

Chapter:	59	FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE	Gazette Number	Version Date
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		Long title		30/06/1997
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To amend the law, relating to factories and industrial undertakings and to the employment of women, young persons and children therein.

[29 September 1955]

(Originally 34 of 1955)

Section:	1	Short title		30/06/1997
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This Ordinance may be cited as the Factories and Industrial Undertakings Ordinance.

Section:	2	Interpretation	53 of 1999	23/07/1999
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Remarks:

Adaptation amendments retroactively made - see 54 of 2000 s. 3

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

"approved code" (認可守則) means a code of practice issued under section 7A; (Added 81 of 1993 s. 2)

"bodily injury" (身體傷害) includes injury to health;

"child" (兒童) has the meaning assigned to it in the Employment Ordinance (Cap 57); (Replaced 55 of 1979 s. 2)

"Commissioner" (處長) means the Commissioner for Labour holding office under the Occupational Safety and Health Ordinance (Cap 509), and-

- (a) includes any person who is acting in that office; and
- (b) in relation to the exercise or performance of a particular function conferred or imposed on the Commissioner by or under this Ordinance, also includes (subject to section 3) any person authorized to exercise or perform the function; (Replaced 39 of 1997 s. 48)

"construction work" (建築工程) means-

- (a) the construction, erection, installation, reconstruction, repair, maintenance (including redecoration and external cleaning), renewal, removal, alteration, improvement, dismantling, or demolition of any structure or works specified in the Third Schedule;
- (b) any work involved in preparing for any operation referred to in paragraph (a), including the laying of foundations and the excavation of earth and rock prior to the laying of foundations;
- (c) the use of machinery, plant, tools, gear, and materials in connexion with any operation referred to in paragraph (a) or (b); (Added 52 of 1973 s. 2)

"container" (貨櫃) means an article of transport equipment-

- (a) of a permanent character and accordingly strong enough to be suitable for repeated use;
- (b) specially designed to facilitate the transport of goods, by one or more modes of transport, without intermediate reloading;
- (c) designed to be secured or readily handled or both and having corner fittings for these purposes; and
- (d) of a size such that the area enclosed by the 4 outer bottom corners is either-
 - (i) at least 14 square metres; or
 - (ii) at least 7 square metres if it is fitted with top corner fittings; (Added 32 of 1992 s. 2)

"container handling" (貨櫃處理作業) means the loading, unloading, handling, stacking, unstacking, storing or maintaining (including repairing) of containers; (Added 53 of 1999 s. 2)

"contractor" (承建商), in relation to construction work, means any person or firm engaged in carrying out construction work by way of trade or business, either on his own account or pursuant to a contract or arrangement entered into with another person, including the State or any public body; (Added 52 of 1973 s. 2. Amended 54 of 2000 s. 3)

"corner fittings" (夾角接頭) means an arrangement of apertures and faces either at the top or at the bottom or both at the top and the bottom of a container for the purposes of handling, stacking and securing or any of these purposes; (Added 32 of 1992 s. 2)

"court" (法庭) includes a magistrate; (Added 81 of 1993 s. 2)

"dangerous trade" (危險行業) means any trade, process or occupation specified in the First Schedule;

"factory" (工廠) means any premises or place, (other than a mine or quarry), in which articles are manufactured, altered, cleansed, repaired, ornamented, finished, adapted for sale, broken up or demolished or in which materials are transformed, and within the close or curtilage or precincts of which- (Amended 4 of 1969 s. 2)

- (a) any machinery other than machinery worked entirely by hand is used; or
- (b) 20 or more persons are employed in manual labour; (Replaced 37 of 1983 s. 2)

"function" (職能) includes a power and a duty; (Added 39 of 1997 s. 48)

"industrial undertaking" (工業經營) includes-

- (a) any factory;
- (b) any mine or quarry; (Amended 4 of 1969 s. 2)
- (c) any industry in which articles are manufactured, altered, cleansed, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including shipbuilding;
- (d) the generation, transformation, and transmission of electricity or motive power of any kind;
- (e) any construction work; (Replaced 52 of 1973 s. 2)
- (f) the loading, unloading, or handling of goods or cargo at any dock, quay, wharf, warehouse or airport; (Replaced 52 of 1973 s. 2. Amended 73 of 1977 s. 2)
- (fa) container handling; (Replaced 53 of 1999 s. 2)
- (g) the carriage of coal, building materials, or debris; (Added 52 of 1973 s. 2)
- (h) the transport of passengers or goods by road, rail, cableway or aerial ropeway; (Replaced 19 of 1976 s. 32. Amended 77 of 1990 s. 2)
- (ha) the preparation of food for consumption and sale on the premises where it is prepared; (Added 77 of 1990 s. 2)
- (i) any premises or site in or upon which, and the machinery, plant, tools, gear and materials with which, any of the foregoing industrial undertakings is carried on; (Added 37 of 1978 s. 2)

"mine" (礦場) means any works or system of works for the extraction of minerals from the earth; (Replaced 4 of 1969 s. 2)

"mineral" (礦物) includes-

- (a) metalliferous ores and other substances in their natural state which are obtainable only by mining or in the course of prospecting operations;
- (b) metalliferous ores and other substances in their natural state mined or obtained in the course of prospecting operations;
- (c) the valuable parts of such ores or other substances when unmanufactured;
- (d) the product of treating or dressing such ores or other substances for marketing or export; and
- (e) kaolin,

but does not include-

- (i) any clay other than kaolin;
- (ii) granite, porphyry, limestone or sand;
- (iii) any common mineral substance which the Chief Executive by notice in the Gazette under the Mining Ordinance (Cap 285) has declared not to be a mineral for the purposes of the provisions of that Ordinance other than section 3 thereof; or (Amended 54 of 2000 s. 3)
- (iv) any mineral oil; (Added 4 of 1969 s. 2)

"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. I); (Added 50 of 1985 s. 2)

"occupational safety officer" (職業安全主任) has the same meaning as in the Occupational Safety and Health

Ordinance (Cap 509); (Added 39 of 1997 s. 48)

"prohibition notice" (禁止通知書) means a notice issued under section 9A(1); (Added 50 of 1985 s. 2)

"proprietor" (東主) in relation to any industrial undertaking or notifiable workplace includes the person for the time being having the management or control of the business carried on in such industrial undertaking or notifiable workplace and includes a body corporate and a firm and also the occupier of any industrial undertaking or notifiable workplace and the agent of such occupier; (Amended 50 of 1985 s. 2; 71 of 1989 s. 2)

"quarry" (石礦場) means any works or system of works the principal purpose of which is to extract from the earth for commercial purposes any granite, porphyry or limestone; (Added 4 of 1969 s. 2)

"scheduled trade" (附表所列行業) means any trade, process or occupation specified in the Second Schedule;

"young person" (青年) has the meaning assigned to it in the Employment Ordinance (Cap 57). (Replaced 55 of 1979 s. 2)

(Amended 39 of 1997 s. 48)

(2) A woman, young person or child who works in an industrial undertaking, whether for wages or not, either in a process or in cleaning any part of the industrial undertaking used for any process, or in cleaning or oiling any part of the machinery or plant, or in any other kind of work whatsoever incidental to or connected with the process, or connected with the article made or otherwise the subject of the process therein, shall be deemed to be employed therein for the purposes of this Ordinance or any proceedings thereunder. (Added 51 of 1961 s. 2)

(3) None of the provisions of this Ordinance shall apply to- (Amended 73 of 1977 s. 2; 11 of 1980 s. 2)

- (a) any undertaking which is not carried on by way of trade or for purposes of gain; or
- (b) any agricultural operation. (Amended 77 of 1990 s. 2)
- (c) (Repealed 77 of 1990 s. 2)

(Amended 50 of 1985 s. 2)

Section:	3	Certain functions to be exercised or performed by Commissioner personally		30/06/1997
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The functions conferred or imposed on the Commissioner by sections 4(2) and (2A), 7(1) to (3), 7A and 8 may be exercised or performed only by the Commissioner personally.

(Replaced 39 of 1997 s. 48)

Section:	4	Powers of officers	32 of 2000	09/06/2000
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(1) An occupational safety officer may exercise the following powers- (Replaced 10 of 1965 s. 4. Amended 73 of 1977 s. 4; 71 of 1989 s. 4; 39 of 1997 s. 48)

- (a) to enter, inspect and examine at all reasonable times, by day and night, any premises or place in which he knows or has reasonable cause to believe that an industrial undertaking is being carried on;
- (b) (Repealed 73 of 1977 s. 4)
- (c) to require the production of any register or other document required to be kept under this Ordinance and inspect, examine and copy the same;
- (d) to make such examination and inquiry as may be necessary to ascertain whether the requirements of this Ordinance are complied with, and seize anything which may appear to be evidence of an offence against this Ordinance;
- (e) to examine, either alone or in the presence of any other person, as he thinks fit, respecting matters under this Ordinance, any person whom he finds in any industrial undertaking, or whom he has reasonable cause to believe has been within the preceding 2 months employed in any industrial undertaking, or require any such person to be so examined and to sign a declaration of the truth of the matters respecting which he has been so examined; (Amended 4 of 1969 s. 4)
- (f) to require any person who employs or has employed any woman, young person or child in an industrial undertaking or any agent or servant of any such employer to give to him all information in the possession of such person, agent or servant with reference to such woman, young person or child and to the labour conditions and treatment of every woman, young person and child employed by such employer;
- (g) to remove and detain for inquiries in a place of refuge appointed under any Ordinance for the time

being in force relating to women, young persons or children any young person or child whom he finds in any place in or in respect of which he has reasonable cause to suspect that an offence against this Ordinance has been committed;

(h) to require the posting up, in such place and manner and for such period as he may direct, of any notice in connection with the provisions of this Ordinance or any matter related to the manufacture carried out, or machinery, plant, process or persons employed in any industrial undertaking; and (Amended 11 of 1980 s. 3)

(i) any other powers which may be conferred by any regulation made under this Ordinance.

(2) Any Health Officer, any officer of the Fire Services Department with the written authority of the Director of Fire Services and any officer specially authorized by the Commissioner may, subject to such directions as the Commissioner may impose, at any time enter and inspect any industrial undertaking for the purpose of ascertaining whether the requirements of this Ordinance are complied with. (Amended 42 of 1961 s. 2; 4 of 1969 s. 4; 39 of 1997 s. 48)

(2A) An officer exercising any power conferred on him by subsection (1) may take with him any person, whether a public officer or not, whom he may reasonably need to assist him in carrying out his duties under this Ordinance and in particular may, for his assistance, take persons who have been engaged by the Commissioner, on account of their special expertise, to advise the Commissioner on the safety and health of persons employed in industrial undertakings. (Added 73 of 1977 s. 4; 39 of 1997 s. 48)

(2B) A person who accompanies an officer pursuant to subsection (2A)-

(a) may give to the officer such assistance in the exercise of any power conferred on him by subsection (1) as the officer may reasonably require;

(b) shall be deemed to be a public officer for the purposes of section 6. (Added 73 of 1977 s. 4. Amended 32 of 2000 s. 48)

(3) The powers conferred by this Ordinance on any officer shall be in addition to and not in substitution for any other powers which such officer may possess.

Section:	5	(Repealed 39 of 1997 s. 48)		30/06/1997
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(Repealed 39 of 1997 s. 48)

Section:	6	Employment not to be terminated, etc. by reason of fact that employee has given evidence in proceedings under Ordinance, etc.		30/06/1997
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No employer shall terminate, or threaten to terminate, the employment of, or in any way discriminate against, any of his employees by reason of the fact that the employee has-

(a) given evidence, or agreed to give evidence, in any proceeding for the enforcement of any of the provisions of this Ordinance; or

(b) given information to a public officer in any inquiry made by such officer for the purposes of or in connection with the enforcement of any of the provisions of this Ordinance.

(Added 51 of 1961 s. 3. Amended 4 of 1969 s. 5)

Section:	6A	General duties of a proprietor		30/06/1997
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(1) It shall be the duty of every proprietor of an industrial undertaking to ensure, so far as is reasonably practicable, the health and safety at work of all persons employed by him at the industrial undertaking.

(2) Without prejudice to the generality of a proprietor's duty under subsection (1), the matters to which that duty extends include in particular-

(a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;

(b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;

(c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of all persons employed by him at the industrial undertaking;

(d) so far as is reasonably practicable as regards any part of the industrial undertaking under the proprietor's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks; and

(e) the provision and maintenance of a working environment for all persons employed by him at the industrial undertaking that is, so far as is reasonably practicable, safe, and without risks to health.

(3) Subject to subsection (4), a proprietor of an industrial undertaking who contravenes this section commits an offence and is liable to a fine of \$500000. (Amended 40 of 1997 s. 2)

(4) A proprietor of an industrial undertaking who contravenes this section wilfully and without reasonable excuse commits an offence and is liable to a fine of \$500000 and to imprisonment for 6 months. (Amended 40 of 1997 s. 2)

(Added 71 of 1989 s. 5. Amended 81 of 1993 s. 3)

Section:	6B	General duties of persons employed		30/06/1997
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(1) It shall be the duty of every person employed at an industrial undertaking while at work-

(a) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and

(b) as regards any duty or requirement imposed on a proprietor of the industrial undertaking or on any other person by this Ordinance for securing the health and safety of persons employed at the industrial undertaking, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 4. (Amended 40 of 1997 s. 3)

(3) A person employed at an industrial undertaking who wilfully and without reasonable excuse does anything while at work likely to endanger himself or other persons commits an offence and is liable to a fine of \$50000 and to imprisonment for 6 months. (Amended 81 of 1993 s. 4)

(Added 71 of 1989 s. 5)

Section:	6BA	Proprietor of relevant industrial undertaking not to employ, etc. relevant person who does not have relevant certificate	53 of 1999	23/07/1999
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(1) In this section-

"appointed day" (指定日期) means the day appointed under subsection (17);

"certificate" (證明書) means a certificate referred to in subsection (2);

"relevant certificate" (有關證明書), in relation to a relevant person employed at a relevant industrial undertaking, means the certificate issued to the person in respect of his attendance at the relevant safety training course which relates to that undertaking;

"relevant industrial undertaking" (有關工業經營) means an industrial undertaking the subject of a notice under subsection (2);

"relevant person" (有關人士), in relation to a relevant industrial undertaking, means a person the subject of a notice under subsection (2) in the case of that undertaking;

"relevant safety training course" (有關安全訓練課程), in relation to a relevant person, means the safety training course the subject of a notice under subsection (2) in the case of the class of persons to which that person belongs.

(2) The Commissioner may, by notice in the Gazette, or by notice in writing published in such other manner as the Commissioner thinks fit, recognize a safety training course-

(a) for a class of persons-

(i) employed at an industrial undertaking specified in column 1 of the Fourth Schedule; and

(ii) belonging to the persons specified opposite the undertaking in column 2 of that Schedule; and

(b) in respect of which a certificate is issued to a person who attends the course.

(3) A certificate issued to a person who attends a safety training course which is subsequently recognized under subsection (2) shall, unless otherwise provided in the notice under that subsection recognizing the course, for the

purposes of this Ordinance have the same effect as a certificate issued to a person who attends the course on or after the day on which the course is so recognized.

- (4) Where the Commissioner is satisfied that a relevant person has undergone training-
 - (a) equivalent to the training provided by a relevant safety training course; and
 - (b) of a standard not less than the standard of the training provided by that course,then-
 - (i) the Commissioner may issue or cause to be issued to the person a certificate in the same terms as the certificate that would have been issued to the person if he had attended that course; and
 - (ii) the certificate so issued shall, for the purposes of this Ordinance, have the same effect as a certificate issued to a person who has attended that course.
- (5) On and after the appointed day, every proprietor of a relevant industrial undertaking-
 - (a) shall not employ at the undertaking a relevant person who has not been issued a relevant certificate or whose relevant certificate has expired;
 - (b) in the case of a relevant person employed at the undertaking-
 - (i) immediately before that day who has not been issued a relevant certificate or whose relevant certificate has expired, shall cease to continue to employ the person at the undertaking on the expiration of 1 month after that day unless, before that expiration, the person has been issued a relevant certificate;
 - (ii) on or after that day whose relevant certificate expires during the course of his employment, shall cease to continue to employ the person at the undertaking on the expiration of 1 month after the expiration of the certificate unless, before the expiration of that month, the person has been issued a relevant certificate.
- (6) A certificate shall expire on-
 - (a) the day specified in the certificate, being a day not less than 1 year, and not more than 3 years, after the day on which the certificate was issued;
 - (b) if no such day is specified, on the expiration of 3 years after the day on which the certificate was issued.
- (7) On and after the appointed day, it shall be the duty of every relevant person employed at a relevant industrial undertaking who has been issued a relevant certificate which has not expired to-
 - (a) carry the certificate with him while at work at the undertaking;
 - (b) produce the certificate upon demand by-
 - (i) subject to paragraph (c), the proprietor of the undertaking or an agent of the proprietor authorized by the proprietor for the purpose; or
 - (ii) subject to paragraph (d), an occupational safety officer;
 - (c) if unable to comply with a demand under paragraph (b)(i), make a statement-
 - (i) subject to subparagraph (ii), in a register kept by the proprietor of the undertaking under subsection (8), that he has been issued the certificate and the certificate has not expired and containing such other particulars as are required by the register; and
 - (ii) if and only if he has not made a like statement in that register on the day immediately preceding the day on which that demand is made;
 - (d) if unable to comply with a demand under paragraph (b)(ii), produce the certificate at a place and within a period-
 - (i) specified by the occupational safety officer who made the demand; and
 - (ii) which are reasonable in all the circumstances.
- (8) On and after the appointed day, every proprietor of a relevant industrial undertaking shall-
 - (a) establish and maintain a register or registers for the purposes of subsection (7)(c) in such form as is specified by the Commissioner;
 - (b) not cause or permit any statement referred to in subsection (7)(c) made in any such register to be removed therefrom at any time before the expiration of 18 months from the date on which the statement was made in the register.
- (9) Where a relevant certificate which has not expired has been lost, defaced or destroyed, the relevant person to whom it was issued shall, unless he has ceased to be employed at a relevant industrial undertaking, as soon as is reasonably practicable make an application to the Commissioner to be issued a replacement relevant certificate in the same terms (and any such application may consist of, or require the accompaniment of, a statutory declaration made by the person as to the loss, defacement or destruction of the certificate).

(10) The Commissioner shall issue or cause to be issued a replacement relevant certificate pursuant to an application under subsection (9) upon being satisfied that the relevant certificate which it will replace has in fact been lost, defaced or destroyed.

(11) A replacement relevant certificate issued pursuant to an application under subsection (9) shall, for the purposes of this Ordinance, have the same effect as the relevant certificate which it replaces.

(12) Subject to subsection (13), a proprietor who contravenes subsection (5) commits an offence and is liable to a fine at level 5.

(13) It shall be a defence to a prosecution for an offence under subsection (12) for the proprietor to show that he believed, and that it was reasonable for him to believe, that the relevant person to whom the offence relates had been issued with a relevant certificate and that the certificate had not expired.

(14) A relevant person employed at a relevant industrial undertaking who-

(a) makes a statement referred to in subsection (7)(c); and

(b) is not a person who has been issued a relevant certificate which has not expired at the time of making that statement,

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

(15) A relevant person who, without reasonable excuse, contravenes subsection (7)(d) commits an offence and is liable to a fine at level 3.

(16) A proprietor who contravenes subsection (8) commits an offence and is liable to a fine at level 3.

*(17) The Secretary for Education and Manpower may, by notice in the Gazette, appoint a day for the purposes of subsections (5), (7) and (8).

(18) A notice under subsection (17) is subsidiary legislation.

(19) For the avoidance of doubt, it is hereby declared that subsection (5)(b) shall not operate to entitle an employer to terminate the contract of employment of an employee otherwise than in accordance with the provisions of the Employment Ordinance (Cap 57) in the case of an employee within the meaning of section 2(1) of that Ordinance.

(Added 53 of 1999 s. 3)

Note:

* **1 May 2001 was the day appointed under this subsection - see Cap 59 sub. leg. AH.**

Section:	6C	Meaning of "at work" (工作時)	53 of 1999	23/07/1999
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For the purposes of sections 6A, 6B and 6BA, a person is at work throughout the time when he is in the course of employment, but not otherwise.

(Added 71 of 1989 s. 5. Amended 53 of 1999 s. 4)

Section:	7	Power of Commissioner to make regulations, etc.	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

- (1) The Commissioner may in respect of industrial undertakings by regulation prescribe or provide for-
 - (a) prohibiting or controlling the employment of all persons or any class of persons in dangerous trades or scheduled trades;
 - (b) prohibiting or controlling the employment of women, young persons and children in industrial undertakings, and requiring registers to be kept of women, young persons and children employed in industrial undertakings;
 - (c) imposing obligations for securing compliance with the provisions of this Ordinance upon persons who employ women, young persons or children in industrial undertakings and upon the agents and servants of such persons;
 - (d) defining the duties and powers of all officers appointed under section 3; (Amended 10 of 1965 s. 5)
 - (e) exempting any industrial undertaking from the operation of this Ordinance or any part thereof;
 - (f) the forms to be used for the purposes of this Ordinance and the manner of publishing such forms; (Replaced 50 of 1985 s. 3)
 - (g) means of securing hygienic conditions;

- (h) means of ensuring the safety of persons in industrial undertakings and of relieving persons suffering from the effects of accidents in industrial undertakings; (Replaced 4 of 1969 s. 6)
 - (i) means of securing the removal of any danger or defect;
 - (j) requiring notifications to be made in relation to accidents and such dangerous occurrences as may be specified in the regulations;
 - (k) precautions to be taken against fire and providing for means of escape from fire;
 - (l) the taking for purposes of analysis of samples of materials or substances used or handled;
 - (m) requiring notifications to be made in relation to the occurrence amongst person who have been or are employed in industrial undertakings of such diseases as may be specified in such regulations;
 - (n) requiring the medical inspection by a Health Officer or by a medical practitioner employed by the proprietor of the industrial undertaking concerned of any person or of any class of person employed or intended to be employed in any industrial undertaking, and the keeping of records of any such inspections; (Amended 4 of 1969 s. 6)
 - (o) imposing duties on proprietors, contractors and persons employed; (Amended 52 of 1973 s. 3)
 - (oa) without prejudice to the generality of paragraph (o), requiring proprietors and contractors (including any class of proprietors and contractors)-
 - (i) to develop, implement and maintain any management system that relate to the safety of personnel in their industrial undertakings;
 - (ii) to prepare and revise safety policy statements in relation to the general safety policy of their industrial undertakings and make such statements available to persons employed;
 - (iii) to establish safety committees to identify, recommend and review measures to improve the safety and health of persons employed;
 - (iv) to employ, or otherwise use the services of, persons specified in regulations made under this section to assess the effectiveness of any management system referred to in subparagraph (i) as implemented; (Added 53 of 1999 s. 5)
 - (ob) in relation to any registration of persons referred to in paragraph (oa)(iv) or who operate schemes to train those persons (including any class of those persons)-
 - (i) the keeping of a register;
 - (ii) the specification of conditions (including requirements) for registration;
 - (iii) the recognition by the Commissioner of any scheme having regard to the scheme operator;
 - (iv) the better and more effectual carrying out of the scheme of registration; (Added 53 of 1999 s. 5)
 - (oc) means of assessing by the Commissioner the performance of persons referred to in paragraph (ob); (Added 53 of 1999 s. 5)
 - (od) the appointment of a disciplinary board panel and a disciplinary board by the Secretary for Labour and Welfare with- (Amended L.N. 106 of 2002; L.N. 130 of 2007)
 - (i) all such powers that are necessary for the purposes of conducting any hearing before the board;
 - (ii) power to exonerate or discipline the person concerned (including the power of cancellation of registration, suspension of registration, the imposition of a fine not exceeding \$10000 or reprimanding the person concerned);
 - (iii) power to make any order with respect to costs; (Added 53 of 1999 s. 5)
 - (oe) decisions in relation to which appeals may be made to the Administrative Appeals Board (including consequentially amending the Schedule to the Administrative Appeals Board Ordinance (Cap 442)); (Added 53 of 1999 s. 5)
 - (p) generally, carrying into effect the provisions of this Ordinance.
- (2) (a) Where the Commissioner is satisfied that any manufacture, machinery, plant, process or description of manual labour, used in industrial undertakings is of such a nature as to cause risk of bodily injury to persons employed in connection therewith, or any class of those persons, he may, without prejudice to the generality of the power to make regulations under subsection (1), make such special regulations as appear to him to be reasonably practicable and to meet the necessity of the case and is particular such special regulations may-
- (i) prohibit or control the employment of all persons or any class of persons in connection with any manufacture, machinery, plant, process, or description of manual labour; or
 - (ii) prohibit or control the use of any material or process;
- and may impose duties on proprietors, contractors, employed persons and other persons. (Amended 52 of 1973 s. 3)

(b) Special regulations so made may apply to all industrial undertakings in which the manufacture, machinery, plant, process, or description of manual labour is used or to any specified class or description of such undertaking, and may provide for the exemption of any specified class or description of undertaking either absolutely or subject to conditions.

(3) All regulations made by the Commissioner shall be submitted to the Chief Executive, and shall be subject to the approval of the Legislative Council. (Amended 54 of 2000 s. 3)

(4) The Commissioner in such cases as he shall think fit may, for such period and subject to such conditions as he may specify, exempt any industrial undertaking from any regulation made under this Ordinance and the Commissioner, or any officer authorized in writing by him, may order the adoption of special precautions in addition to any precautions required by any regulation made under this Ordinance. (Amended 7 of 1959 s. 2; 4 of 1969 s. 6; 6 of 1994 s. 36)

(4A) Any person aggrieved by an exemption or order made under subsection (4) may, within 28 days of being notified of such exemption or order, appeal to the Administrative Appeals Board. (Added 6 of 1994 s. 36)

(5) Regulations made under this section may provide that contravention of specified provisions of such regulations shall be an offence and may provide penalties therefor:

Provided that no penalty so provided shall exceed a fine of \$200000 and imprisonment for 12 months. (Amended 52 of 1973 s. 3; 57 of 1980 s. 2; 71 of 1989 s. 6; 81 of 1993 s. 5)

(Amended 39 of 1997 s. 48)

Section:	7A	Codes of practice		30/06/1997
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(1) For the purpose of providing practical guidance in respect of any one or more of the requirements of this Ordinance or of regulations under this Ordinance, the Commissioner may issue such codes of practice (whether prepared by the Commissioner or not) as the Commissioner considers appropriate.

(2) The Commissioner may amend or revoke a code of practice issued by him under subsection (1).

(3) Where the Commissioner exercises a power under subsection (1) or (2), he shall as soon as may be reasonably practicable publish notice thereof in the Gazette and the notice shall be in such form as the Commissioner considers appropriate.

(4) A failure by any person to observe a provision of an approved code shall not of itself cause him to incur any criminal liability, but where-

(a) in any criminal proceedings the defendant is alleged to have committed an offence either-

(i) by reason of a contravention of or a failure to comply with, whether by act or omission, this Ordinance or regulations under this Ordinance; or

(ii) by reason of a failure to discharge or perform a duty imposed by this Ordinance or such regulations; and

(b) the matter to which the alleged contravention or failure relates is one to which, in the opinion of the court, an approved code relates,

then subsection (5) shall apply as regards the proceedings.

(5) In any criminal proceedings to which this subsection applies, the following, namely-

(a) compliance with a provision of an approved code found by the court to be relevant to a matter to which a contravention or failure alleged in the proceedings relates;

(b) a contravention or failure to comply with, whether by act or omission, any such provision so found, may be relied on by any party to the proceedings as tending to establish or to negative any liability which is in question in the proceedings.

(6) In any criminal proceedings, any document which purports to be a copy of a particular approved code shall, in the absence of evidence to the contrary, be regarded by the court as being a true copy of that code.

(Added 81 of 1993 s. 6)

Section:	8	Commissioner may amend the Schedules	53 of 1999	23/07/1999
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(1) The Commissioner may by notice published in the Gazette amend the First, Second or Third Schedule. (Amended 53 of 1999 s. 6)

(2) The Commissioner may, by notice in the Gazette and subject to the approval of the Legislative Council, amend the Fourth Schedule. (Added 53 of 1999 s. 6)

(Replaced 81 of 1993 s. 7. Amended 39 of 1997 s. 48)

Section:	9	Notification of workplaces		30/06/1997
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(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.

(Replaced 50 of 1985 s. 5. Amended 39 of 1997 s. 48)

Section:	9A	Prohibition notices		30/06/1997
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(1) If at any time the Commissioner considers that any notifiable workplace, whether a notifiable workplace which has been notified to him under section 9 or not, is not suitable-

- (a) for use as a factory, mine or quarry; or
- (b) for the carrying on therein of any dangerous trade or scheduled trade; or
- (c) for the carrying on therein of any industrial process or industrial operation or any part thereof,

he may issue to the proprietor of the notifiable workplace a notice in the prescribed form prohibiting-

- (i) its use as a factory, mine or quarry;
- (ii) the carrying on therein of any dangerous trade or scheduled trade; or
- (iii) the carrying on therein of such industrial process or industrial operation, or such part thereof, as may be specified in the notice.

(2) Upon issuing a prohibition notice in respect of any notifiable workplace the Commissioner shall on the notice state the reasons for the issue of the notice and specify a date by which it is to be complied with.

(3) Where at any time after issuing a prohibition notice in respect of a notifiable workplace the Commissioner is satisfied that the matter leading to the issuing of the notice has been remedied, he may, and if so requested by the proprietor of the notifiable workplace shall, cancel the prohibition notice, but may upon doing so give directions in writing to the proprietor of the notifiable workplace in respect of any matter which led to the issuing of the notice.

(4) Any proprietor of a notifiable workplace who is aggrieved by-

- (a) the issue of a prohibition notice in respect of that notifiable workplace;
- (b) a refusal by the Commissioner to cancel a prohibition notice; or
- (c) the giving of any direction upon the cancellation of a prohibition notice,

may, within 28 days of being notified of such issue, refusal or direction, appeal against it to the Administrative Appeals Board. (Amended 6 of 1994 s. 36)

(5) In this section-

- (a) "Commissioner" (處長) includes any person authorized by the Commissioner in writing for the purposes of this section;
- (b) "suitable" (適宜) means,-
 - (i) in the case of a notifiable workplace designed and constructed for industrial use, suitable in respect of the safety, health and welfare of persons employed therein;
 - (ii) in the case of a notifiable workplace not so designed and constructed, suitable in respect of the safety, health and welfare of persons generally other than in respect of noise affecting persons not employed therein. (Amended 75 of 1988 s. 40)

(Added 50 of 1985 s. 5. Amended 39 of 1997 s. 48)

Section:	9B	(Repealed 39 of 1997 s. 48)		30/06/1997
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(Repealed 39 of 1997 s. 48)

Section:	9C	(Repealed 39 of 1997 s. 48)		30/06/1997
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(Repealed 39 of 1997 s. 48)

Section:	9D	(Repealed 39 of 1997 s. 48)		30/06/1997
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(Repealed 39 of 1997 s. 48)

Section:	10	Offences and penalties		30/06/1997
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(1) A person who contravenes section 9 commits an offence and is liable to a fine of \$10000. (Replaced 50 of 1985 s. 6)

(1A) Subject to subsection (1C) a proprietor of a notifiable workplace who fails to comply with the terms of a prohibition notice relating to that notifiable workplace within the period specified in the prohibition notice commits an offence and is liable to a fine of \$200000 and to imprisonment for 6 months. (Replaced 50 of 1985 s. 6. Amended 71 of 1989 s. 7)

(1B) Where a proprietor has appealed to the Administrative Appeals Board under section 9A(4), the period for compliance with the terms of a prohibition notice shall be as specified in the decision on the appeal or, if it is not so specified, shall run from the date when the proprietor is notified of the result of the appeal. (Added 50 of 1985 s. 6. Amended 6 of 1994 s. 36)

(1C) Where under section 9A(3) the Commissioner has upon cancelling a prohibition notice issued in respect of a notifiable workplace given any directions, a proprietor who carries on an industrial process or industrial operation in the notifiable workplace without complying with those directions commits an offence and is liable to a fine of \$200000 and to imprisonment for 6 months. (Added 50 of 1985 s.6. Amended 71 of 1989 s. 7; 39 of 1997 s. 48)

(2) Any person who fails to comply with any order made under section 7(4) or who fails to comply with any condition imposed on the granting thereunder of any exemption shall be guilty of an offence and shall be liable to a fine of \$200000 and to imprisonment for 6 months. (Amended 71 of 1989 s. 7)

(3) Any person who-

(a) fails to comply with a requirement made by any officer under section 4(1); or

(b) wilfully or recklessly gives false information or withholds information as to any of the matters in respect of which information is required to be given under section 4(1); or

(c) obstructs or delays any officer in the exercise of any of the powers conferred upon him by section 4,

shall be guilty of an offence and shall be liable to a fine of \$50000.

(4) (Repealed 39 of 1997 s. 48)

(4A) Any person who contravenes section 6 commits an offence and is liable on conviction to a fine of \$50000. (Added 30 of 1992 s. 2)

(5) The proprietor of a notifiable workplace shall be deemed to have complied with section 9(1) if before the commencement* of the Factories and Industrial Undertakings (Amendment) Ordinance 1985 (50 of 1985) the workplace was registered or provisionally registered under repealed section 9(5). (Added 50 of 1985 s. 6)

(6) The proprietor of a notifiable workplace which before the commencement of Factories and Industrial Undertakings (Amendment) Ordinance 1985 (50 of 1985) was a registrable workplace under repealed section 9(1) but which was not registered or provisionally registered under repealed section 9(5) may be exempted from the requirements of section 9(1) by the Commissioner for Labour by notice in writing not later than 6 months after the commencement of that Ordinance. (Added 50 of 1985 s. 6. Amended L.N. 587 of 1995)

(7) In this section "repealed" (已廢除) means repealed by section 5 of the Factories and Industrial Undertakings (Amendment) Ordinance 1985 (50 of 1985). (Added 50 of 1985 s. 6)

(8)-(9) (Repealed 39 of 1997 s. 48)

(Replaced 19 of 1963 s. 3. Amended 4 of 1969 s. 8; 37 of 1983 s. 5; 81 of 1993 s. 8)

Note:

* **Commencement date: 2 August 1985.**

Section:	11	(Repealed 51 of 1996 s. 4)		30/06/1997
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(Repealed 51 of 1996 s. 4)

Section:	11A	(Repealed 39 of 1997 s. 48)		30/06/1997
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(Repealed 39 of 1997 s. 48)

Note:

Please see the savings and transitional provisions contained in s. 2 of Schedule 5 to the Occupational Safety and Health Ordinance (Cap 509).

Section:	11B	(Repealed 39 of 1997 s. 48)		30/06/1997
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(Repealed 39 of 1997 s. 48)

Note:

Please see the savings and transitional provisions contained in s. 2 of Schedule 5 to the Occupational Safety and Health Ordinance (Cap 509).

Section:	11C	(Repealed 39 of 1997 s. 48)		30/06/1997
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(Repealed 39 of 1997 s. 48)

Section:	12	Continuing offences		30/06/1997
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Any person guilty of an offence against this Ordinance shall, in addition to any other penalty prescribed for such offence, be liable to a fine of \$5000 for every day during the whole or any part of which such offence is knowingly and wilfully continued.

(Amended 52 of 1973 s. 5; 37 of 1983 s.7)

Section:	13	Liability of proprietor	53 of 1999	23/07/1999
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(1) Except as may be otherwise provided by regulations made under this Ordinance, the proprietor of every industrial undertaking in or in respect of which any offence against this Ordinance has been committed shall be guilty of a like offence, and shall be liable to the penalty prescribed for such offence.

(2) It shall be no defence to a prosecution of the proprietor of an industrial undertaking for an offence against this Ordinance that the offence was committed without his knowledge or consent or that the actual offender has not been convicted of the offence.

(3) Nothing in this section shall apply to an offence under section 6B or 6BA (15). (Added 71 of 1989 s. 9. Amended 53 of 1999 s. 7)

Section:	14	Liability of directors, partners, etc.		30/06/1997
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(1) Where the person convicted of an offence against this Ordinance is a company and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the company, the director, manager, secretary or other similar officer shall be guilty of the like offence.

(2) Where the person convicted of an offence against this Ordinance is a firm and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, any partner in the firm or any person concerned in the management of the firm, the partner or the person concerned in the management of the firm shall be guilty of the like offence.

(Replaced 71 of 1989 s. 10)

Section:	14A	Protection of public officers	54 of 2000	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 54 of 2000 s. 3

(1) A public officer is not personally liable in respect of any act or omission of his if it was done or made by him in the honest belief that it was required or authorized in the exercise of any function, duty or power of his under this Ordinance.

(2) The protection conferred on public officers by subsection (1) in respect of any act or omission shall not in any way affect any liability of the Government in tort for that act or omission. (Amended 54 of 2000 s. 3)

(Added 71 of 1989 s. 11)

Section:	15	Procedure		30/06/1997
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(1) (a) Any summons relating to an offence against this Ordinance by a proprietor of an industrial undertaking may be served by leaving a copy of the summons with some person for him at the industrial undertaking mentioned in the summons.

(b) Any such summons may be addressed to the proprietor of an industrial undertaking without specifying the name of the proprietor.

(c) If on the hearing of any such summons the offence is proved to the satisfaction of the magistrate, he may, in addition to any other power which he may possess, order that any fine imposed, if not duly paid, shall be recovered by distress and sale of the machinery, goods and chattels found in the industrial undertaking in question, and the provisions of the Magistrates Ordinance (Cap 227) shall apply in the case of such distress and sale as they apply to any distress and sale under that Ordinance.

(2) Any summons relating to an offence against this Ordinance by a person employed in an industrial undertaking may be served by leaving a copy of the summons either with some person for him at his last or most usual place of abode or with some person for him at the industrial undertaking mentioned in the summons.

Section:	16	Presumptions		30/06/1997
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In any prosecution under this Ordinance-

(a) if it appears to the magistrate that any person who is alleged in the charge to have been a young person or child at the date of the alleged offence was a young person or child at the said date, it shall, until the contrary is proved, be presumed that such person was a young person or child at the said date;

(b) if it appears to the magistrate that any young person or child who is alleged in the charge to have been under any particular age at the date of the alleged offence was under that particular age at the said date, it shall, until the contrary is proved, be presumed that the said young person or child was under the said age at the said date;

(c) if the charge alleges the contravention of any of the provisions of this Ordinance prohibiting or controlling the employment of women, young persons or children and the defendant in such prosecution is the proprietor of the industrial undertaking in or in respect of which the offence is alleged to have been committed, it shall, until the contrary is proved, be presumed that any woman, young person or child to whom the charge relates and who was employed in the industrial undertaking on the day on which the offence is alleged to have been committed was employed therein on that day by such proprietor. (Added 51 of 1961 s.5)

Section:	17	Prosecution of offences	11 of 2000	25/02/2000
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(1) Prosecutions for offences against this Ordinance may be brought in the name of the Commissioner, and may be commenced and conducted by any officer of the Labour Department. (Amended 39 of 1997 s. 48)

(2) Save as is provided in subsection (1), no prosecution for an offence against this Ordinance shall be commenced without the written consent of the Commissioner. (Amended 39 of 1997 s. 48)

(3) Nothing in this section shall be deemed to derogate from the powers of the Secretary for Justice in relation to the prosecution of criminal offences. (Amended L.N. 362 of 1997)

(4) A person who has been convicted or acquitted of having committed an offence under a provision of the

Occupational Safety and Health Ordinance (Cap 509) in relation to an act or omission is not liable to be proceeded against for an offence under a corresponding provision of this Ordinance relating to the same act or omission. (Added 39 of 1997 s. 48)

(5) Notwithstanding section 26 of the Magistrates Ordinance (Cap 227), prosecution under this Ordinance for any of the offences specified in the Fifth Schedule shall be commenced within 6 months from the offence being discovered by or coming to the notice of the Commissioner. (Added 11 of 2000 s. 2)

Section:	18	Onus of proving limits of what is practicable, etc.		30/06/1997
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(1) In a proceeding for an offence under a provision in this Ordinance consisting of a failure to comply with a duty or requirement to do something so far as is necessary, where practicable, so far as is reasonably practicable, or so far as practicable or to take all reasonable steps, all practicable steps, adequate steps or all reasonably practicable steps to do something, the onus is on the accused to prove that it was not necessary, not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement, or that he has taken all reasonable steps, or practicable steps or done the appropriate thing to satisfy the duty or requirement.

(2) In a proceeding for an offence under a provision in this Ordinance consisting of an exemption from compliance with a duty or requirement to do something where it is impracticable, not reasonably practicable or rendered impracticable to comply with that duty or requirement, the onus is on the accused to prove that it was impracticable or not reasonably practicable to do more than was in fact done to comply with the duty or requirement.

(3) Subsections (1) and (2) do not apply where the offence is committed on or before the commencement* of this section.

(Added 71 of 1989 s. 12)

Note:

* **Commencement date: 15 December 1989.**

Section:	19	Civil liability	53 of 1999	23/07/1999
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This Ordinance does not-

- (a) confer a right of action in civil proceedings in respect of a failure to comply with section 6A, 6B or 6BA; and (Amended 53 of 1999 s. 8)
- (b) affect the extent (if any) to which breach of any other provision is actionable.

(Added 71 of 1989 s. 12)

Schedule:	1	DANGEROUS TRADES		30/06/1997
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[sections 2 & 8]

1. Boiler chipping.
2. (Repealed L.N. 222 of 1983)
3. The manufacture of glass from basic raw materials. (Replaced L.N. 222 of 1983)
4. Manufacturing processes involving the use of arsenic, lead, manganese, mercury, phosphorus, or any compound of any of them. (Amended L.N. 222 of 1983)
5. Vermillion manufacture.
6. Chromium plating.
7. The machining or grinding of celluloid or magnesium, or of any article wholly or partly made of celluloid or magnesium in any manufacturing process. (Replaced L.N. 222 of 1983)
8. The manufacture of hydrochloric, nitric or sulphuric acids.

Schedule:	2	SCHEDULED TRADES		30/06/1997
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[sections 2 & 8]

1. Any industrial undertaking involving the use of any dangerous goods specified in Category 5 in the Schedule to the Dangerous Goods (Application and Exemption) Regulations (Cap 295 sub. leg. A) and for which a licence is required under the Dangerous Goods Ordinance (Cap 295). (Amended L.N. 222 of 1983; 80 of 1997 s. 102)
2. Any industrial undertaking involving the use of coal gas.
3. Any industrial undertaking involving the use of electricity as motive power or for heating or in any electrolytic process, other than electricity used solely for the ventilation, heating or lighting of a building.
4. Any industrial undertaking involving the use of any X-ray or radioactive substance. (Added G.N.A. 62 of 1956)

Schedule:	3	SPECIFIED STRUCTURES AND WORKS		30/06/1997
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[sections 2 & 8]

1. Any building, edifice, wall, fence, or chimney, whether constructed wholly or partly above or below ground level.
2. Any road, motorway, railway, tramway, cableway, aerial ropeway or canal. (Amended 19 of 1976 s. 32)
3. Any harbour works, dock, pier, sea defence work, or lighthouse.
4. Any aqueduct, viaduct, bridge, or tunnel.
5. Any sewer, sewage disposal works, or filter bed.
6. Any airport or works connected with air navigation.
7. Any dam, reservoir, well, pipeline, culvert, shaft, or reclamation.
8. Any drainage, irrigation, or river control work.
9. Any water, electrical, gas, telephonic, telegraphic, radio, or television installation or works, or any other works designed for the manufacturing or transmission of power or the transmission or reception of radio or sound waves.
10. Any structure designed for the support of machinery, plant, or power transmission lines. (Added 52 of 1973 s. 6)

Schedule:	4	SPECIFIED INDUSTRIAL UNDERTAKINGS AND PERSONS EMPLOYED AT THE UNDERTAKINGS	53 of 1999	23/07/1999
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[sections 6BA & 8]

Column 1

Column 2

Industrial undertaking

Persons employed at industrial undertaking

