

# 立法會

## *Legislative Council*

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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

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### **Council meeting of 26 November 2003**

#### **Proposed resolution under the Factories and Industrial Undertakings Ordinance and the Interpretation and General Clauses Ordinance**

I forward for Members' consideration a proposed resolution which the Secretary for Economic Development and Labour will move at the Council meeting of 26 November 2003 under the Factories and Industrial Undertakings Ordinance and the Interpretation and General Clauses Ordinance. The President has directed that "it be printed in the terms in which it was handed in" on the Agenda of the Council.

2. The draft speech, in both English and Chinese versions, which the Secretary for Economic Development and Labour will deliver when moving the proposed resolution, is also attached.

(Ray CHAN)  
for Clerk to the Legislative Council

Encl.

FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE

AND

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

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**RESOLUTION**

(Under section 7 of the Factories and Industrial Undertakings Ordinance (Cap. 59) and section 35 of the Interpretation and General Clauses Ordinance (Cap. 1))

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CONSTRUCTION SITES (SAFETY) (AMENDMENT) REGULATION 2003

RESOLVED that the Construction Sites (Safety) (Amendment) Regulation 2003, made by the Commissioner for Labour on 28 May 2003, be approved, subject to the following amendments -

(a) in section 15 -

(i) in paragraph (a), by deleting the proposed regulation 38A(1A);

(ii) by adding -

"(aa) in paragraph (3), by repealing "unsafe place on the site" and substituting "place on the site where any hazardous

conditions are present";";

(iii) by deleting paragraph (b) and  
substituting -

"(b) in paragraph (4), by repealing  
"making any place safe if all"  
and substituting "rectifying  
any hazardous conditions if  
all reasonably";";

(iv) by adding -

"(ba) by adding -

"(4A) For the  
purpose of this  
regulation, "hazardous  
conditions" (危險狀況)  
includes the following  
conditions that may give  
rise to a risk of persons  
falling from a height -

- (a) unprotected  
edge or  
opening at a  
place of work;
- (b) improper design  
and  
construction of

a place of work;

(c) inadequate or  
insecure

support or  
anchoring of a  
place of work;

(d) improper  
maintenance of a  
place of work;

(e) any working  
platform (other  
than a suspended  
working  
platform) that  
fails to comply  
with the  
provisions of  
the Third  
Schedule  
applicable to  
it."";

(v) in paragraph (c), in the proposed  
regulation 38A(5) -

(A) in paragraph (a) -

(I) by deleting "(1A)" and  
substituting "(4A)";

(II) by deleting "paragraph  
(1)" and substituting  
"paragraphs (1), (3) and  
(4)";

(B) in paragraph (b), by deleting  
"(1A)" and substituting "(4A)";

(b) in section 16, in the proposed regulation 38AA -

(i) by deleting paragraph (2);

(ii) by renumbering paragraphs (3), (4) and  
(5) as paragraphs (2), (3) and (4)  
respectively;

(iii) by deleting paragraph (3) and  
substituting -

"(3) Subject to paragraph (4),  
any contractor who has direct  
control over any construction work  
shall take suitable and adequate  
steps to ensure that, so far as is  
reasonably practicable, no person  
gains access to any place which is  
within the place of work where the  
construction work is being carried  
out and where any hazardous  
conditions are present.";

(iv) in paragraph (4) -

(A) by deleting "Paragraph (4)" and

substituting "Paragraph (3)";

(B) by deleting "making any place safe" and substituting "rectifying any hazardous conditions";

(v) by adding -

"(5) For the purpose of this regulation, "hazardous conditions" (危險狀況) includes the following conditions that may give rise to a risk of persons falling from a height -

- (a) unprotected edge or opening at a place of work;
- (b) improper design and construction of a place of work;
- (c) inadequate or insecure support or anchoring of a place of work;
- (d) improper maintenance of a place of work;
- (e) any working platform (other

than a suspended  
working platform)  
that fails to  
comply with the  
provisions of the  
Third Schedule  
applicable to  
it.";

(vi) in paragraph (6) -

(A) in paragraph (a) -

(I) by deleting "(2)" and  
substituting "(5)";

(II) by deleting "paragraph  
(1)" and substituting  
"paragraphs (1), (3)  
and (4)";

(B) in paragraph (b), by deleting  
"(2)" and substituting "(5)";

(c) by deleting section 21(b) and substituting -

"(b) in paragraph (3), by adding "and the  
contractor who employs him to carry out  
the inspection" after "the scaffold";";

(d) by deleting section 24(c) and substituting -

"(c) in paragraph (3) (b), by repealing  
"concerned" and substituting  
"responsible for the construction site

concerned and the contractor who employs that person to carry out the examination".";

- (e) in section 34, in the proposed regulation 48(1A)(b), by deleting "remains on the site to carry out the construction work" and substituting "employed to carry out the construction work remains on the site";
- (f) in section 43 -
  - (i) in paragraph (a), by deleting "38AA(1), (3) or (4)" and substituting "38AA(1), (2) or (3)";
  - (ii) in paragraph (b)(v), by deleting "38AA(3) or (4)" and substituting "38AA(2) or (3)";
- (g) in section 44, by deleting "regs. 38A(1A), 38AA(2)" and substituting "regs. 38A(4A), 38AA(5)".



# CONSTRUCTION SITES (SAFETY)(AMENDMENT) REGULATION 2003

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# CONSTRUCTION SITES (SAFETY)(AMENDMENT) REGULATION 2003

(Made under section 7 of the Factories and  
Industrial Undertakings Ordinance  
(Cap. 59) subject to the approval  
of the Legislative Council)

## 1. Interpretation

Regulation 2(1) of the Construction Sites (Safety)

Regulations (Cap. 59 sub. leg. I) is amended -

(a) by repealing the definition of "subcontractor";

(b) by adding -

"direct control" (直接控制), in relation to any  
construction work, process, excavation,  
operation, or erection, substantial  
addition, alteration or dismantling of  
scaffold, means control over the way the  
construction work, process, excavation,  
operation, or erection, substantial  
addition, alteration or dismantling of  
scaffold, as the case may be, is carried  
out;".

## 2. Restriction on employment of persons under 18 years of age on construction sites

Regulation 4A is amended by adding -

"(1A) Any contractor who has direct control over any  
construction work shall ensure that no person under 18 years  
of age is employed to carry out the construction work unless  
that person satisfies one or more of the descriptions set out

in paragraph (1)(a), (b), (c) or (d).".

**3. Construction, maintenance,  
and inspection of hoist**

Regulation 5 is amended -

- (a) in paragraph (1), by adding "and any contractor who has direct control over any construction work which involves the use of the hoist" before "shall";
- (b) in paragraph (2), by adding "and any contractor who has direct control over any construction work which involves the use of the hoist" before "shall".

**4. Cabins for drivers**

Regulation 8 is amended by adding "and any contractor who has direct control over any construction work which involves the use of the hoist" before "shall".

**5. Drums and pulleys**

Regulation 9 is amended -

- (a) in paragraph (1) -
  - (i) by adding "and any contractor who has direct control over any construction work which involves the use of the hoist" before "shall";
  - (ii) by repealing "其吊" and substituting "該吊";
- (b) in paragraph (2), by repealing "contractor" and substituting "contractors".

**6. Brakes, controls, safety devices, etc.**

Regulation 10 is amended -

- (a) in paragraph (1), by adding "and any contractor who has direct control over any construction work which involves the use of the winch" before "shall";
- (b) in paragraph (2), by adding "and any contractor who has direct control over any construction work which involves the use of the hoist" before "shall".

**7. Trained workmen to operate hoist or give signals**

Regulation 20 is amended -

- (a) in paragraph (1), by adding "and any contractor who has direct control over any construction work which involves the use of the hoist" before "shall";
- (b) in paragraph (2), by adding "and any contractor who has direct control over any construction work which involves the use of the hoist" before "shall".

**8. Safety of hoistways, platforms and cages**

Regulation 31 is amended -

- (a) in paragraph (1), by adding "and any contractor who has direct control over any construction work which involves the use of the hoist" before "shall";
- (b) in paragraph (3), by adding "and any contractor who has direct control over any construction work which involves the use of the hoist," before "shall".

**9. Operation of hoists**

Regulation 32 is amended -

(a) in paragraph (1) -

(i) by adding "and any contractor who has direct control over any construction work which involves the use of the hoist" before "shall";

(ii) in subparagraph (a), by repealing "其吊" and substituting "該吊";

(b) in paragraph (2), by adding "and any contractor who has direct control over any construction work which involves the use of the hoist" before "shall".

**10. Winches**

Regulation 33 is amended -

(a) by adding "and any contractor who has direct control over any construction work which involves the use of the hoist" before "shall";

(b) by repealing "其吊" where it twice appears and substituting "該吊".

**11. Safe working load and marking of hoists**

Regulation 34 is amended -

(a) in paragraph (1) -

(i) by adding "and any contractor who has direct control over any construction work

which involves the use of the hoist"

before "shall";

- (ii) by repealing "其吊" where it twice appears and substituting "該吊";

- (b) in paragraph (2), by adding "每名" before "有關的承建商".

## **12. Test and examination of hoists**

Regulation 35 is amended -

- (a) in paragraph (1), by adding "and any contractor who has direct control over any construction work which involves the use of the hoist" before "shall";
- (b) in paragraph (3), by adding "and any contractor who has direct control over any construction work which involves the use of the hoist" before "shall";
- (c) in paragraph (4)(b), by repealing "contractor" and substituting "contractors".

## **13. Carrying of persons prohibited**

Regulation 36 is amended by adding "and any contractor who has direct control over any construction work which involves the use of the hoist" before "shall".

## **14. Loads to be safely secured**

Regulation 38 is amended -

- (a) in paragraph (1), by adding "and any contractor who has direct control over any construction work which

- involves the use of the hoist" before "shall";
- (b) in paragraph (2), by repealing "contractor" and substituting "contractors";
- (c) in paragraph (3), by repealing "contractor" and substituting "contractors";
- (d) in paragraph (4), by repealing "contractor takes" and substituting "contractors take";
- (e) in paragraph (5), by adding "and any contractor who has direct control over any construction work which involves the use of the hoist" before "shall";
- (f) in paragraph (6), by adding "and any contractor who has direct control over any construction work which involves the use of the hoist" before "shall".

**15. Duty of contractor responsible for construction site to ensure safety of places of work**

Regulation 38A is amended -

- (a) by repealing paragraph (1) and substituting -
  - "(1) Without prejudice to the other provisions of this Part, the contractor responsible for any construction site shall, so far as reasonably practicable -
    - (a) identify the hazardous conditions of persons working at a height in the construction site;
    - (b) rectify any hazardous conditions of persons working



at a height in the construction site; and

- (c) safeguard any person working at a height in the construction site against all hazardous conditions.

(1A) For the purpose of paragraph (1), "hazardous conditions" (危險狀況) includes the following conditions that may give rise to a risk of fall of person from height -

- (a) unprotected edge or opening at a place of work;
- (b) improper design and construction of a place of work;
- (c) inadequate or insecure support or anchoring of a place of work;
- (d) improper maintenance of a place of work;
- (e) any working platform (other than a suspended working platform) that fails to comply with the provisions of the Third Schedule applicable to it.";

(b) in paragraph (4), by adding "reasonably" before "practicable";

(c) by adding -

"(5) For the avoidance of doubt, it is

hereby declared that -

- (a) paragraph (1A) does not prejudice the generality of paragraph (1);
- (b) the reference to working platform in paragraph (1A) does not prejudice the operation of the provisions of the Factories and Industrial Undertakings (Suspended Working Platforms) Regulation (Cap. 59 sub. leg. AC) in relation to a working platform which is a suspended working platform."

**16. Regulation added**

The following is added -

**"38AA. Duty of other contractors to ensure safety of places of work**

(1) Without prejudice to the other provisions of this Part, any contractor who has direct control over any construction work shall, so far as reasonably practicable -

- (a) identify the hazardous conditions of persons working at a height in the construction work;
- (b) rectify any hazardous conditions of persons working at a height in the construction work;
- and
- (c) safeguard any person working at a height in

the construction work against all hazardous conditions.

(2) For the purpose of paragraph (1), "hazardous conditions" (危險狀況) includes the following conditions that may give rise to a risk of fall of person from height -

- (a) unprotected edge or opening at a place of work;
- (b) improper design and construction of a place of work;
- (c) inadequate or insecure support or anchoring of a place of work;
- (d) improper maintenance of a place of work;
- (e) any working platform (other than a suspended working platform) that fails to comply with the provisions of the Third Schedule applicable to it.

(3) Any contractor who has direct control over any construction work shall ensure that, so far as is reasonably practicable, suitable and adequate safe access to and egress from every place of work where the construction work is being carried out is provided and properly maintained.

(4) Subject to paragraph (5), any contractor who has direct control over any construction work shall ensure that, so far as is reasonably practicable, no person gains access to any unsafe place which is within the place of work where the construction work is being carried out.

(5) Paragraph (4) shall not apply in relation to a person engaged in work for the purpose of making any place

safe if all reasonably practicable steps have been taken to ensure the safety of that person whilst engaged in that work.

(6) For the avoidance of doubt, it is hereby declared that -

- (a) paragraph (2) does not prejudice the generality of paragraph (1);
- (b) the reference to working platform in paragraph (2) does not prejudice the operation of the provisions of the Factories and Industrial Undertakings (Suspended Working Platforms) Regulation (Cap. 59 sub. leg. AC) in relation to a working platform which is a suspended working platform."

## **17. Prevention of falls**

Regulation 38B is amended -

(a) by adding -

"(1A) Subject to paragraphs (2), (3) and (4), any contractor who has direct control over any construction work shall take adequate steps to prevent any person on any place where the construction work is being carried out from falling from a height of 2 metres or more.";

(b) in paragraphs (2), (4) and (5)(a), by repealing "paragraph (1)" and substituting "paragraphs (1) and (1A)";

(c) in paragraph (3), by repealing "Paragraph (1)" and

substituting "Paragraphs (1) and (1A)".

**18. Safe means of support**

Regulation 38C is amended by adding "and any contractor who has direct control over the work" before "shall" where it first appears.

**19. Construction and maintenance of scaffolds, etc.**

Regulation 38D is amended by adding "and any contractor who has direct control over any work which involves the use of the scaffold, ladder, or other means of support" before "shall" where it first appears.

**20. Trained workmen to erect scaffold under supervision**

Regulation 38E is amended -

(a) by renumbering it as regulation 38E(1);

(b) by adding -

"(2) Any contractor who has direct control over any erection, substantial addition, alteration or dismantling of any scaffold shall ensure that the scaffold is not erected, added to, altered or dismantled except by workmen who are -

(a) adequately trained and possess adequate experience of such work; and

(b) under the immediate supervision

of a competent person.".

**21. Inspection of scaffolds**

Regulation 38F is amended -

- (a) in paragraph (1), by adding "and any contractor who has direct control over any construction work which involves the use of the scaffold" before "shall";
- (b) in paragraph (3), by repealing "contractor responsible for the scaffold" and substituting "contractors concerned";
- (c) in paragraph (4), by repealing "contractor" and substituting "contractors".

**22. Boatswain's chairs (not power operated)**

Regulation 38G is amended -

- (a) by renumbering it as regulation 38G(1);
- (b) by adding -

"(2) Any contractor who has direct control over any construction work shall ensure that no boatswain's chair or similar plant or equipment (not being a boatswain's chair or similar plant or equipment which is raised or lowered by a power-driven lifting appliance) is used in the construction work.".

**23. Defences to regulations 38B(1) and (1A) and 38C**

Regulation 38H(1) is amended by adding "or (1A)" after

"38B(1)".

**24. Safety of excavations, etc.**

Regulation 39 is amended -

- (a) in paragraph (1), by adding "and any contractor who has direct control over the operations" before "shall";
- (b) in paragraph (2), by repealing "contractor" and substituting "contractors";
- (c) in paragraph (3)(b), by repealing "contractor" and substituting "contractors".

**25. Fencing of excavations, etc.**

Regulation 40(1) is amended by adding "and any contractor who has direct control over the excavation or any construction work in the shaft, pit or opening" before "shall".

**26. Safe guarding the edges of excavations, etc.**

Regulation 41 is amended by adding ", and any contractor who has direct control over the excavation or any construction work in the shaft, pit or opening," before "shall".

**27. Requirements for emergency escape**

Regulation 41A is amended by adding "and any contractor who has direct control over the excavation or any construction work in the shaft, tunnel, pit or opening" before ", shall".

**28. Prevention of inhalation of dust and fumes**

Regulation 42 is amended by adding "and any contractor who has direct control over the work" before "shall".

**29. Protection of eyes**

Regulation 43 is amended by adding "and any contractor who has direct control over the process," before "shall".

**30. Fencing of machinery**

Regulation 44 is amended -

(a) by repealing paragraph (1) and substituting -

"(1) The contractor responsible for any prime mover, transmission machinery and other machinery (whether or not driven by mechanical power), and any contractor who has direct control over any construction work which involves the use of the prime mover, transmission machinery and other machinery, shall ensure that -

(a) every flywheel and moving part of the prime mover;

(b) every part of the transmission machinery; and

(c) every dangerous part of the other machinery,

are effectively guarded unless they are in such a position or of such construction as to



be as safe to every workman on the construction site as they would be if they were effectively guarded.

(1A) The reference to effectively guarded in paragraph (1) means effectively guarded by one or more of the following methods -

- (a) an automatic guard;
- (b) subject to paragraph (1B), a fixed guard;
- (c) an interlocking guard;
- (d) a trip guard;
- (e) a two-hand control device.

(1B) An opening may be provided in any fixed guard mentioned in paragraph (1A)(b) in accordance with regulation 6 of the Factories and Industrial Undertakings (Guarding and Operation of Machinery) Regulations (Cap. 59 sub. leg. Q).";

(b) in paragraph (2), by repealing "fenced, the contractor shall ensure that the fencing" and substituting "guarded, the contractors shall ensure that the guarding";

(c) by adding -

"(3) For the purpose of paragraph (1A), "automatic guard" (自動式護罩), "fixed guard" (固定式護罩), "interlocking guard" (互鎖式護罩), "trip guard" (觸覺式護罩) and "two-hand control

device" (雙手控制裝置) have the meanings respectively assigned to them by regulation 2 of the Factories and Industrial Undertakings (Guarding and Operation of Machinery) Regulations (Cap. 59 sub. leg. Q).".

**31. Trained and competent workmen to operate mechanical equipment**

Regulation 45 is amended -

- (a) in paragraph (1), by adding "and any contractor who has direct control over any construction work which involves the use of the equipment" before "shall";
- (b) in paragraph (2), by adding "and any contractor who has direct control over any construction work which involves the use of the equipment" before "shall".

**32. Cleaning of dangerous machinery by young persons**

Regulation 46 is amended -

- (a) by adding -

"(1A) Any contractor who has direct control over any construction work which involves the use of any machinery or plant in the site shall ensure that no young person is permitted to clean any dangerous part of the machinery or plant while the machinery or plant is in motion by the aid of any mechanical power.";

- (b) in paragraph (2), by repealing "paragraph (1)" and

substituting "paragraphs (1) and (1A)".

**33. Use of electricity on construction sites**

Regulation 47 is amended -

(a) by adding -

"(1A) Where workmen employed in carrying out any construction work are liable to come into contact with any live electric cable or apparatus, any contractor who has direct control over the construction work shall, both before the commencement of the work at the site and during its progress, take such measures (whether by rendering the cable or apparatus electrically dead or otherwise) as will prevent them from being endangered by the cable or apparatus.";

(b) by adding -

"(3) Any contractor who has direct control over any construction work at any place where there is any electrically charged overhead cable or apparatus shall take such precautions, by the provision of adequate and suitably placed barriers or other means, as will prevent the cable or apparatus from being a source of danger to workmen carrying out the construction work (whether as a result of lifting appliance coming into contact with the cable or apparatus or otherwise).".

**34. Safety helmets**

Regulation 48 is amended by adding -

"(1A) Any contractor who has direct control over any construction work shall -

- (a) provide each workman employed to carry out the construction work with a suitable safety helmet; and
- (b) take all reasonable steps to ensure that no workman remains on the site to carry out the construction work unless he is wearing a suitable safety helmet."

**35. Protection from falling materials**

Regulation 49 is amended -

- (a) by adding -

"(1A) Where workmen are employed to carry out any construction work, any contractor who has direct control over the construction work shall take such precautions as are necessary to prevent any workman carrying out the construction work from being struck by any falling material or object.";

- (b) in paragraph (2), by repealing "shall take steps to ensure that scaffolding materials, tools, other objects and material are" and substituting ", and any contractor who has direct control over any construction work which involves the use of

scaffolding materials, tools or other objects and materials, shall take steps to ensure that they are";

(c) by adding -

"(4) In any construction work where proper lowering is impracticable or where any part of a building or other structure is being demolished or broken off, any contractor who has direct control over the construction work shall take all reasonable steps as are necessary to protect any workman employed at the site from falling or flying debris.".

### **36. Lighting of working places, etc.**

Regulation 50 is amended by adding "and any contractor who has direct control over any construction work engaged in by that workman" before "shall".

### **37. Projecting nails**

Regulation 51 is amended -

(a) by renumbering it as regulation 51(1);

(b) by adding -

"(2) Any contractor who has direct control over any construction work shall ensure that no timber or material with projecting nails or other sharp objects are used in the construction work or left on the place where the construction work is being carried out if

the nails or objects are a source of danger to workmen employed there.".

**38. Materials kept on construction sites**

Regulation 52 is amended -

(a) by adding -

"(1A) Any contractor who has direct control over any construction work shall ensure that all platforms, gangways, floors, or other places used as passageways to the place where the construction work is being carried out are kept clear of any loose materials which are not required for immediate use.";

(b) in paragraph (2), by adding "and any contractor who has direct control over any construction work which involves the use of the materials that are being kept or stored in the site" before "shall".

**39. Prevention of drowning**

Regulation 52A is amended -

(a) by adding -

"(1A) Where any construction work is carried out on a place situated on, or adjacent to, water into which a workman is liable to fall with risk of drowning, any contractor who has direct control over the construction work shall -

(a) provide suitable rescue equipment and keep it in an efficient state; and

(b) take measures to arrange for the prompt rescue of any such person in danger of drowning.";

(b) in paragraph (2), by adding "and any contractor who has direct control over any construction work on the land, structure or floating stage" before "shall".

**40. Power to prohibit smoking**

Regulation 53(2) is amended by adding "and any contractor who has direct control over any construction work in the site" before "shall".

**41. Maintenance of fire escapes and fire-fighting appliances**

Regulation 54 is amended by adding -

"(1A) Any contractor who has direct control over any construction work shall maintain in good condition and free from obstruction all the means of escape in case of fire and all fire-fighting appliances provided in the place where the construction work is being carried out.".

**42. Information to be furnished to Commissioner**

Regulation 56 is amended by adding -

"(3) For the purpose of this regulation, "subcontractor"

(次承建商) means a person employed by a contractor to perform construction work under a contract for services."

**43. Offences and penalties relating to contractors**

Regulation 68 is amended -

(a) in paragraph (1)(a), by repealing "4A, 5, 8, 9, 10(1) or (2), 20, 31(1) or (3), 32, 33, 34, 35(1) or (3), 36, 38, 38A(1), (2) or (3), 38B(1), 38C, 38D, 38E, 38F(1) or (4), 38G, 39(1) or (2), 40(1), 41, 41A, 42, 43, 44, 45, 46, 47, 48(1), 49, 50, 51, 52, 52A, 53(2), 54(1)," and substituting "4A(1) or (1A), 5(1) or (2), 8, 9(1) or (2), 10(1) or (2), 20(1) or (2), 31(1) or (3), 32(1) or (2), 33, 34(1) or (2), 35(1) or (3), 36, 38(1), (2), (3), (5) or (6), 38A(1), (2) or (3), 38AA(1), (3) or (4), 38B(1) or (1A), 38C, 38D, 38E(1) or (2), 38F(1) or (4), 38G(1) or (2), 39(1) or (2), 40(1), 41, 41A, 42, 43, 44(1) or (2), 45(1) or (2), 46(1) or (1A), 47(1), (1A), (2) or (3), 48(1) or (1A), 49(1), (1A), (2), (3) or (4), 50, 51(1) or (2), 52(1), (1A) or (2), 52A(1), (1A) or (2), 53(2), 54(1) or (1A),";

(b) in paragraph (2) -

(i) in subparagraph (a), by repealing "5, 31(1) or (3), 32, 34, 35(1) or (3), 38, 38E, 38F(1), 39(1) or (2), 41, 41A, 47 or 49" and substituting "5(1) or (2), 31(1) or (3), 32(1) or (2), 34(1) or (2), 35(1) or (3), 38(1), (2), (3), (5) or (6),



- 38E(1) or (2), 38F(1), 39(1) or (2), 41, 41A, 47(1), (1A), (2) or (3), 49(1), (1A), (2), (3) or (4)";
- (ii) in subparagraph (b), by repealing "4A, 8, 9, 10(1) or (2), 20, 33, 42, 43, 44, 45, 46, 48(1), 50, 51, 52, 52A, 53(2) or 54(1)" and substituting "4A(1) or (1A), 8, 9(1) or (2), 10(1) or (2), 20(1) or (2), 33, 42, 43, 44(1) or (2), 45(1) or (2), 46(1) or (1A), 48(1) or (1A), 50, 51(1) or (2), 52(1), (1A) or (2), 52A(1), (1A) or (2), 53(2), 54(1) or (1A)";
- (iii) in subparagraph (d), by repealing "of \$10,000" and substituting "at level 3";
- (iv) in subparagraph (f), by adding ", 38AA(1)" after "38A(1)";
- (v) in subparagraph (g), by repealing "38B(1), 38C, 38D or 38G" and substituting "38AA(3) or (4), 38B(1) or (1A), 38C, 38D, 38G(1) or (2)".

**44. Requirements with which certain safety equipment must comply**

The Third Schedule is amended, within the square brackets, by repealing "reg. 38B(4)" and substituting "regs. 38A(1A), 38AA(2) & 38B(4)".

Fred TING

Commissioner for Labour

28 May 2003

**Explanatory Note**

The purposes of the Regulation are to amend the Construction Sites (Safety) Regulations (Cap. 59 sub. leg. I) to -

- (a) extend the duty imposed on the contractor responsible for a construction site or any plant to any contractor who has direct control over the construction work, process, excavation, operation or erection, substantial addition, alteration or dismantling of scaffold concerned;
- (b) amend regulation 38A to prescribe the specific measures required to ensure the safety of places of work; and
- (c) amend regulation 44 to prescribe the specific measures required to effectively guard a prime mover, transmission machinery and other machinery.



**(Draft)**

**Speech by Secretary for Economic Development and Labour  
in moving the motion on  
Construction Sites (Safety) (Amendment) Regulation 2003  
at the Legislative Council on 26 November 2003**

Madam President,

I move that the Construction Sites (Safety) (Amendment) Regulation 2003 as set out in the motion on the Agenda be approved.

2. The Amendment Regulation made by the Commissioner for Labour on 28 May 2003 under Section 7 of the Factories and Industrial Undertakings Ordinance (“FIUO”) aims to improve the overall safety performance on our construction sites and remove the ambiguity of two provisions of the Construction Sites (Safety) Regulations (“CSSR”) in order to make them enforceable.

3. The Government is committed to enhancing safety at work on construction sites. Through years of concerted efforts by contractors, workers and the Government, there has been significant improvement in the safety performance of the construction industry. In 1998, there were some 19,600 accidents in the industry. The figure dropped by 68% to about 6,200 in 2002. The accident rate of the industry also dropped from 248 per 1,000 workers in 1998 to 85 per 1,000 workers in 2002, a decrease of 66%. Despite this encouraging achievement, we must not be complacent. There is still room for improvement. The Amendment Regulation proposed today aims at further improving the safety performance in the construction industry.

4. Safety at work on construction sites is regulated mainly by the CSSR made under the FIUO. At present, compliance with the CSSR is primarily a matter for the principal contractor. The Regulations stipulate that where there is more than one contractor undertaking construction work on a construction site, the principal contractor is held responsible for the site safety and for any plant located there. Under the CSSR, a principal contractor is held liable for offences committed on the site, even though the contravening acts are

committed by the other contractors. The principal contractor is held primarily responsible for site safety because he should have control over his contractors to ensure that a safe and healthy environment is maintained on the site. But, this may, in some circumstances, absolve other offending contractors and sub-contractors of any responsibility, which is not conducive to improving construction site safety and health.

5. Nowadays, it is common for developers and authorized persons to appoint other contractors directly to undertake specialized work on construction sites, in parallel to the appointment of the principal contractor. In such circumstances, the principal contractor has little control over these contractors not appointed by him and has difficulties in monitoring their safety performance on the construction site. These contractors, as well as all sub-contractors, are not held liable for offences under the current provisions of CSSR.

6. Notwithstanding the above, these other contractors and sub-contractors, as proprietors of industrial undertakings, have a general duty to ensure, as far as is reasonably practicable, the safety and health of their employees under the general duties provision of the FIUO. Where appropriate, they have to observe provisions of the other regulations made under the FIUO. But the general duties on contractors and sub-contractors are not as effective as the CSSR in ensuring safety on construction sites.

7. Safety and health at work on a construction site requires the concerted efforts of all parties involved in the management of the project. While the principal contractor should bear the primary responsibility for the co-ordination of activities of all contractors and all safety matters on site, other contractors and sub-contractors should also have a statutory obligation to observe safety legislation. This will make them more alert to the need to comply with safety requirements and will help improve the overall safety performance on construction sites.

8. We, therefore, recommend amending the CSSR to extend the duties imposed on the principal contractor to other contractors and sub-contractors who have direct control over any construction work on a construction site. In the Amendment Regulation, direct control is defined to mean the control of the way the work is carried out. Those contractors and sub-contractors who have

control over the way any construction work is carried out will also be liable for offences committed in carrying out the work.

9. I wish to emphasize that the proposed amendments will not diminish the existing responsibility of the principal contractor for the overall safety and health at work on a construction site. The amendments aim to impose sanction on key stakeholders in an equitable manner for failing to comply with the CSSR. When an offence is discovered, we will identify and prosecute only the parties responsible.

10. Today's proposed amendments are in line with the recommendations of the Construction Industry Review Committee. The Committee, in its report published in early 2001, recommended that the CSSR should be amended to enable prosecution action to be brought against sub-contractors for non-compliance with safety requirements in operations under their direct control.

11. The proposed amendments will not bring about increased costs to the construction industry. Principal contractors' duties to ensure safety and health at work on construction sites remain unchanged. As for contractors and sub-contractors, they already have a general duty to ensure the safety and health of their employees under the FIUO, the compliance costs incurred from the amendments will be minimal. Furthermore, the amendments will not affect contractors' obligations under the Employees' Compensation Ordinance, Cap. 282.

12. On a separate note, a technical problem has been found in Regulations 38A(1) and 44(1) of the CSSR, which we would like to address. In an appeal case, the Court of First Instance ruled that Regulation 44(1) of the CSSR fell outside the enabling powers conferred on the Commissioner for Labour (the Commissioner) by the FIUO. Regulation 44(1) requires, among others, a contractor responsible for a machine to securely fence its dangerous parts to the satisfaction of the Commissioner. The Court ruled that the elements of the offence purportedly set out in the Regulation are incompletely defined because of the uncertainty in the words "to the satisfaction of the Commissioner". Those who are required to regulate their conduct according to the Regulation cannot

ascertain, before a prosecution is brought, what fencing measure will satisfy the Commissioner.

13. In the light of this ruling, we have examined other provisions of the CSSR and found that Regulation 38A(1) has a similar problem. Regulation 38A(1) imposes a general duty on the contractor responsible for a construction site to “ensure every place of work on the site is, so far as is reasonably practicable, made and kept safe for any person working there”. The Regulation, however, does not specify any means for ensuring safety. We consulted the Department of Justice and were advised that this Regulation also fell outside the empowering provision of the FIUO.

14. We recommend amending Regulations 38A(1) and 44(1) to prescribe measures for achieving the goal set down in the respective Regulations so as to make them enforceable. The proposed amendments are only technical in nature and will not impose additional operating costs on the industry.

15. We propose that the Amendment Regulation comes into effect immediately after enactment.

16. We originally intended to move the motion on this Amendment Regulation on 18 June 2003. However, the Legislative Council House Committee decided at its meeting on 6 June 2003 to form a Subcommittee to examine the resolution. I would like to take this opportunity to thank the Chairman, Honourable Cyd HO Sau-lan and members of the Subcommittee for putting forth useful comments and constructive suggestions in examining the Amendment Regulation. We have made some amendments to the Amendment Regulation and were supported by the Subcommittee. We consulted the Legislative Council Panel on Manpower and the Labour Advisory Board and they were also supportive of the proposed amendments. I now urge Honourable Members to support my motion and pass the Amendment Regulation.

17. Madam President, I beg to move.