

A Guide to the Factories and Industrial Undertakings Ordinance (Section 6A)

GENERAL DUTIES OF PROPRIETORS



OCCUPATIONAL SAFETY AND HEALTH BRANCH
LABOUR DEPARTMENT



OCCUPATIONAL SAFETY & HEALTH COUNCIL

Corrigendum to A Guide to the Factories and Industrial Undertakings Ordinance

(Section 6A) — General Duties of Proprietors (1st edition)

(23 June 2023)

| Item | Section | Current Version | Amendment |
|------|---------|---|--|
| 1 | 2.3 | <p>Offences and penalties</p> <p>(a) A proprietor of an industrial undertaking who fails to comply with the general duties provision commits an offence and is liable to a fine of \$500,000.</p> <p>(b) A proprietor of an industrial undertaking who fails to comply with the general duties provision wilfully and without reasonable excuse commits an offence and is liable to a fine of \$500,000 and imprisonment for 6 months.</p> | <p>Offences and penalties</p> <p>(1) A proprietor of an industrial undertaking who fails to comply with the general duties provisions commits an offence and is liable —</p> <p>(a) on summary conviction—to a fine of \$3 million; or</p> <p>(b) on conviction on indictment—to a fine of \$10 million.</p> <p>(2) A proprietor of an industrial undertaking who fails to comply with the general duties provisions wilfully and without reasonable excuse commits an offence and is liable —</p> <p>(a) on summary conviction—to a fine of \$3 million and to imprisonment for 6 months; or</p> <p>(b) on conviction on indictment—to a fine of \$10 million and to imprisonment for 2 years.</p> |

- End -

This guide is prepared by the
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A Guide to the Factories and Industrial
Undertakings Ordinance (Section 6A)

GENERAL DUTIES OF PROPRIETORS

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1. Introduction

Promotion of safety and health at work requires the co-operation of the proprietors and the persons employed. The Factories and Industrial Undertakings Ordinance imposes general duties on proprietors and persons employed with regard to safety and health at work. This guide is prepared to assist proprietors to comply with the general duty provisions.

The general duty is a comprehensive provision with wide applications. Contrary to other existing safety and health legislation which stipulates safety and health requirements in technical details, the general duty provisions only express duties of proprietors and persons employed in general terms with regard to safety and health at work.

The general duties are additional to other safety and health legislation and apply to all work activities and situations which may not be covered by existing safety and health legislation. Proprietors and persons employed must ensure that they comply with the general duties as well as the more specific responsibilities laid down in other safety and health provisions.

2. General duties of proprietors

2.1 Section 6A of the Factories and Industrial Undertakings Ordinance

- (1) Every proprietor of an industrial undertaking has a duty to ensure the safety and health at work of all persons employed by him.
- (2) The aforesaid general duties extend in particular to include the following areas–
 - (a) Provision and maintenance of plant and systems of work that are safe and without risks to health;
 - (b) Arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
 - (c) Provision of information, instruction, training and supervision to ensure the safety and health at work of all persons employed;
 - (d) Maintenance of the industrial undertaking under the proprietor’s control in a condition that is safe and without risks to health, and provision and maintenance of means of access to and egress from the industrial undertaking that are also safe and without health risks; and
 - (e) Provision and maintenance of a working environment that is safe and without risks to health.

2.2 Checklist on general duties of proprietors

The general duties are comprehensive provisions and have wide applications. It is therefore impossible to specify in detail here all the steps necessary to comply with the legal obligation by any particular concern. The proprietor should therefore consider within the context of his organization that action is necessary on his part to carry out his duties. The checklist given below is intended to assist the proprietor

in making this assessment. It should be pointed out that this checklist cannot be comprehensive and cannot mention every situation. It is not an authoritative interpretation of the legal requirements and should not be regarded as such.

(a) Provision and maintenance of plant and systems of work

- (1) Is all plant up to the necessary standards with respect to safety and risk to health?
- (2) When new plant is installed, is the latest good practice taken into account?
- (3) Is there provision by regular inspection, examination and, when necessary, testing to ensure that plant and its safety devices have not deteriorated?
- (4) In such cases would the examination etc. be more suitably assigned to specialists?
- (5) Do all the systems of work provide adequately for safety and health?
- (6) Are they properly enforced?
- (7) Has a thorough examination been made of all operations undertaken in the workplace (especially those carried out only infrequently) to minimize danger or injury or risk to health?
- (8) What attention has been paid to the safety of cleaning, repair and maintenance operations?
- (9) Should special safety systems such as 'permit to work' be considered?
- (10) Is the working environment regularly monitored to ensure that, where known toxic contaminants are present, the protection conforms to current hygiene standards?

- (11) Is monitoring also carried out to check the adequacy of control measures?
 - (12) Have arrangements been made for regular inspection of all equipment and appliances used for safety and health (for example, dust and fume extraction equipment, guards, safe arrangements for access and monitoring and testing appliances)?
 - (13) What personal protective equipment is required (e.g. protective boots, helmets, goggles, respirators, ear protectors)? Has it been issued? Are adequate arrangements made for its storage, maintenance, cleaning and renewal? Have those who need it been trained in its use?
 - (14) Have arrangements been made for regular maintenance and testing of electrical installation and equipment?
 - (15) Have emergency procedures and contingency plans been formulated to cover, for example, escapes or spillages of toxic or dangerous materials, fire, escapes of gases etc., and also emergencies due to hazards arising in adjacent premises?
- (b) Use, handling, storage and transport of articles and materials**
- (1) Have the methods of manufacture been examined carefully of every substance likely to give rise to risk to ensure that every necessary precaution has been taken?
 - (2) Has an audit been carried out to list every substance used at work to identify the specific health and safety risks to which any substance may give rise?
 - (3) Are the containers of all substances correctly labelled?
 - (4) Are all containers and handling devices suitable or should expert advice be sought?

- (5) Has particular attention been given to the manipulation of molten metal?
- (6) Can storage and transport arrangements be improved to make them safer and reduce health risks?
- (7) If there is mechanical transport on the premises, have the operating procedures been critically appraised? Are the transport rules adequate and are they properly enforced?
- (8) Are structural modifications to plant, building or operating areas necessary to achieve safety from the use of transport?
- (9) Have proper procedures been established for assessing new proposals for handling materials or using transport?
- (10) Can safety be increased or working conditions be improved by substitution of less toxic or less dangerous substances or by improvements in enclosure or by institution of remote handling methods?
- (11) Has particular attention been given to the safety of systems of work and of the handling of substances undertaken outside the normal production processes?
- (12) Has special attention been given to the precautions in the carriage and transport of dangerous materials, such as those of high toxicity, or with explosive properties or radiation emitters?
- (13) Should the safety of handling articles in use be again reviewed?
- (14) Is further training in the use of hand tools, machines and mobile plant necessary?
- (15) Is all equipment safely stored?
- (16) Are any processes being undertaken using suitable machines or equipment?

(c) Information, instruction, training and supervision

- (1) What can be done to bring attention within the procedures for planning for safety and health the co-operation of the work people themselves?
- (2) Are adequate information and guidance given to all persons employed of the hazards of the work activities and the methods for avoiding them and on any other matters affecting safety or health?
- (3) Has every worker exposed to a health hazard been informed of the risks and the precautions? Have arrangements been made for him/her to be told of the results of any relevant monitoring carried out?
- (4) Is further information necessary with respect to special equipment or substances or processes?
- (5) Are there arrangements for a proper flow of information to employees and also for rapid and unhindered communication on safety and health matters from employees to management?
- (6) Has information been provided to employees on legal requirements?
- (7) Has adequate technical information been provided at suitable levels?
- (8) Are arrangements such that advisory literature (including any new publications) on safety and health available for all whom it concerns?
- (9) Have adequate arrangements been made for training in safe practices, in procedures for avoiding risks to health and in the use of equipment for safety? Does such training take into account the levels at which it must be approached and the capabilities of the recipients? Is there proper training

for supervisory staff? Is the effectiveness of the training and its retention by the trainees monitored regularly? Are there arrangements for retraining of those in post as well as for training new employees?

- (10) Has action been taken to foster a high standard of safety awareness in all employees?
- (11) Has a high standard of skill been achieved by all supervisors in their role in the management of safe procedures and systems of work?
- (12) Has a system been instituted for identifying the particular training needs within the organization and of any special needs of individual employees?
- (13) Do employees engaged in the processes with special hazards have particular training needs?
- (14) Are safe methods of working given full emphasis in all training given?
- (15) Is full use being made of the training facilities available from the Occupational Safety and Health Training Centre of the Labour Department?

(d) Maintenance of industrial undertaking and provision and maintenance of means of access and egress

- (1) Has consideration been given to the safety of all places of work and the means of access to and egress from them?
- (2) Do all buildings comply adequately with safety standards? Are professional surveys required for any buildings?
- (3) Has adequate consideration been given to special safety requirements for all buildings such as fire escapes, anchorage point for window cleaners' harnesses, and preplanned arrangements for building maintenance?

- (4) Are there specially awkward places within the buildings which must be reached at particular times, for examples, for observation or for control of processes or plant? If so, can the means of access be improved?
- (5) Do persons have to enter plant for maintenance or cleaning where there may be special hazards and, if so, have proper procedures and precautions been taken?
- (6) Do good housekeeping and cleanliness receive the attention due to them?
- (7) Are fire exits identified and are they checked to ensure that they are maintained free from obstruction?
- (8) Is fire fighting equipment provided and is it maintained? Are persons adequately trained in its use?
- (9) Has the fire alarm been tested? Are fire drills held?

(e) Working environment

- (1) Are there any problems in the premises in connection with heating, lighting, ventilation or noise?
- (2) Are the first aid arrangements satisfactory?
- (3) Are there any problems arising from dangerous wastes?

2.3 Offences and penalties

- (a) A proprietor of an industrial undertaking who fails to comply with the general duties provision commits an offence and is liable to a fine of \$500,000.
- (b) A proprietor of an industrial undertaking who fails to comply with the general duties provision wilfully and without reasonable excuse commits an offence and is liable to a fine of \$500,000 and imprisonment for 6 months.

3. Useful Information

If you wish to enquire about this guide or require advice on occupational safety and health, you can contact the Occupational Safety and Health Branch through:

Telephone : 2559 2297 (auto-recording after office hours)

Fax : 2915 1410

E-mail : enquiry@labour.gov.hk

Information on the services offered by the Labour Department and on major labour legislation can also be found by visiting our Home Page on the Internet. Address of our Home Page is <http://www.labour.gov.hk>.

Information on the services offered by the Occupational Safety and Health Council can be obtained through hotline 2739 9000.