

立法會
Legislative Council

LC Paper No. LS92/00-01

**Paper for the House Committee Meeting
of the Legislative Council
on 11 May 2001**

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

Object of the Bill

To improve certain provisions relating to certificates of competency issued to operators of boilers and steam receivers.

LegCo Brief Reference

2. LegCo Brief EMB 26/3231/86 issued by the Education and Manpower Bureau in April 2001.

Date of First Reading

3. 9 May 2001.

Comments

4. The Bill contains a series of proposals to address the following, mostly practical, problems identified since 1997 in relation to certificates of competency issued to operators of boilers and steam receivers under the principal ordinance -

- (a) where a fee is charged for the issue of the certificate, some applicants are required to pass an examination (but without a corresponding power being created to conduct such examination) before its issue and are charged a fee only for the examination, and not for the subsequent issue of the certificate;
- (b) endorsement of an existing certificate is intended to be and in practice charged the same fee as the issue of a new certificate but this is only provided for rather obliquely ;
- (c) the requirements for the issue or endorsement of a certificate have in practice become more stringent than would appear from the existing provisions; and

- (d) a right of appeal from decisions regarding the issue, endorsement or revocation of a certificate has not been provided.

5. The Bill now proposes -

- (a) to expressly empower the Authority (i.e. the Commissioner for Labour) to conduct examinations for the issue or endorsement of a certificate;
- (b) to provide more clearly how fees will be charged for applications for certificates requiring and not requiring examination;
- (c) to re-define the criteria for the issue or endorsement of a certificate so as to require more substantial experience in all cases;
- (d) to provide for a right of appeal from those decisions.

Public Consultation

6. According to paragraph 27 of the LegCo Brief, the Labour Advisory Board has been consulted and the fee charging arrangements were endorsed.

Consultation with the LegCo Panel

7. The LegCo Panel on Manpower was briefed on the main features of the Bill at its meeting on 14 December 2000.

Conclusion

8. In response to our query, the Administration has provided some further information which may supplement the LegCo Brief (please see attached correspondence). We have no other questions on the drafting and legal aspects of the Bill.

9. The proposals in the Bill are focused on the practical problems arising from the specific issue of certificates of competency and do not involve any significant change in policy. Members may wish to consider whether they can support the resumption of the Second Reading of the Bill as it is.

Encls.

Prepared by

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Legislative Council Secretariat
8 May 2001

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Secretary for Education and Manpower
Education and Manpower Bureau
(Attn: Mr K K LAM
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6/F, West Wing
CGO
Hong Kong

By Fax (2899 2967) & By Post

3 May 2001

Dear Sir,

Boilers and Pressure Vessels (Amendment) Bill 2001

With reference to the captioned Bill to be introduced on 9 May 2001, I would be grateful if you could clarify in respect of the proposed new section 6(1) -

- (a) how, if any person is able to satisfy the Authority as to the conditions in paragraph (i) and (ii), should he have to pass the examination conducted by the Authority in order to qualify under (b) instead of under (a); and
- (b) the policy change from requiring now a person to satisfy an examiner as to his suitability and as to his competence under the existing section 6(1)(b) to, as proposed in the Bill, requiring him to undergo an examination as well as satisfying the Authority as to his being a fit and proper person as well as having substantial experience, skill and knowledge in the operation of the relevant equipment, the reasons for which are not apparent from the LegCo Brief.

Yours faithfully,

(Arthur CHEUNG)
Assistant Legal Adviser

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2899 2967

15 May, 2001

Mr Arthur Cheung
Assistant Legal Adviser
Legislative Council
8 Jackson Road
Hong Kong

Dear Mr Cheung,

Boilers and Pressure Vessels (Amendment) Bill 2001

Thank you for your letter of 3 May 2001. I wish to respond to your enquiries as follows -

Part (a)

A person may obtain a certificate of competency under the proposed section 6(1) by either producing evidence to the Boilers and Pressure Vessels Authority or taking part in examinations conducted by the Authority. For a person who is able to produce evidence to satisfy the Authority as to the conditions in paragraph (i) and (ii) under (a), it is not necessary for him to take part in the examinations in order to qualify under (b).

Part (b)

Your question brings out two issues on whether there is a policy change in regard to (i) the person to be satisfied before a certificate is issued; and (ii) the grounds on which a certificate is issued.

There is no policy change for both (i) and (ii). For (i), the authority to issue a certificate rests with the Boilers and Pressure Vessels Authority, under the existing section 6(1). The wordings in the existing section 6(1)(b) may however imply that an examiner (to be renamed as "assessor") has the final decision as to whether an applicant should be issued with a certificate. This will be clarified in the proposed new section 6(1).

For (ii), an applicant's being fit and proper to hold a certificate and his experience, skill and knowledge are essential considerations in determining whether a certificate of competency should be issued, having regard to the job nature of a competent person. Under the existing practices, these considerations are taken into account when assessing the person's suitability and competence before the issue of a

certificate. The proposed new section 6(1) only seeks to state clearly the grounds on which the Authority may issue a certificate of competency. This would enable, on the one hand, any person who wishes to lodge a complaint with the Administrative Appeals Board to know the terms for the issue of a certificate, and on the other, would provide the Board with the basis for dealing with appeals.

Should you require further information, please do not hesitate to contact the undersigned or Mr Samson Lai at 2810 2534.

Yours faithfully,

(K K Lam)
for Secretary for Education & Manpower

b.c.c. Commissioner for Labour
Department of Justice

(Attn: Mr Mak Hung-kae)
(Attn: Ms Mabel Cheung, Ms Cindy Yau)