

**立法會**  
**Legislative Council**

LC Paper No. CB(2)2807/02-03(01)

Ref : CB2/PL/MP

**Subcommittee on proposed resolution under section 7 of the Factories and Industrial Undertakings Ordinance**

**Background brief prepared by Legislative Council Secretariat**

**A proposal to amend  
the Construction Sites (Safety) Regulations and Related Regulations**

**Purpose of paper**

This paper gives a summary of the issues and concerns raised by members of the Panel on Manpower on the following four items of regulations under the Factories and Industrial Undertakings Ordinance (Cap. 59) (FIUO) -

- (a) the Construction Sites (Safety) Regulations (Cap. 59 sub. leg. I) ("CSSR");
- (b) the Factories and Industrial Undertakings (Lifting Appliances and Lifting Gear) Regulations (Cap. 59 sub. leg. J);
- (c) the Factories and Industrial Undertakings (Suspended Working Platforms) Regulation (Cap. 59 sub. leg. AC); and
- (d) the Factories and Industrial Undertakings (Loadshifting Machinery) Regulation (Cap. 59 sub. leg. AG).

**Consultation with Panel on Manpower**

2. On 18 December 2002, the Administration briefed the Panel on Manpower on its proposal to amend the four Regulations for the purposes of improving construction site safety performance and removing the ambiguities of some provisions of CSSR. Two main issues, were raised in the course of deliberations. They are the responsibilities of the principal contractors and

subcontractors, and regulations 38A and 44 of CSSR.

### Responsibilities of the principal contractors and subcontractors

3. The Administration informed the Panel that at present, the principal contractors had assumed overall responsibility for the safety and health at work in the whole construction site. In recent years, more developers and authorized persons had directly appointed specialist contractors to undertake specialized work, in parallel to the appointment of the principal contractor. However, the principal contractor was not able to exercise control over the specialist contractors not appointed by him and had difficulty in monitoring their safety and health performance in the construction site. Hence, there was a need to amend CSSR to hold the principal contractors and all other contractors or sub-contractors responsible for safety and health at work in construction sites. If amendments were made to CSSR, then the Regulations referred to in paragraph 1(b) to (d) above, which contained 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, would require consequential amendments.

4. A member expressed concern as to whether it would be possible to identify the responsible party in each and every case of non-compliance with safety requirements in construction sites after the enactment of the proposed amendments. He also asked whether consideration would be given to holding developers to be ultimately responsible for safety offences committed by contractors, a practice which was adopted by the United Kingdom.

5. Another member expressed concern that contractors and subcontractors might take advantage of the construction industry's multi-layered subcontracting system to evade their responsibilities. The right and benefits of workers might be affected as a result. She suggested that the Administration should have due regard to the characteristics of the subcontracting system in the construction industry when finalizing the details of the proposed amendments.

### Regulations 38A and 44 of CSSR

6. The Administration informed the Panel that in the light of a court ruling in an appeal case that regulation 44(1) of CSSR fell outside the enabling powers conferred on the Commissioner of Labour (the Commissioner) by section 7 of FIUO, the Department of Justice had advised that regulation 44(1) of CSSR should be amended to clearly define the elements of offence so that those who were required to regulate their conduct according to CSSR could ascertain what measures, standard or criteria would satisfy the Commissioner. When examining other provisions of FIUO, the Administration identified that regulation 38A should also be amended.

7. A member enquired whether the Administration had considered the feasibility of amending section 7 of FIUO for the purpose of conferring powers on the Commissioner, instead of amending regulations 38A and 44 as proposed.

8. Another member asked whether there were other relevant regulations that needed to be amended on similar ground as that of regulation 44(1). The Administration affirmed that only regulations 44(1) and 38A needed to be amended.

9. The Administration has provided for the Panel's reference a copy of the judgment on the appeal case, HKSAR v Lam Geotechnics Limited, HCMA 379 of 2000 (LC Paper No. CB(2)741/02-03 issued on 20 December 2002).

### **Relevant minutes**

10. Members may wish to refer to the extract from the minutes of the meeting of the Panel on Manpower on 18 December 2002 in the **Appendix** for details of the discussion.

Council Business Division 2  
Legislative Council Secretariat  
10 July 2003

***Extract***

**立法會**  
***Legislative Council***

LC Paper No. CB(2) 913/02-03  
(These minutes have been seen  
by the Administration)

Ref : CB2/PL/MP/1

**Panel on Manpower**

**Minutes of meeting**  
**held on Wednesday, 18 December 2002 at 8:30 am**  
**in Conference Room A of the Legislative Council Building**

**Members present** : Hon CHAN Kwok-keung (Deputy Chairman)  
Hon Cyd HO Sau-lan  
Hon LEE Cheuk-yan  
Dr Hon LUI Ming-wah, JP  
Hon CHAN Yuen-han, JP  
Hon LEUNG Yiu-chung  
Hon YEUNG Yiu-chung, BBS  
Hon Ambrose LAU Hon-chuen, GBS, JP  
Hon Andrew CHENG Kar-foo  
Hon SZETO Wah  
Hon LI Fung-ying, JP  
Hon Michael MAK Kwok-fung  
Hon LEUNG Fu-wah, MH, JP

**Members absent** : Hon LAU Chin-shek, JP (Chairman)  
Hon Kenneth TING Woo-shou, JP  
Hon CHEUNG Man-kwong  
Hon Tommy CHEUNG Yu-yan, JP  
Hon Frederick FUNG Kin-kee

**Public Officers attending** : Item III

Mr Matthew CHEUNG Kin-chung, JP  
Permanent Secretary for Economic Development and Labour (Labour)

Mrs Jenny CHAN, JP  
Assistant Commissioner for Labour (Rights and Benefits)

Item IV

Mr Matthew CHEUNG Kin-chung, JP  
Permanent Secretary for Economic Development and Labour (Labour)

Mr Fred TING Fook-cheung, JP  
Deputy Commissioner for Labour (Occupational Safety and Health)

Mr TSO Sing-hin  
Chief Occupational Safety Officer (Support Services)  
Labour Department

Mr Peter KWAN Ping-kwun  
Acting Chief Occupational Safety Officer (Operations)  
Labour Department

Item V

Mr Philip CHOK, JP  
Deputy Secretary for Education and Manpower

Mr S S KWONG  
Executive Director  
Employees Retraining Board

Mr Gary AU  
Acting Principal Assistant Secretary for Education and  
Manpower

**Clerk in attendance** : Mrs Sharon TONG  
Chief Assistant Secretary (2) 1

**Staff in attendance** : Ms Dora WAI  
Senior Assistant Secretary (2) 4

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**IV. Proposed amendments to Construction Sites (Safety) Regulations**  
(LC Paper No. CB(2)647/02-03(04))

34. PS for EDL(L) briefed members on the proposal to amend the Construction Sites (Safety) Regulation (CSSR) (Cap. 59 sub. leg.) and other related regulations for the purposes of improving construction site safety performance and removing the

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ambiguities of some provisions of the CSSR as detailed in the Administration's paper.

35. Ms Cyd HO noted the Administration's proposal to amend regulation 44(1) of the CSSR in the light of a court ruling in an appeal case that the regulation fell outside the enabling powers conferred on the Commissioner for Labour (the Commissioner) by section 7 of the Factories and Industrial Undertakings Ordinance (FIUO) (Cap. 59). She also noted that regulation 38A(1) of the CSSR would also be amended as similar problem had been found with this regulation. She hoped that the Administration would forward the wording of the proposed amendments to members as soon as possible. In addition, she requested the Administration to provide a copy of the court judgment on the above-mentioned case for members' reference.

*(Post-meeting note : The court judgment provided by the Administration was circulated to members vide LC Paper No. CB(2)741/02-03 on 20 December 2002.)*

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36. Ms Cyd HO enquired whether the Administration had considered the feasibility of amending section 7 of the FIUO for the purpose of conferring greater powers on the Commissioner, instead of amending regulations 38A(1) and 44(1) as proposed. She requested the Administration to provide a copy of the legal advice of the Department of Justice (DoJ) in this respect.

37. Deputy Commissioner for Labour (Occupational Safety and Health) (DC for L(OSH)) said that the wording of the proposed amendments would be available for members' scrutiny when the relevant legislative amendments were introduced into the Legislative Council (the Council). He explained that the proposed amendments to regulations 44(1) and 38A(1) of the CSSR were technical in nature, which aimed at removing the ambiguities therein and making them enforceable. On the advice of DoJ, it was proposed that the qualifying clause "to the satisfaction of the Commissioner" under regulation 44(1) of the CSSR should be deleted.

38. DC for L(OSH) supplemented that apart from the deletion of the qualifying clause, the proposed amendments to regulations 44(1) and 38A(1) also sought to prescribe measures to effectively guard the dangerous parts of machinery, and to prescribe measures to be taken by contractors to ensure the safety of the persons working at height respectively.

39. Mr Andrew CHENG enquired about the details of the proposed amendments to the regulations referred to in paragraph 14(b) of the Administration's paper. He said that he did not understand how the proposed amendments to regulation 44(1) of the CSSR, namely the deletion of the qualifying clause "to the satisfaction of the Commissioner" and the introduction of a clearer definition of the elements of offence, could address the problem of falling outside the scope of section 7 of the FIUO. He also asked whether there were other relevant regulations that needed to be amended on similar ground as that of regulation 44(1).

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40. DC for L(OSH) responded that DoJ had advised that only two regulations under the CSSR, namely regulations 44(1) and 38A(1), would need to be amended. He added that the proposed amendments to the three regulations referred to in paragraph 14(b) of the Administration's paper were different from that of regulation 44(1). The proposed amendments to these three regulations mainly sought to clarify the responsibilities of the principal contractors and the subcontractors.

41. DC for L(OSH) further said that according to the advice of DoJ, the problem of the two regulations in question falling outside the scope of section 7 of FIUO could be addressed by deleting the qualifying clause and prescribing measures to be taken that could achieve the purpose of protecting the safety of workers.

42. In response to Mr LEUNG Fu-wah's enquiry about the details of the problems cited in paragraphs 7 and 8 of the Administration's paper, DC for L(OSH) said that the principal contractor of a construction site had all along assumed overall responsibility for the safety and health of the employees at work in his site. However, in recent years, more developers had directly appointed specialist contractors to undertake specialised work, such as installation of lifts/escalators or air-conditioning facilities, in parallel to the appointment of the principal contractor. The principal contractor was therefore not able to exercise control over these specialist contractors who were not appointed by him and would have difficulties in monitoring their safety and health performance in the construction site.

43. DC for L(OSH) pointed out that the Government had also been facing difficulties in monitoring the safety and health performance in renovation sites as it was common that owners of these sites, or premises, would appoint different specialist contractors to undertake different types of renovation work in these places. In most cases, there was no principal contractor designated to assume the overall responsibility for a renovation project.

44. DC for L(OSH) considered that although the principal contractor should bear the primary responsibility for the coordination of the activities of different contractors and all safety issues on site, subcontractors should also have the obligation to observe relevant safety provisions required by law. The Administration, therefore, considered it necessary and reasonable to amend the CSSR to hold the principal contractor and subcontractors jointly and severally liable for safety offences committed on their own parts. He remarked that the proposed amendments had indeed been made having regard to one of the recommendations put forward by the Construction Industry Review Committee in its report published in early 2001.

45. Mr LEUNG Fu-wah expressed concern as to whether it would be possible to identify the responsible party in each and every case of non-compliance with safety requirements in construction sites after the enactment of the proposed amendments. Noting that developers in the United Kingdom had to take ultimate responsibility for accidents in their construction sites, he asked whether developers in Hong Kong were required to bear similar responsibility. If the answer was in the negative, he suggested that the Administration should consider requiring developers to be ultimately

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responsible for safety offences committed by contractors appointed by them if situation warranted.

46. DC for L(OSH) explained that the CSSR was targeted at contractors working on construction sites who had a responsibility to ensure the safety of the persons working there. Developers would not normally be involved in safety issues in construction sites. He believed that with the proposed amendments in place, contractors and subcontractors would be more alert to the need to comply with statutory safety and health requirements, which would help improve the overall safety performance in construction sites.

47. PS for EDL(L) supplemented that on review of the CSSR, the only inadequacy identified was the unclear responsibility of contractors over construction site safety performance. The proposed amendments would help to clarify their responsibilities under the CSSR. After their enactment, the Administration was confident that the overall safety performance in construction sites would be greatly improved.

48. Miss CHAN Yuen-han said that she was in support of the direction of the proposed amendments. However, she was worried that contractors and subcontractors might take advantage of the construction industry's multi-layered subcontracting system to evade their responsibilities. The rights and benefits of workers might thus be affected. She suggested that the Administration should have due regard to the characteristics of the subcontracting system in the construction industry when finalising the details of the proposed amendments. She considered that a subcommittee should be formed to study the proposed amendments after their introduction into the Council.

49. DC for L(OSH) said that each industrial accident happened in construction sites would be thoroughly investigated by the relevant enforcement departments at the earliest possible time. During the investigation, officers would gather as much information as possible from the contractors and workers concerned and would endeavour to make clear the party/parties that should be held responsible for the accident. So far, the success rate of prosecutions against contractors under the CSSR had been high.

50. DC for L(OSH) added that the subject of subcontracting system in the construction industry was outside the scope of this amendment exercise. However, he understood that the Environment, Transport and Works Bureau had set up a working group to examine in detail matters relating to the subcontracting system in the construction industry.

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