



LABOUR DEPARTMENT (Headquarters)

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By Fax (2877 5029) and Post

29 July 2003

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Legal Service Division
Legislative Council
8 Jackson Road
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Dear Miss Cheng,

Proposed Resolution under Section 7 of Cap. 59

Thank you for your letter of 18 July 2003 on the above resolution. We would like to clarify the following questions raised in your letter.

Regulation 33

In the proposed amendment in regulation 33, we are extending the existing duty imposed on the contractor responsible for a hoist which is operated by means of a winch to the other contractors who have direct control over the same hoist. The use of "the hoist" clearly refers to the hoist mentioned previously. Further, the words "the hoist" is also used in the second line of the existing provision. We, therefore, consider that there is no need to amend the present regulation.

Regulations 35 and 39

The same reasoning in regulation 33 applies.

Regulation 38A

We shall amend regulation 38AA(4) to impose the same duty on the

contractor responsible for the construction site and the contractor who has direct control over the construction work.

Regulation 38D

The use of the word "the" in "the scaffold, ladder, or other means of support" refers to "any scaffold, ladder or other means of support referred to in regulation 38C" mentioned at the beginning of the provision. There is no need to repeat the qualifier again.

Regulations 38F and 39

While it is the duty of both the contractor responsible for the scaffold and the contractor who has direct control over any construction work involving the use of the scaffold to ensure that the scaffold is not used unless it has been inspected by a competent person at regular interval, the competent person need only deliver the report to the contractor responsible for the scaffold and the contractor who employs him to carry out the inspection work. The competent person will not be able to deliver the certificate to all contractors using the scaffold as he may not have the knowledge of these contractors. The same applies to regulation 39. The two regulations will be amended accordingly to reflect the policy intention.

Regulation 40

The duties imposed on the contractor responsible for the construction site and any contractor who has direct control over the excavation or any construction work in the shaft, pit or opening under regulation 40 are the same. The words "into or down the side of which (i.e. the excavation, shaft, pit, or opening in the ground of the construction site) a workman or other person lawfully on the site is liable to fall a distance of more than 2 metres" are used to describe "an excavation, shaft, pit, or opening" mentioned previously. There is no need to repeat the description if we use the word "the" in "any contractor who has direct control over *the* excavation or any construction work in *the* shaft, pit or opening" as it is clear that it refers to the excavation, shaft, pit, or opening mentioned previously. Further, the words "the excavation, shaft, pit, or opening" are also used in subparagraphs (a) and (b) of the existing provision without the need to repeat the description.

Regulation 41

The same reasoning in regulation 40 applies. Further, the words "the excavation, shaft, pit, or opening" are used in subparagraphs (a) and (b) of the existing provisions.

Regulation 41A

The same reasoning in regulation 40 applies.

Regulation 45

It is quite clear that the words "the equipment" refers to "any mechanical equipment" mentioned in the beginning of paragraph (1). The words "the equipment" is also used in the proviso in paragraphs (1) and (2)(a) and (b) of the existing provision. It seems that it is the drafting style of the existing provision to use "the equipment" instead of "the mechanical equipment" if any mechanical equipment is referred to subsequently in the provision. Therefore, the amendment regulation follows the existing drafting style. There is no need to make any amendment.

There is no need to set out the duties of other contractors in separate paragraphs unless the scope of their duties is different. Further, this approach is more comprehensive to the contractors and could better reflect the policy intention. Wherever the duties of the principal contractor and the other contractors are contained in one paragraph, they understand that the same duties are imposed on them and the purpose of the amendment is just to extend the existing duty to the other contractors. If the duties of the principal contractor and the other contractors are imposed by different paragraphs, they understand that apart from extending the duty to other contractors, the scope of the duties imposed on them are different.

Please let me know if I can be of further assistance.

Yours sincerely,

(TSO Sing-hin)
for Commissioner for Labour