

立法會
Legislative Council

LC Paper No. LS127/00-01

**Paper for the House Committee Meeting
of the Legislative Council
on 22 June 2001**

**Legal Service Division Further Report on
Boilers and Pressure Vessels (Amendment) Bill 2001**

At the House Committee meeting on 11 May 2001, it was agreed to seek further clarification from the Administration as to why rules to be made in relation to examination conducted for the issue or endorsement of certificates of competency under new rule-making powers to be conferred on the Boilers and Pressure Vessels Authority by the Bill are not subsidiary legislation.

2. The Administration has since responded with the following clarification -

- (a) it is the Administration's intention that the Authority shall make rules which do not have legislative effect;
- (b) the conditions required under the rules to be satisfied by candidates before taking an examination will be general administrative rules such as requirement to make applications in person, documents to be presented during applications and methods of payment of examination fees;
- (c) the rules will be included in a "Guide and Syllabus" to be published by Labour Department. An announcement will be published in a Government notice in the Gazette whenever the "Guide and Syllabus" is revised; and
- (d) section 16 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) (relevant extract attached) also provides for the power to make rules which are not subsidiary legislation to govern the conduct of examinations for the purpose of the issue of certificates of a similar nature.

3. Members may wish to consider, in the light of the above clarification, whether the scope of the rules to be made would be likely or unlikely to contain provisions that would stray beyond what is intended into matters with a legislative effect, i.e. into the realm of subsidiary legislation. In the former case, since the declaration of the rules as non subsidiary legislation in the proposed section 6(8) is merely for the avoidance of doubt, any rules made that clearly have legislative effect would exceed the rule-making power.

4. Correspondence with the Administration is attached for reference.

Encl

Prepared by

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19 June 2001

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By Fax (2899 2967) & By Post

14 May 2001

Dear Sir,

Boilers and Pressure Vessels (Amendment) Bill 2001

Thank you for your letter of 5 May 2001.

I shall be grateful if you would provide further clarification on the Bill with regard to proposed section 6(7) and (8) relating to the power to make rules for examinations under proposed section 6(6) and specifically on the following questions

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- (a) Is the Administration's intention to make rules which shall not have legislative effect, and if so, why is it not sufficient to rely on section 40(1) of the Interpretation and General Clauses Ordinance (Cap. 1) for the proper exercise of the power to conduct examinations under proposed section 6(6)?
- (b) What sort of conditions are intended under proposed section 6(7)(b)?
- (c) Has any gazetted requirement been considered for the rules?
- (d) How is the power to conduct examinations for comparable certificates in other legislation exercised? Does it require corresponding rules making power, whether with legislative effect or not?

Yours faithfully,

(Arthur CHEUNG)
Assistant Legal Adviser

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27 June, 2001

Mr Arthur Cheung
Assistant Legal Adviser
Legislative Council
8 Jackson Road
Central

Dear Mr Cheung,

Boilers and Pressure Vessels (Amendment) Bill 2001

On your further enquiries of 14 May 2001, I wish to respond as follows -

- (a) It is the Administration's intention that the Boilers and Pressure Vessels Authority shall make rules which do not have legislative effect.

Having consulted the Department of Justice, the Administration takes the view that section 40(1) of the Interpretation and General Clauses Ordinance (Cap.1), as read with the proposed section 6(6) of the Boilers and Pressure Vessels Ordinance (Cap.56), may not be sufficient to empower the Authority to specify the conditions to be satisfied by candidates before taking the examinations (proposed section 6(7)(b)) and the procedures for the review of examination results (proposed section 6(7)(e)). We consider that the safer course is to make express provisions under the Boilers and Pressure Vessels Ordinance rather than to rely on section 40(1) of the Interpretation and General Clauses Ordinance.

- (b) The conditions to be made under the proposed section 6(7)(b) will be general administrative rules to be abided by before taking the examinations, e.g. the requirement of making applications in person, documents to be presented during applications, methods of payment of examination fees, etc.
- (c) The rules will be included in a "Guide and Syllabus" to be published by Labour Department for persons who wish to obtain a certificate of competency under the Ordinance. The "Guide and Syllabus" will be available to the applicants free of charge at selected service outlets of Labour Department.

Since the rules made by the Authority under the proposed section 6(7) will

not be subsidiary legislation, they will not be gazetted in the Legal Notice of the Gazette. We would however publish an announcement in the Government notice of the Gazette whenever the “Guide and Syllabus” is revised.

- (d) There is no hard and fast rule as to how the power to conduct examinations for comparable certificates in other legislation should be provided for. For example, section 29 of the Shipping and Port Control Ordinance (Cap.313) and section 16 of the Merchant Shipping (Local Vessels) Ordinance (Cap.548) both provide for the power to make rules governing the conduct of examinations for the purpose of the issue of certificates of a similar nature. While the rules made under Cap.313 are subsidiary legislation, those made under Cap.548 are not.

As far as the proposed section 6(7) of the Boilers and Pressure Vessels Ordinance is concerned, our intention is to remove any possible grounds for legal challenges as to whether the Authority is sufficiently authorised to make rules to be included in the “Guide and Syllabus” (see (a) above). Since the rules to be made will only cover general matters, we are of the view that they should not be made in the form of subsidiary legislation. For the avoidance of doubt, the Bill has explicitly provided that the rules are not subsidiary legislation.

Yours sincerely,

(K K Lam)
for Secretary for Education and Manpower

