in relation to any construction works, means the value of the construction works assessed under this Part.~~

“construction contract” (建造合約) has the meaning assigned to it in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap. 317);

“contract of employment” (僱傭合約) has the meaning assigned to it in section 2(1) of the Employment Ordinance (Cap. 57);

“levy inspector” (徵款督察) means a person who is appointed under section 30A;

“term contract” (固定期合約) has the meaning assigned to it in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap. 317);

“total value” (總價值), in relation to construction operations, has the meaning assigned to it in section 18B;

“works order” (施工通知) has the meaning assigned to it in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap. 317).

~~(2) This Part shall not apply to any construction works—~~

~~(a) the tender for which was submitted before the commencement of this Part; or~~

~~(b) that began before that commencement.~~

(3) For the purposes of this Part, any ~~construction work~~ construction operations that are building works, or street works, not carried out by or on behalf of the Government is deemed to begin on the date of the Building

(5) In this section,—

~~(a) "domestic premises" (住用處所) means premises used or intended to be used solely or principally for residential purposes and constituting a separate household unit;~~

(b) a person shall be regarded as a person who occupies a domestic premises if he intends to occupy the premises.

~~19.Imposition of levy~~

~~(1)Subject to subsection (2), a levy shall be imposed in accordance with this Part on the value of all the construction works undertaken in Hong Kong and shall be payable by every contractor who undertakes the construction works.~~

~~(2)The Secretary may by notice provide that any construction works the value of which does not exceed the amount specified in the notice shall not be liable to the levy.~~

19. Imposition of levy

(1) A levy at the prescribed rate shall be imposed on the value of all construction operations undertaken or carried out in Hong Kong.

30A. Levy inspector

_____ The Authority may, subject to the approval of the Secretary, appoint in writing a person to be a levy inspector for the purposes of this Part.

42. Expiry and renewal of registration

(1) Subject to subsection (5), the registration of a person shall expire on a day that is specified by the Registrar in accordance with subsection (2).

(2) The date so specified shall –

(a) if the person is a Hong Kong permanent resident, subject to subsection (3), be not less than 12 months, and not more than 48 months, after the ~~date of registration or renewal of registration~~ relevant date;

(b) if the person is not a Hong Kong permanent resident, subject to subsections (3) and (4), be not more than ~~42 months after the date of registration or renewal of registration~~ 48 months after the relevant date.

(3) If, on the date of registration or renewal of registration, the person holds another registration that is in effect, the date so specified shall be the day on which that other registration expires.

(4) If, on the date of registration or renewal of registration, the person is subject to a condition of stay in Hong Kong limiting the period during which the person may remain in Hong Kong, the date so specified shall be a day within that period.

(5) A person may apply to the Registrar for the renewal of his registration.

(6) An application under subsection (5) shall be –

(a) in the specified form; **and**

(b) accompanied by the prescribed fee; **and**

~~(c) made not earlier than 3 months before and not later than 7 business days before the date of expiry of the applicant's registration.~~

(6A) An application under subsection (5) shall be made –

- (a) not earlier than 3 months before and not later than 7 business days before the date of expiry of the person's registration;**
- (b) after the expiry of the period referred to in paragraph (a) but before the date on which the Registrar gives notice to the person that the Registrar intends to cancel the person's registration under section 47(1)(b); or**
- (c) in the case where the Registrar has given notice to the person that the Registrar intends to cancel the person's registration under section 47(1)(b), before the expiry of the period of 14 days referred to in section 47(2)(b).**

(7) The Registrar shall not renew the registration of a person unless the Registrar is satisfied that –

- (a) the person complies with the applicable requirements for registration set out in sections 37 and 40(4) and (5); and
- (b) if the registration will, on the date of its expiry, have been in effect for not less than 2 years, the person has attended and completed, during the period of 1 year immediately before the date of application for renewal of the registration, such development courses applicable to his registration as the Authority may specify.

(8) The Authority shall give notice in the Gazette of the development courses that it specifies for the purposes of subsection (7)(b).

(9) In this section, “registration” (—註冊)— means registration under this Ordinance as—

- (a) a registered skilled worker for a designated trade;**
- (b) a registered semi-skilled worker for a designated trade; or**
- (c) a registered general worker,**

Clause 42

(9) In this section -

"registration" (註冊) means registration under this Ordinance as -

- (a) a registered skilled worker for a designated trade;
- (b) a registered semi-skilled worker for a designated trade; or
- (c) a registered general worker,

and "registered" (註冊) shall be construed accordingly;

"relevant date" (有關日期) means -

- (a) the date of registration;
- (b) in the case of an application for renewal of registration made in accordance with subsection (6A)(a), the date on which the registration would have expired but for the renewal;
- (c) in the case of an application for renewal of registration made in accordance with subsection (6A)(b) -
 - (i) the date on which the registration would have expired but for the renewal; or
 - (ii) the date of renewal of registration, whichever is the later; or
- (d) in the case of an application for renewal of registration made in accordance with subsection (6A)(c), the date of renewal of registration.

57. Legal adviser

(1) The Secretary may appoint a legal practitioner to advise an Appeal Board on any points of law and procedure that arise before, during or after a hearing of an appeal.

(2) A legal practitioner appointed under subsection (1) shall be remunerated for his services out of the funds of the Authority at a rate determined by the Secretary.

(3) In this section, "legal practitioner" (法律執業者) means counsel or a solicitor who holds a current practising certificate.

58. Powers of Appeal Board

(1) An Appeal Board may, by notice under the signature of its chairman –

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(3) An Appeal Board may –

- (a) in an appeal against a decision ~~or order~~ of the Authority –
 - (i) confirm or revoke the decision ~~or order~~; or
 - (ii) make any decision ~~or order~~ that the Authority could have made;
- (b) in an appeal against a decision of the Registrar –
 - (i) confirm or revoke the decision; or
 - (ii) make any decision that the Registrar could have made.

60. Authorized officers and levy inspectors

~~(1) The Authority may, subject to the approval of the Secretary, appoint in writing a person to be an authorized officer for the purposes of this Ordinance (except Part 4).~~

~~(2) An authorized officer may—~~

~~(a) enter and inspect a construction site at all reasonable times;~~

~~(b) require any person found on the construction site to state whether or not he is a registered construction worker;~~

~~(c) require any person who states that he is a registered construction worker to produce his registration card; and~~

~~(d) examine the record referred to in section 59(7)(a).~~

~~(3) (1) The Authority may, subject to the approval of the Secretary, appoint in writing a person to be a levy inspector for the purposes of Part 4.~~

61. Offences of making false or misleading statements, ~~of failure to attend as witness and of obstructing authorized officers, etc. and of failure to attend inquiries or hearings as witness, etc.~~

(1) A person who, without reasonable excuse, makes any statement or furnishes any information, which is false or misleading in a material particular, in connection with –

~~(aa) a requirement made to the person under section 17C(1)(d)(i), (e)(i)(A) or (f);~~

- (a) an application for registration or renewal of registration;
- ~~(b) a complaint under Part 6;~~
- (c) a request for review under Part 7;
- (d) an appeal under Part 7; or
- (e) an application under section 59(2),

commits an offence and is liable on conviction to a fine at level 3.

(2) If a person who –

- (a) having been summoned ~~by the Complaints Committee to attend an inquiry or~~ by an Appeal Board to attend a hearing, without reasonable excuse, refuses or fails to do so;
- (b) attends ~~an inquiry before the Complaints Committee, or~~ a hearing before an Appeal Board, ~~as~~ as a witness and, without reasonable excuse, refuses or fails to answer any question put to him by the ~~Committee or~~ Board; or
- (c) having been required to produce any document or other thing in his possession, without reasonable excuse, refuses or fails to do so,

commits an offence and is liable on conviction to a fine at level 3.

(3) A person who –

- (a) without reasonable excuse, resists, obstructs or delays an authorized officer who is performing or exercising, or attempting to perform or exercise, a function or power under this Ordinance;
- (b) without reasonable excuse, fails to comply with a requirement made to the person under section 17C(1)(d)(i), (e)(i) or (f);
- (c) without reasonable excuse, prevents, or attempts to prevent, another person from assisting an authorized officer in the performance or exercise of the officer's functions or powers under this Ordinance; or
- (d) directly or indirectly, intimidates or threatens an authorized officer or person assisting such an officer in the performance or exercise of the officer's functions or powers under this Ordinance,

commits an offence and is liable on conviction to a fine at level 3.

61A. Prosecution may be brought in Authority's name

Without prejudice to any Ordinance relating to the prosecution of criminal offences or to the powers of the Secretary for Justice in relation to the prosecution of criminal offences, a prosecution for an offence under this Ordinance may be –

- (a) brought in the name of the Authority; and
- (b) commenced and conducted by a member or employee of the Authority authorized in that behalf in writing by the Authority.

14. Fire Service Portable Equipment Fitter	To maintain, inspect and repair portable fire services equipment	Not applicable	Fire service installation contractor class 3 registered under the Fire Service (Installation Contractors) Regulations (Cap. 95 sub. leg.)
15. Gas Installer	To install, commission, maintain and repair domestic and non-domestic gas appliances, gas fittings supply systems, and gas flow control and meters connected to gas cylinders or gas supply points	Not applicable	Gas installer registered to carry out gas installation work under regulation 7(1)(a) of the Gas Safety (Registration of Gas Installers and Gas Contractors) Regulations (Cap. 51 sub. leg.)
16. Grouting Worker	To mix cement or other materials to carry out underground grouting work	Trade test certificate for Grouting Worker issued by CITA	Not applicable