

**Information Paper for the Bills Committee on
Boilers and Pressure Vessels (Amendment) Bill 2001**

Meeting on 22 January 2002

BACKGROUND

General Background

The Boilers and Pressure Vessels Ordinance controls the safe use and operation of boilers and pressure vessels and provides for the holding of enquiries in case of accidents. It requires boilers and steam receivers falling within its coverage to be operated under the direct supervision of a "competent person" who should possess a certificate of competency issued by the Boilers and Pressure Vessels Authority (the Authority). At present, the Commissioner for Labour has been appointed as the Authority.

2. Boilers and steam receivers that are covered by the Ordinance include water tube boilers, fire tube boilers, electric boilers and steam receivers etc. These equipment are usually used for generation and collection of steam for purposes like laundry, heating and power generation in industries such as electrical power stations, hospitals, hotels, garment factories, laundry factories. The great majority of steamers used in the restaurant trade are not covered by the Ordinance.

3. The Ordinance provides a mechanism whereby the Authority issues a certificate of competency to a person if that person has produced evidence or passed the examination conducted by examiners appointed by the Authority, such that the Authority or the examiner is satisfied with his suitability and experience/competence to be issued a certificate.

4. A person who possesses a certificate (certificate holder) may obtain under section 6(3) an endorsement of his existing certificate, or a new certificate, from the Authority if he satisfies the Authority that he is competent to operate additional classes or types of boilers and steam receivers. Since 1967, the Authority has issued some 15,600 certificates of competency. In recent years, an average of 450 persons obtain the certificate each year.

5. The Authority collects fees to cover the cost relating to the issue or endorsement of certificates and has power under section 6(4)(a) to revoke a certificate at any time.

The Problem and the Proposal

6. In 1997, when the proposals for reviewing fees and charges under the Ordinance were examined by the then Legislative Council, ambiguities were identified in the provisions relating to the charging of fees under the Ordinance by the then Legislative Council. The fees and charges review proposals were supported on the basis of the undertaking by the Administration to conduct a review and to introduce necessary amendments. Having examined in consultation with the Department of Justice, the relevant provisions of the Ordinance and the Regulations, as well as the actual practices, we have concluded that some of the provisions in the Ordinance should be clarified. These amendments are technical in nature to remove the ambiguities in the Ordinance. The Bill does not seek to affect substantially the existing operation of the Ordinance (except for the appeal mechanism provided).

7. The following are the summary of the proposed amendments. Members may refer to the Legislative Council Brief issued in April 2001 for details on each proposal:

(A) Charging of fees

8. Section 65(1)(c) of the Ordinance provides that "the Authority may by regulation provide for fees". Under regulation 18(1) of the Regulations, the prescribed fee for the issue of a certificate is \$330. A person who sits for an examination for the purposes of the issue or endorsement of a certificate is required under regulation 18(2) to pay a fee of \$610. The Department of Justice has advised that the existing provisions are ambiguous and required the following clarifications: -

- (a) There is a need to provide an express provision under section 65 to empower the Authority to charge fees for conducting examinations or to impose different fees for those who need to take an examination and those who do not need to take an examination;
- (b) Regulation 18(1) needs to be amended so as to cover expressly the endorsement of certificates;
- (c) Regulation 18(2) requires an applicant to pay a fee prior to each occasion on which he/she is examined for the purpose of the issue or endorsement of a certificate. The fee is payable by an applicant irrespective of whether he/she subsequently passes or fails the examination. However, without express authorisation under the existing provisions, the Authority may only set the fee at a level sufficient to recover the costs of providing the services. Charging the unsuccessful applicants for the issue or endorsement of certificates may be ultra vires. An express provision should be

included in section 65 to empower the Authority to fix the amount of fee for general recovery of expenditure incurred in performing his functions under the Ordinance without being limited by reference to the amount of costs in relation to a particular application.

- (d) Express provisions should be provided for making refund to applicant who serves a notice of postponement for a scheduled examination at least two working days' in advance.

(B) Issue, Endorsement and Revocation of Certificates

9. According to the existing practice, the Authority may issue or endorse a certificate under sections 6(1) or 6(3) of the Ordinance if an applicant -

- (a) has produced evidence that satisfies the Authority; or
- (b) has passed the examination conducted by the Authority and satisfied the Authority,

that the applicant is a fit and proper person to hold a certificate and has substantial experience, skill and knowledge in the operation of the classes and types of boilers and pressure vessels concerned. Sections 6(1) and 6(3) do not clearly reflect these factors and should therefore be amended to provide for them.

10. Separately, while section 6(4)(a) empowers the Authority to revoke certificates, it does not provide for the circumstances under which the Authority may exercise the power. In practice, the Authority may revoke a certificate if he ceases to be satisfied, having regard to the factors for the issue or endorsement of certificates, that the certificate holder is a suitable person to hold the certificate. There is a need to spell it out under section 6(4)(a).

(C) Conduct of Examinations

11. It is necessary to expressly provide in section 6 of the Ordinance that the Authority may conduct examinations for the purpose of the endorsement of a certificate and to make rules providing for examinations.

12. In addition, the Authority now appoints "examiners" for the conduct of examinations for the purpose of section 6. To avoid confusion with the definition of "appointed examiner"¹ in section 2, there is a need to replace

¹ Under section 2 of the Ordinance, "appointed examiner" refers to a boiler inspector, air receiver inspector or a pressurized fuel container inspector, as the case may be. They are responsible under various sections of the Ordinance to examine a boiler, pressure vessel, air receiver or pressurized fuel container.

"examiner" by "assessor".

(D) Appeal Mechanism

12. The Ordinance does not provide for an appeal mechanism against administrative decisions regarding (i) the issue or endorsement of certificates under sections 6(1) or 6(3); and (ii) the revocation of certificates under section 6(4)(a). In line with section 5A² and in order to comply with the human rights requirements that determinations of a person's civil right (including the right to practise in a trade) are made by a competent, independent and impartial tribunal, there is a need to make provisions under the Ordinance to enable persons aggrieved by the relevant decisions by the Authority to appeal against those decisions to the Administrative Appeals Board.

(E) Technical Amendments

13. There is inconsistency in the Chinese text of the term of "competence" in section 49(7) of the Ordinance, i.e. "資格", with that of the same term used in the same context under section 6(2), i.e. "足夠能力". It is necessary to amend section 49(7) so that the Chinese text of the term "competence" is the same as in section 6(2).

Education and Manpower Bureau
January 2002

² Section 5A of the Ordinance provides for the revocation and suspension of appointment of a boiler inspector, air receiver inspector and a pressurized fuel container inspector. A person who is aggrieved by the Authority's decision to revoke or suspend his appointment may appeal against the decision to the Administrative Appeals Board.