

## Property Management Services Authority

### Code of Conduct

#### Handling Scaffolding Works

**Code No. : C13/2022**

**Effective Date : 29 July 2022**

#### **Preamble**

The following code of conduct (Code) is issued by the Property Management Services Authority (PMSA) pursuant to section 5 of the Property Management Services Ordinance (PMSO) and contains practical guidance for the purposes of section 4 of the PMSO (disciplinary offences). Although a licensee<sup>1</sup> does not incur a legal liability only because the licensee has contravened a provision of the Code, the Code is admissible in evidence in disciplinary hearings, and proof that a licensee contravened or did not contravene the relevant provision of the Code may be relied on as tending to establish or negate a matter that is in issue in the hearings.

#### **Background**

A licensed property management company (PMC) may, in respect of property for which property management services (PMSs) are provided by it, from time to time, (a) carry out by itself construction work<sup>2</sup> involving scaffolding work<sup>3</sup>; (b) appoint a contractor to carry out construction work involving scaffolding work; or (c) handle applications for erection of scaffolds made by individual flats for construction work carried out in respect of the flats involving scaffolding work. The PMSA has formulated the Code to provide practical guidance to licensed PMCs on scaffolding work.

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<sup>1</sup> The term “licensee” means the holder of the following licence: a PMC licence; a PMP (Tier 1) licence; a PMP (Tier 2) licence; a provisional PMP (Tier 1) licence; or a provisional PMP (Tier 2) licence.

<sup>2</sup> The Factories and Industrial Undertakings Ordinance (Cap. 59) is applicable to industrial undertakings; and industrial undertakings includes any “construction work”, defined according to section 2 of the ordinance as (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 Schedule 3; (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).

<sup>3</sup> According to section 2 of the Construction Sites (Safety) Regulations (Cap. 591), “construction site” means a place where construction work is undertaken and also any area in the immediate vicinity of any such place which is used for the storage of materials or plant used or intended to be used for the purpose of the construction work, and “scaffold” means any temporarily provided structure on or from which persons perform work in connexion with operations or works to which these regulations apply, and any temporarily provided structure which enables persons to obtain access to or which enables materials to be taken to any place at which such work is performed, and includes any working platform, gangway, run, ladder or step-ladder (other than an independent ladder or step-ladder which does not form part of such a structure) together with any guard-rail, toe-board or other safeguards and all fixings, but does not include a lifting appliance or a structure used merely to support such an appliance or to support other plant or equipment.

## **PMC carrying out scaffolding work by itself**

**Code : A(1)** A licensed PMC, when carrying out construction work by itself (i.e. without engaging a contractor) involving work on a scaffold (generally referring to a work platform) for the property in respect of which PMSs are provided by it, has to:

- (a) so far as reasonably practicable, ensure the health and work safety of the staff members carrying out the respective works in accordance with section 6A of the Factories and Industrial Undertakings Ordinance and section 6 of the Occupational Safety and Health Ordinance (Cap. 509) (OSH Ordinance) (the regulations at **Appendix 1** and **Appendix 2** refer); and
- (b) ensure that the staff members carrying out the respective works are holders of relevant certificates in accordance with section 6BA of the Factories and Industrial Undertakings Ordinance (the regulations at **Appendix 3** refer).

A(2) Regarding the work mentioned in paragraph A(1) of the Code, if the workers are employed directly by an owners' organization<sup>4</sup> (if any), the licensed PMC has to inform the owners' organization of the regulations stipulated in **Appendix 1** to **Appendix 3** and remind them to abide by those regulations.

## **PMC arranging for scaffolding work**

**Code : B(1)** A licensed PMC, when engaging a contractor to carry out construction work involving scaffolding work in respect of the property in respect of which PMSs are provided by it, has to:

- (a) ensure that the contractor concerned abides by the contractual terms of the scaffolding work contract entered into;
- (b) remind the contractor concerned to abide by relevant laws/subsidiary legislations<sup>5</sup> and guidelines<sup>6</sup> issued by relevant

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<sup>4</sup> The term "owners' organisation" has the same meaning as defined by section 2 of the PMSO i.e. "in relation to a property, means an organisation (whether or not formed under the Building Management Ordinance (Cap. 344) (BMO) or a deed of mutual covenant) that is authorised to act on behalf of all the owners of the property".

<sup>5</sup> The relevant laws/subsidiary legislations are e.g. Factories and Industrial Undertakings Ordinance, Construction Sites (Safety) Regulations, Occupational Safety and Health Ordinance and the requirement that the employer concerned has to take out employees' compensation insurance under the Employees' Compensation Ordinance (Cap. 282), etc.

<sup>6</sup> Guidelines issued by relevant organizations include:

(i) Code of Practice for Bamboo Scaffolding Safety issued by the Labour Department

- authorities;
- (c) remind the contractor concerned to ensure that, so far as is reasonably practicable, suitable and adequate safe access to and egress from the place of work is provided and properly maintained<sup>7</sup>;
  - (d) remind the contractor concerned to take adequate steps to prevent any person from falling from a place of work with a height of 2 metres or more<sup>8</sup>;
  - (e) remind the contractor concerned that the scaffold has to be erected by trained workers under the direction and immediate supervision of a competent person<sup>9</sup>;
  - (f) remind the contractor concerned that the scaffold has to be inspected by a competent person before it is used for the first time, after expansion or modification, after weathering and within 14 days before each subsequent usage, and a report has to be made according to relevant requirements<sup>10,11</sup>;
  - (g) inspect the validity of the insurance policy (including employee compensation insurance) taken out by the contractor concerned for the related scaffolding work; and
  - (h) check the reports made by the competent person responsible for inspecting the scaffold before the scaffold is used for the first time and thereafter timely.

B(2) If the contractor mentioned in paragraph B(1) of the Code is engaged by the owners' organization (if any) directly, the licensed PMC has to remind the owners' organization of the guidelines set out in paragraphs

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- (ii) (<https://www.labour.gov.hk/eng/public/os/B/Bamboo.pdf>);
  - (iii) 《懸空式竹棚架構造及工作安全指南》 ([https://www.labour.gov.hk/common/public/pdf/os/D/TOS\\_Guidance\\_notes\\_tc.pdf](https://www.labour.gov.hk/common/public/pdf/os/D/TOS_Guidance_notes_tc.pdf)) (only available in Chinese);
  - (iii) 勞工處特函—在合資格的人的直接監督下架設、相當程度上的擴建、更改或拆卸棚架(Ref(8) in LD ELD/1-10/1) (<https://www.housingauthority.gov.hk/mini-site/site-safety/common/resources/alerts/2019/SH-2019-48c-LD.pdf>) (only available in Chinese);
  - (iv) Guidelines on the Design and Construction of Bamboo Scaffolds issued by the Buildings Department (<https://www.bd.gov.hk/doc/en/resources/codes-and-references/code-and-design-manuals/GDCBS.pdf>) and;
  - (v) Guidelines on Safety Enhancement of and Notification Arrangement for Truss-out Bamboo Scaffolds issued by the Construction Industry Council (<https://www.cic.hk/files/page/50/Guidelines%20on%20Safety%20Enhancement%20of%20and%20Notification%20Arrangement%20for%20Truss-out%20Bamboo%20Scaffolds.pdf>)
- <sup>7</sup> Refer to Section 38A of Construction Sites (Safety) Regulations.
- <sup>8</sup> Refer to Section 38B of Construction Sites (Safety) Regulations.
- <sup>9</sup> Refer to Section 38E "Trained workmen to erect scaffold under supervision" of Construction Sites (Safety) Regulations.
- <sup>10</sup> Refer to Section 38F(1) of Construction Sites (Safety) Regulations.
- <sup>11</sup> Refer to Appendix 1 – Form 5 of Code of Practice for Bamboo Scaffolding Safety issued by the Labour Department ([https://www.labour.gov.hk/text\\_alternative/pdf/eng/CSSR-F5.pdf](https://www.labour.gov.hk/text_alternative/pdf/eng/CSSR-F5.pdf))

B(1)(a) to (h) of the Code so as to enable the owners' organization to remind the contractor concerned accordingly.

### **PMC handling scaffolding work carried out by individual flats**

**Code :** C(1) A licensed PMC, in respect of the construction work carried out by individual flats involving scaffolds, has to deal with the application for erection of the scaffold (Application) by the flat concerned, and also has to:

- (a) establish the terms and procedures for the Application (if there is no owners' organization); or
- (b) agree with the owners' organization (if any)<sup>12</sup> for the terms and procedures of the Application.

C(2) A licensed PMC has to remind the owners or their authorised persons of individual flats in respect of contractors engaged by them to carry out construction work involving scaffolding work, and the owners or their authorised persons concerned have to ensure that the contractors:

- (a) abide by the contractual terms of the scaffolding work contract entered into;
- (b) abide by the relevant laws/subsidiary legislations<sup>13</sup> and guidelines<sup>14</sup> issued by relevant organizations;
- (c) so far as is reasonably practicable, suitable and adequate safe access to and egress from the place of work is provided and

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<sup>12</sup> The agreement does not affect the work of a licensed PMC as the manager to carry out its duties pursuant to the Buildings Management Ordinance (Cap. 344) or the deed of mutual covenant of the respective property. The term "manager" has the same meaning as that defined by section 34D of the BMO.

<sup>13</sup> The relevant laws are e.g. Factories and Industrial Undertakings Ordinance, Construction Sites (Safety) Regulations, Occupational Safety and Health Ordinance and the requirement that the employer concerned has to take out employees' compensation insurance under the Employees' Compensation Ordinance (Cap. 282), etc.

<sup>14</sup> Guidelines issued by relevant organizations include:

- (i) Code of Practice for Bamboo Scaffolding Safety issued by the Labour Department (<https://www.labour.gov.hk/eng/public/os/B/Bamboo.pdf>);
- (ii) 《懸空式竹棚架構造及工作安全指南》 ([https://www.labour.gov.hk/common/public/pdf/os/D/TOS\\_Guidance\\_notes\\_tc.pdf](https://www.labour.gov.hk/common/public/pdf/os/D/TOS_Guidance_notes_tc.pdf)) (only available in Chinese);
- (iii) 勞工處特函—在合資格的人的直接監督下架設、相當程度上的擴建、更改或拆卸棚架(Ref(8) in LD ELD/1-10/1) (<https://www.housingauthority.gov.hk/mini-site/site-safety/common/resources/alerts/2019/SH-2019-48c-LD.pdf>) (only available in Chinese);
- (iv) Guidelines on the Design and Construction of Bamboo Scaffolds issued by the Buildings Department (<https://www.bd.gov.hk/doc/en/resources/codes-and-references/code-and-design-manuals/GDCBS.pdf>) and;
- (v) Guidelines on Safety Enhancement of and Notification Arrangement for Truss-out Bamboo Scaffolds issued by the Construction Industry Council (<https://www.cic.hk/files/page/50/Guidelines%20on%20Safety%20Enhancement%20of%20and%20Notification%20Arrangement%20for%20Truss-out%20Bamboo%20Scaffolds.pdf>)

- properly maintained<sup>15</sup>;
- (d) take adequate steps to prevent any person from falling from a place of work with a height of 2 metres or more<sup>16</sup>;
  - (e) arrange the scaffold to be erected by trained workers under the direction and immediate supervision of a competent person<sup>17</sup>;
  - (f) inspect the scaffold by a competent person before it is used for the first time, after expansion or modification, after weathering and within 14 days before each subsequent usage, and a report has to be made in accordance with relevant regulations<sup>18,19</sup>;
  - (g) have taken out a valid insurance policy (including employee compensation insurance) for the scaffolding work concerned; and
  - (h) check the reports made by the competent person responsible for inspecting the scaffold before the scaffold is used for the first time and thereafter timely.

### **Monitoring scaffolding work**

- Code :** D(1) A licensed PMC has to, so far as reasonably practicable, monitor and record scaffolding work as stated in the Code. If abnormalities (e.g. the scaffold makes abnormal noise) are found, it has to handle and follow-up with the matter properly.
- D(2) If a licensed PMC discovers that the contractor concerned contravenes the law/subsidiary legislation when carrying out scaffolding work as stated in paragraphs A(2), B(1), B(2) or C(2) of the Code, the licensed PMC has to instruct the contractor concerned (if engaged by the PMC or the owners' organization) to stop the scaffolding work immediately, or demand the owners of the flat concerned or their authorised persons to instruct the contractor concerned (if engaged by owners or their authorised persons of individual flats) to stop the scaffolding work immediately, and discuss with the owners' organization (if any) to take follow-up action (e.g. reporting to the relevant law enforcement agencies); if there is no owner's organization, the licensed PMC has to, so far as reasonably practicable, take appropriate follow-up action (e.g. reporting to the relevant law enforcement agencies).

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<sup>15</sup> Refer to Section 38A of Construction Sites (Safety) Regulations.

<sup>16</sup> Refer to Section 38B of Construction Sites (Safety) Regulations.

<sup>17</sup> Refer to Section 38E "Trained workmen to erect scaffold under supervision" of Construction Sites (Safety) Regulations.

<sup>18</sup> Refer to Section 38F(1) of Construction Sites (Safety) Regulations.

<sup>19</sup> Refer to Appendix 1 – Form 5 of Code of Practice for Bamboo Scaffolding Safety issued by the Labour Department ([https://www.labour.gov.hk/text\\_alternative/pdf/eng/CSSR-F5.pdf](https://www.labour.gov.hk/text_alternative/pdf/eng/CSSR-F5.pdf))

## **Issuing notice**

**Code :** E(1) A licensed PMC has to, so far as reasonably practicable, display notices in prominent place of the lobby of the property concerned to inform the owners and relevant persons (i.e. residents of various flats) about scaffolding work before such work commences.

## **Follow-up work after completion of scaffolding work**

**Code :** F(1) A licensed PMC, after completion of the scaffolding work, has to:

- (a) by themselves, in respect of the scaffolding work as stated in paragraph A(1) of the Code; and
- (b) remind related workers, in respect of the scaffolding work as stated in paragraph A(2) of the Code to, dismantle the scaffold appropriately, clear up the affected area and properly restore damaged facilities and areas arising from the scaffolding work.

F(2) A licensed PMC, after completion of the scaffolding work as stated in paragraphs A(2), B(1) or B(2) of the Code, has to:

- (a) remind the contractor or owners' organisation (if applicable) concerned that the scaffold has to be dismantled by trained workers under the direction and immediate supervision of competent persons<sup>20</sup>;
- (b) ensure that the contractor dismantles the scaffold and clears up the area concerned;
- (c) ensure that the contractor restores properly the damaged facilities and areas arising from the scaffolding work; and
- (d) refund the renovation deposit concerned timely.

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<sup>20</sup> Refer to Section 38E of Construction Sites (Safety) Regulations.

F(3) A licensed PMC, after completion of the scaffolding work as stated in paragraph C(2) of the Code, has to:

- (a) remind the owners or their authorised persons that they have to instruct the contractor engaged by them to:
  - (i) arrange for the scaffold to be dismantled by trained workers under the direction and immediate supervision of competent persons<sup>21</sup>;
  - (ii) dismantle the scaffold and clear up the area; and
  - (iii) restore properly the damaged facilities and areas arising from the scaffolding work.
- (b) refund the renovation deposit concerned timely.

### **Keeping records**

**Code :** G(1) Except for the scaffolding work contracts entered into by the contractors and the owners or their authorised persons concerned and the relevant documents as stated in paragraph C(2) of the Code, a licensed PMC has to keep all records, documents and information of each case of scaffolding work for not less than six years<sup>22</sup>.

End

If there is any inconsistency between the Chinese version and the English version of this Code, the Chinese version shall prevail.

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<sup>21</sup> Refer to Section 38E of Construction Sites (Safety) Regulations.

<sup>22</sup> This guideline is made with reference to section 20A(4) of the BMO.

## Appendix 1

### Factories and Industrial Undertakings Ordinance

[29 September 1955]

*(Format changes—E.R. 3 of 2015)*

#### 6A.

##### General duties of a proprietor

- (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 \$500,000.

*(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 \$500,000 and to imprisonment for 6 months.

*(Amended 40 of 1997 s. 2)*

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

**Occupational Safety and Health Ordinance**

[23 May 1997] L.N. 281 of 1997

*(Format changes—E.R. 2 of 2018)*

**6.**

**Employers to ensure safety and health of employees**

- (1) Every employer must, so far as reasonably practicable, ensure the safety and health at work of all the employer's employees.
- (2) The cases in which an employer fails to comply with subsection (1) include (but are not limited to) the following—
  - (a) a failure to provide or maintain plant and systems of work that are, so far as reasonably practicable, safe and without risks to health;
  - (b) a failure to make arrangements for ensuring, so far as reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage or transport of plant or substances;
  - (c) a failure to provide such information, instruction, training and supervision as may be necessary to ensure, so far as reasonably practicable, the safety and health at work of the employer's employees;
  - (d) as regards any workplace under the employer's control—
    - (i) a failure to maintain the workplace in a condition that is, so far as reasonably practicable, safe and without risks to health; or
    - (ii) a failure to provide or maintain means of access to and egress from the workplace that are, so far as reasonably practicable, safe and without any such risks;
  - (e) a failure to provide or maintain a working environment for the employer's employees that is, so far as reasonably practicable, safe and without risks to health.
- (3) An employer who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine of \$200,000.
- (4) An employer who fails to comply with subsection (1) intentionally, knowingly or recklessly commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 6 months.

## Appendix 3

### Factories and Industrial Undertakings Ordinance

[29 September 1955]

(Format changes—E.R. 3 of 2015)

#### 6BA.

**Proprietor of relevant industrial undertaking not to employ, etc. relevant person who does not have relevant certificate**

(1) In this section—

#### *equivalent document*

(同等文件) means a document recognized by the Commissioner for the purposes of section 6BA(7)(a) as being equivalent to a person's relevant certificate;

(Added 22 of 2014 s. 41)

#### *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 industrial undertaking*

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

#### *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;

#### *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;

#### *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).

(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 Schedule 4; 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 with the person the certificate or an equivalent document 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.

Editorial Note:

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