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**Paper for the House Committee meeting
on 17 May 2002**

**Report of the Bills Committee on
Boilers and Pressure Vessels (Amendment) Bill 2001**

Purpose

This paper reports on the deliberations of the Bills Committee on Boilers and Pressure Vessels (Amendment) Bill 2001.

Background

2. The Boilers and Pressure Vessels Ordinance (Cap. 56) controls the 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 (i.e. the Commissioner for Labour).

3. Boilers and steam receivers that are covered by the Ordinance include water tube boilers, fire tube boilers, electric boilers and steam receivers, etc. Such equipment is usually used for generation and collection of steam for purposes like laundry, heating, and power generation in industries such as electric power stations, hospitals, hotels, garment factories and laundries.

4. 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 an examiner appointed by the Authority, such that the Authority or examiner is satisfied with his suitability and experience/competence to be issued a certificate.

5. A person who possesses a certificate of competency may obtain under section 6(3) of the Ordinance an endorsement of his existing certificate or be issued a new certificate, if he satisfies the Authority that he is competent to operate additional classes or types of boilers or steam receivers.

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

7. 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. The fees and charges proposals were supported on the basis of an undertaking by the Administration to conduct a review and introduce necessary amendments to the Ordinance.

8. Having examined the relevant provisions in the Ordinance and the Regulations in consultation with the Department of Justice, the Administration concludes that some existing provisions should be clarified. A Bill is introduced to effect these amendments.

The Bill

9. The Bill seeks to address the practical problems identified since 1997 in relation to the certificates of competency. It proposes to-

- (a) expressly empower the Authority to conduct examinations for the issue or endorsement of a certificate of competency;
- (b) provide more clearly the different fee arrangements for the issue or endorsement of certificates of competency requiring and not requiring examinations;
- (c) re-define the criteria for the issue or endorsement of a certificate of competency, so as to require substantial experience in all cases;
- (d) provide for a right of appeal in relation to decisions made by the Authority on the issue, endorsement and revocation of certificates of competency.

The Bills Committee

10. At the House Committee meeting on 22 June 2001, Members agreed to form a Bills Committee to study the Bill. Chaired by Hon Cyd HO Sau-lan, the Bills Committee has held four meetings to discuss with the Administration.

11. The membership list of the Bills Committee is in **Appendix I**.

Deliberations of the Bills Committee

Certificates of competency (clause 2)

Scope of proposed amendments

12. Members have sought clarification from the Administration on the reasons and scope of the proposed amendments in clause 2 of the Bill. They are concerned whether the proposed amendments will substantially change the existing practice, or add new conditions, for the issue or endorsement of a certificate of competency under section 6 of the Ordinance.

13. The Administration has explained that the proposed amendments only seek to clarify the grounds on which the Authority may issue or endorse a certificate of competency. The amendments are technical in nature which aim to remove the ambiguities in the Ordinance, and do not seek to affect substantially the existing operation of the Ordinance, other than the provision of an appeal mechanism (paragraphs 29-30).

Considerations for the issue and endorsement of a certificate

14. The Administration has advised that the proposed amendments are to reflect the current considerations for the issue or endorsement of a certificate under section 6(1) or 6(3) of the Ordinance. The conditions are that an applicant must either produce evidence that satisfies the Authority, or pass the examination conducted by the Authority, and has substantial experience, skill and knowledge in the operation of the types/classes of boilers and pressure vessels concerned.

15. Members have asked about the meaning of "substantial" experience and whether there are objective standards of the qualifications, experience and knowledge required for the issue or endorsement of a certificate. The Administration has explained that the required standards have been spelt out in the "Guide and Syllabus" which is being drawn up in consultation with the industry. Candidates passing the examination will be considered to have met the requirements, and local course providers have incorporated the core content of the "Guide and Syllabus" in their curriculum. To address members' concern about the term "substantial" in the English text of the Bill, the Administration has proposed to replace it by "adequate" in the relevant provisions.

16. On the conditions for exemption from examinations, the Administration has advised that if an applicant can produce evidence that he has acquired relevant qualifications, he will be exempted from the examination. Such relevant qualifications include those granted under approved courses run by various local institutions, such as the Institute of Vocational Education (Haking Wong) and the Occupational Safety and Health Council, and sea-going qualifications, such as a Certificate of Competence (Class 2 or above) for Marine Engineer Officer (Steam or

Combined) issued by the Hong Kong Marine Department or other Maritime Administration.

"Fit and proper" person

17. Members have raised concern about the use of the terms "fit and proper person" in the proposed sections 6(1) and 6(3A), and "suitable person" in the proposed section 6(4)(a). They have asked whether these provisions refer to the checking of criminal record or other assessments. The Administration has clarified that the provisions do not seek to introduce additional assessment or checks, and the policy intention is only to ensure that the certificate holder is competent in operating the relevant type or class of boilers or steam receivers safely. Having considered members' views, the Administration proposes to delete the reference to "fit and proper" and "suitable", and to revise the relevant sections to make it clear that experience, skill and knowledge are the only attributes that are statutorily required. The Administration will introduce Committee Stage amendments (CSAs) to this effect.

Revocation of certificate

18. Members have asked about the circumstances under which a certificate may be revoked by the Authority under section 6(4). The Administration has responded that 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. To reflect the policy intention more clearly, the Administration has proposed to revise the whole section 6(4). The revised version also re-affirms that the Authority may make amendment in the certificate to truly reflect a certificate-holder's competence in operating the classes or types of equipment specified in the certificate.

19. Members have expressed concern as to whether the "deemed revocation" provision in the existing section 6(4)(b) applies to insufficient length of continuous service in the operation of the specified types of boilers and steam receivers. In this connection, members are concerned whether it will be difficult for the owners of such equipment to verify that the certificate holder has been in continuous service for a period of four years.

20. The Administration has clarified that the "deemed revocation" provision in section 6(4)(b) has never been invoked in the past and the chance of invoking the provision in future is remote. In view of the concern, the Administration has proposed to delete the "deemed revocation" provision, since the deletion will not give rise to any adverse implication on the standard of competence and the present regulatory regime to ensure the safe operation of boilers and steam receivers in industry. With the deletion of the "deemed revocation" provision, the problem associated with verification of the validity of certificates relating to the length of service in operating a particular class of equipment will not arise.

Availability of certificate holders to operate boilers and steam receivers

21. The Chairman has asked whether there are sufficient certificate holders to operate boilers and steam receivers in Hong Kong, so that all such equipment is operated safely by competent persons issued with a certificate. The Administration has advised that in 2001, there were a total of 10 300 different types of boilers and steam receivers registered in Hong Kong, and only one-third of such equipment is actively in use. In 2001, there were 15 600 certificate holders who could operate various types of such equipment in the market. The Administration concludes that there is abundant supply of certificate holders to operate boilers and steam receivers.

22. The Administration has also advised that one certificate holder may supervise two or three pieces of equipment installed at the same location at a time. The Boilers Inspectors and the Occupational Safety Officers of Labour Department conduct inspections to workplaces to ensure that the boilers and steam receivers are operated under the direct supervision of competent persons.

Charging of fees (clauses 4 and 6)

23. Members have asked the Administration to explain the reasons for the proposed amendments to section 65 of the Ordinance and regulation 18 of the Boilers and Pressure Vessels Regulations. They have also enquired about the basis for determining different fees for those who need to take an examination and those who need not take an examination, for the issue or endorsement of a certificate of competency.

24. The Administration has explained that the amendments seek to remove the ambiguities in existing provisions in the Ordinance and the Regulations concerning the charging of fees for taking examination and the issue or endorsement of a certificate of competency. The existing section 65(1)(c) of the Ordinance only provides that "the Authority may by regulation provide for fees", while regulation 18 stipulates the different fees payable for the issue of certificates. The Department of Justice has advised that there is a need to provide an express provision under section 65 of the Ordinance to empower the Authority to charge fees for conducting examinations, as well as to impose different fees for the certificates for those who take an examination and those who do not.

25. The Administration has further explained that under regulation 18(2) of the Regulations, a person has to pay a fee of \$610 "prior to each occasion on which a person is examined for the purposes of the issue or endorsement of a certificate". The fee is payable irrespective of whether the applicant 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, and charging the unsuccessful applicant for the issue of a certificate may be ultra vires. The Administration therefore proposes to include an express provision in section 65 of the Ordinance to empower the Authority to fix the

amount of fee for recovery of expenditure incurred in performing his functions under the Ordinance, but without being limited by the reference to the amount of costs in relation to a particular application.

26. As regards regulation 18(1) of the Regulations, the Administration has informed members that the amendment seeks to clarify that the fee of \$330 is charged for the issue, as well as the endorsement, of a certificate where no examination is required.

27. On refund of fees, the Administration has advised that at present, Labour Department can make alternative arrangements for a scheduled examination without incurring cost if at least two working days' notice of postponement is served. In such a case, the Authority may refund the applicant on the basis that the cost for the examination has yet to be incurred. An express provision is therefore included under regulation 18 to provide for such refund.

28. The Chairman has asked about the possibility of a fee reduction, given the decline in consumer price indices in recent years. The Administration has responded that the administrative cost for the issue and endorsement of certificate had increased quite significantly from 1997 to 1999, but the fee has not been increased to cover the cost. The rise in cost during that period has more than offset the slight decline in administrative cost in recent years. Nevertheless, the fee level will be reviewed in the next fee revision exercise to be conducted at the end of 2002.

Appeal mechanism

29. The Administration has advised that the Ordinance has not provided for an appeal mechanism against administrative decisions regarding the issue, endorsement or revocation of certificate. In line with the human rights requirements that the determination of a person's civil right is made by a competent, independent and impartial tribunal, there is a need to make provisions under the Ordinance to enable persons aggrieved with the relevant decisions of the Authority to appeal against such decisions to the Administrative Appeals Board (AAB).

30. The Bills Committee welcomes the inclusion of an appeal mechanism in the Ordinance. Members have noted that a person can appeal to the Authority in the first instance, and if he is not satisfied with the Authority's decision, he can further appeal to AAB.

Reasons for specifying that the rules to be made in relation to the conduct of examinations are not subsidiary legislation (clause 2(d))

31. Members have expressed much concern about the proposed sections 6(7) and 6(8) which stipulate that the Authority may make rules in relation to the examinations conducted for the issue or endorsement of certificate, and that such rules are not subsidiary legislation. Members are concerned about whether the rules to be made

under section 6(7) will stray beyond what is intended into matters with a legislative effect, i.e. within the realm of subsidiary legislation. In this connection, the Bills Committee has asked the Administration to clarify -

- (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; and
- (b) the reasons for specifying in the proposed section 6(8) that the rules to be made in relation to examinations conducted for the issue or endorsement of certificates of competency are not subsidiary legislation.

32. The Administration has explained that the test for determining whether certain rules made by the Authority under powers conferred by ordinances are subsidiary legislation is whether the rules carry any legislative effect. Following 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 is to avoid unnecessary dispute over the legal nature of the relevant instrument. The Administration has confirmed that the rules to be made under the proposed section 6(7) are intended to be rules on the administrative arrangements for examinations, for example, syllabus for examinations and standards of competency to be attained by the candidates. 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.

33. The Chairman has pointed out that as the Bill involves a relatively simple labour policy, it should not be complicated by the insertion of the proposed section 6(8) which has implications on Government's policy on legislation and administrative measures. She has suggested that the Administration should consider deleting the proposed section 6(8) if it does not affect the Authority's powers to make rules in relation to examinations under the principal ordinance.

34. In view of concerns raised by the Bills Committee, the Administration has reviewed the need for including the proposed sections 6(7) and 6(8). The Administration has subsequently come to a view that since the proposed section 6(6) provides the Authority with the power to conduct examination, related powers to decide on the administrative arrangements for the examination will be deemed to be conferred on the Authority by virtue of section 40(1) of the Interpretation and General Clauses Ordinance (Cap. 1). The Administration therefore considers that the proposed section 6(7) and (8) can be deleted. However, there is doubt as to whether the power to conduct examinations also includes the power to review examination results. The Administration, therefore, considers it necessary to include an express provision empowering the Authority to review examination results. To effect these amendments, the Administration will introduce CSAs to replace the proposed sections 6(7) and 6(8) by the new provision.

Follow-up actions required

35. The Bills Committee has suggested that the legislative issue regarding Government's policy for determining what kind of statutory instrument should be subsidiary legislation should be referred to the Panel on Administration of Justice and Legal Services for further consideration.

Committee Stage Amendments

36. The Administration has proposed amendments to address the various concerns raised by members. A full set of the Administration's CSAs is in **Appendix II**. The Bills Committee has not proposed any CSAs.

Recommendation

37. Subject to the CSAs to be moved by the Administration, the Bills Committee supports the resumption of Second Reading debate on the Bill.

Advice sought

38. Members are invited to note the recommendation of the Bills Committee in paragraph 37.

Council Business Division 2
Legislative Council Secretariat
15 May 2002

**Bills Committee on
Boilers and Pressure Vessels (Amendment) Bill 2001**

Membership list

Chairman	Hon Cyd HO Sau-lan
Members	Hon LEE Cheuk-yan Hon Margaret NG Hon Jasper TSANG Yok-sing, JP Hon Ambrose LAU Hon-chuen, GBS, JP Hon Andrew CHENG Kar-foo Hon LI Fung-ying, JP Hon Albert CHAN Wai-yip Hon LEUNG Fu-wah, MH, JP Hon Audrey EU Yuet-mee, SC, JP

(Total : 10 Members)

Clerk	Mrs Constance LI
Legal Adviser	Mr Arthur CHEUNG / Miss Connie FUNG
Date	8 May 2002

Appendix II1ST working draft: 5.2.20022nd working draft: 11.2.20021st draft: 20.2.20022nd draft: 8.3.20023rd draft: 4.4.20023rd revised draft: 8.4.2002

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."

2

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.".