

Boilers and Pressure Vessels (Amendment) Bill 2001

**Administration's Response to the Issues raised by Members at the
Bills Committee Meeting on 15 April 2002**

At its meeting on 15 April 2002, Members of the Committee urged the Administration to provide response to the following issues in respect of the Bill: -

- (a) the policy and principles for declaring what kind of rules made by the Authority under powers conferred by Ordinances should or should not be subsidiary legislation;
- (b) the reasons for specifying in the proposed section 6(8) of the Bill that the rules to be made in relation to examinations conducted for the issue or endorsement of certificates of competency were not subsidiary legislation.

2. This paper aims to provide the required information and propose the necessary amendments to the Bill with a view to addressing Members' concerns raised at the above meeting.

Policy and principles for declaring what kinds of rules made by the Authorities under powers conferred by Ordinance should or should not be subsidiary legislation.

3. According to section 3 of the Interpretation and General Clauses Ordinance (Cap 1), "*subsidiary legislation*" is defined as "*any proclamation, rule, regulation, order, resolution, notice, rule of court, bylaw or other instrument made under or by virtue of any Ordinance and having legislative effect*". Hence, the test for determining whether certain rules made by the Authorities under powers conferred by ordinances are subsidiary legislation is whether the rules carry any legislative effect. Following the discussion by the Panel on Constitutional Affairs in 1999, the Administration has undertaken to include, wherever necessary, an express provision in new legislation to make it abundantly clear whether a statutory instrument is subsidiary legislation. The purpose of doing so is to avoid unnecessary dispute

over the legal nature of the relevant instrument.

The reasons for specifying that the rules to be made in relation to the conduct of examinations are not subsidiary legislation

4. The rules intended to be made under the proposed section 6(7) are rules on the administrative arrangements of examinations (for example, the syllabus for examinations, the standards of competency to be attained by candidates and other items set out in the proposed sections 6(7)(b), (d), (e) and (f)). As these rules are administrative in nature and are not intended to carry any legislative effect, it is specifically declared in the proposed section 6(8) that such rules are not subsidiary legislation for the avoidance of doubt.

5. Nevertheless, having considered Members' views and concerns raised at the previous committee meetings, the Administration has reviewed the need to include the proposed sections 6(7) and (8). As section 6(6) proposes to provide the Authority with the power to conduct examination, related powers to decide on the administrative arrangements for the examination shall also be deemed to be conferred on the Authority by virtue of section 40(1) of the Interpretation and General Clauses Ordinance (Cap.1). However, there is doubt whether the power to conduct examinations also includes the power to review examination results. The Administration has therefore concluded that the proposed sections 6(7) and (8) can be deleted and be replaced instead by an express provision to empower the Authority to review examination results. Accordingly, the Administration now proposes to introduce Committee Stage Amendments for sections 6(7) and (8) to reflect the above change.

6. Please see a full set of the Administration's proposed Committee Stage Amendments for the new sections 6(7) and (8) as explained above, as well as sections 6(1), 6(3A) and 6(4) as discussed at the last meeting at the Appendix.

Education and Manpower Bureau
30 April 2002

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BOILERS AND PRESSURE VESSELS (AMENDMENT) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for Education and Manpower

Clause

Amendment Proposed

2(a) By deleting the proposed section 6(1) and substituting -

"(1) The Authority may, upon application in writing, issue a certificate of competency to a person if that person -

- (a) has produced evidence that satisfies the Authority that he has adequate experience, skill and knowledge in the operation of all classes and types of boiler and steam receiver or of boilers or steam receivers, or both, of the class or type to be specified in the certificate, as the case may be; or
- (b) has, by passing an examination conducted by the Authority, satisfied the Authority that he has

adequate experience, skill and knowledge in the operation of all classes and types of boiler and steam receiver or of boilers or steam receivers, or both, of the class or type to be specified in the certificate, as the case may be.".

2(b) By deleting the proposed section 6(3A) and substituting -

"(3A) The Authority may endorse an existing certificate of competency of, or issue a new certificate of competency to, a person under subsection (3) only if that person -

(a) has produced evidence that satisfies the Authority that he has adequate experience, skill and knowledge in the operation of all classes and types of boiler and steam receiver or of boilers or steam receivers, or both, of the additional class or type, as the case may be; or

(b) has, by passing an examination conducted by the Authority, satisfied the Authority that he has adequate experience, skill and

knowledge in the operation of all classes and types of boiler and steam receiver or of boilers or steam receivers, or both, of the additional class or type, as the case may be."

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By deleting paragraph (c) and substituting -

"(c) by repealing subsection (4) and substituting -

"(4) The Authority may -

- (a) revoke a certificate of competency if it ceases to be satisfied that the holder of the certificate has adequate skill or knowledge in the operation of all classes and types of boiler and steam receiver specified in the certificate; or
- (b) amend a certificate of competency by deleting a class or type of boiler or steam receiver specified in the certificate if it ceases to be satisfied that the holder of the certificate has adequate

skill or knowledge in the operation of that class or type of boiler or steam receiver, as the case may be."."

- 2(d) (a) By deleting the proposed section 6(7) and (8) and substituting -

"(7) A person who has taken an examination referred to in subsection (1)(b) or (3A)(b) may, within 28 days of being notified of his examination result, request in writing the Authority to review the result.

(8) Upon receipt of a request under subsection (7), the Authority shall review the examination result to which the request relates as soon as practicable and shall notify in writing the person of its decision within 28 days after the completion of the review.

(9) The Authority shall consider any written representation submitted by the person concerned before it makes a decision under subsection (8)."

- (b) By renumbering the proposed section 6(9) and (10) as section 6(10) and (11) respectively.
- (c) In the proposed section 6(10), by deleting "(1),

(3) or 4(a)" and substituting "(1)(a), (3A)(a) or 4(a) or (b)".

- (d) By deleting the proposed section 6(11) and substituting -

"(11) A revocation or amendment of a certificate of competency by the Authority under subsection (4)(a) or (b), as the case may be, shall have immediate effect, notwithstanding any appeal lodged by the holder of the certificate against the decision under subsection (10).".

New

By adding immediately after clause 2 -

"2A. Authority to keep certain registers, and particulars to be entered in register of boilers and pressure vessels

Section 7(5) is amended by repealing everything after "revoked" where it first appears and substituting "under section 6(4)(a).".

7(b)

- (a) In the proposed paragraph (b), by deleting "6(1) or (3)" and substituting "6(1)(a) or (3A)(a)".
- (b) In the proposed paragraph (c), by deleting everything after "revoke" and substituting "or amend a certificate of competency under section 6(4)(a) or (b), as the case may be.".